

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated September 19, 2017 which denied the appellant's request for a Monthly Nutritional Supplement (MNS) for vitamins and minerals and additional nutritional items. The ministry found that the requirements of Section 67(1.1) and Section 7 of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as there is not sufficient information to establish that a medical practitioner or nurse practitioner has confirmed:

- the appellant requires vitamins and minerals to alleviate a symptom of his chronic, progressive deterioration of health and to prevent imminent danger to life, pursuant to Section 67(1.1)(c) and (d); and,
- the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake, pursuant to Section 7 of Schedule C, to alleviate a symptom of his chronic, progressive deterioration of health and to prevent imminent danger to life, under Section 67(1.1)(c) and (d).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67(1.1) and Schedule C, Section 7

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Letter dated March 27, 2017 in which a neuro-urologist provided information that the appellant has a neurogenic bladder associated with spinal cord injury and he experiences nearly continuous urinary tract infections (UTI) characterized by fevers, foul-smelling and cloudy urine, and he “has been admitted for pyelonephritis recently.” The neuro-urologist reviewed conservative measures to avoid UTI, including maintaining fluid intake at roughly 2.5 L per day. He also reviewed strategies to deal with chronic constipation. He suggested dietary supplementation with cranberry extract, probiotics, and D Mannose;
- 2) Application for Monthly Nutritional Supplement (MNS) dated May 2, 2017 in which the appellant's medical practitioner (MP) reported:
 - the appellant's severe medical conditions are L1 paraplegia and neurogenic bladder, both related to “spinal cord injury;”
 - in response to the question whether as a direct result of the chronic progressive deterioration in health, does the appellant display two or more of the symptoms listed in section 67(1.1)(b) of the EAPWDR, the MP indicated the symptoms of malnutrition (note: “yes”), underweight status (note: “mild”), significant muscle mass loss (note: “yes”), and moderate to severe immune suppression (note: “yes”);
 - in response to a request to specify the vitamin or mineral supplements required and the expected duration of need, the MP wrote “cranberry extract, probiotics, D Mannose;”
 - asked to describe how the item will alleviate the specific symptoms identified, the MP wrote “improve bladder control;”
 - in response to the request to describe how the vitamins and minerals will prevent imminent danger to the appellant's life, the MP wrote “prevent infection, pyelonephritis sepsis, improve immunity;”
 - in response to a request to specify the additional nutritional items required, the MP did not complete this section of the application;
 - in response to the question whether the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the MP did not complete this section of the application;
 - asked to describe how the nutritional items required will alleviate one or more of the symptoms described and provide caloric supplementation to the regular diet, the MP did not complete this section of the application;
 - in response to a request to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the MP did not complete this section of the application;
 - For additional comments, the MP wrote that the appellant needs the supplements “to improve immunity, improve bladder function, and supplement diet. Deteriorated after spinal trauma and incontinent (illegible);”
- 3) Page from the MNS application with the appellant's height and weight recorded; and,
- 4) Request for Reconsideration dated July 25, 2017.

In his Request for Reconsideration, the appellant's advocate wrote:

- The community was under evacuation order at the time and this is why the doctor did not respond to the ministry's request for clarification.
- It stands to reason that someone who is paraplegic would experience a deterioration of health if they constantly battle bladder infections.
- The doctor listed four symptoms that would be alleviated by the MNS.

Additional information

In his Notice of Appeal dated October 2, 2017, the appellant expressed his disagreement with the ministry reconsideration decision and wrote that the ministry does not have a good understanding of the continuing poor health implications of his continuing to suffer from urinary infection. Every time he gets sick, it weakens all his body systems and puts him at great risk of all his symptoms getting much worse.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Written submission by an advocate on behalf of the appellant;
- 2) Questionnaire completed November 2, 2017 in which another MP wrote:
 - The appellant is an L1 paraplegic with neurogenic bladder.
 - Weight or BMI [body mass index] will not necessarily be relevant as the appellant is paraplegic.
 - The appellant has *significant* muscle mass loss, *significant* malnutrition and *significant* immune suppression.
 - The mentioned supplements (cranberry extract, probiotics, D Mannose) are given in an effort to reduce the risk of recurrent UTI, which can result in imminent danger to the appellant's life.
 - The mentioned supplements are given in an effort to reduce the risk of recurrent UTI, which can prevent further health deterioration.
 - Frequent, recurrent UTI can cause renal failure, sepsis and death. It will also worsen aforementioned malnutrition and predispose to other complications;
- 3) Print-out of website information regarding 'Neurogenic Bladder;'
- 4) Print-out of website information regarding 'Spinal Cord Injury;' and,
- 5) Print-out of website information regarding 'Cysticlean and Recurrent UTI.'

At the hearing, the appellant stated:

- He is a PWD assistance and does not have the funds to pay for the items requested in the MNS application. His mother paid to have him trial the cranberry extract since the specialist emphasized the importance of this treatment at the last appointment.
- He has had frequent UTI ever since he was confined to a wheelchair, which was in 2001. He has ended up the hospital about twice each month because of UTI. He has to self-catheter and any contamination entering his body through his [urethra] can cause an infection.
- The cranberry extract has helped with the UTI but it has to be taken for 4 weeks to be fully effective. He has to drink lots of water when he takes the cranberry extract. He had a kidney infection during his last hospital stay in October.

- He has pressure sores from being in the wheelchair 24/7 and with his legs not moving. He started getting them in 2008 and had surgery in 2011 but it was not successful. The wounds got infected. He is waiting for further surgery.
- When he has an UTI, he vomits and it is harder to heal his other conditions.

The ministry relied on its reconsideration decision as summarized at the hearing.

Admissibility of Additional Information

The ministry did not object to the admissibility of any of the additional documents, or raise an objection regarding the oral testimony on behalf of the appellant. The panel considered the Questionnaire dated November 2, 2017 as providing additional detail with respect to medical issues addressed at reconsideration, the panel admitted this document as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4) of the Employment and Assistance Act.

The panel also considered the oral testimony on behalf of the appellant, for the most part, as information that corroborates the extent of the appellant's need for the MNS as a result of medical conditions referred to at reconsideration. However, the panel did not admit information about the appellant experiencing bed sores as this was not referred to at reconsideration and, therefore, is not in support of information and records that were before the ministry at the time of the reconsideration.

The arguments on the appellant's behalf, in the advocate's oral submissions at the hearing, as well as the written submission and supporting print-outs of information, will be addressed in Part F- Reasons for Panel Decision, below.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry decision, which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and additional nutritional items because the requirements of Section 67(1.1) of the EAPWDR and Section 7 of Schedule C of the EAPWDR were not met, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 67(1.1) of the EAPWDR sets out the eligibility requirements which are at issue on this appeal for providing the additional nutritional supplement, as follows:

Nutritional supplement

- 67** (1.1) In order for a person with disabilities to receive a nutritional supplement under this section, the minister must receive a request, in the form specified by the minister, completed by a medical practitioner or nurse practitioner, in which the practitioner has confirmed all of the following:
- (a) the person with disabilities to whom the request relates is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;
 - (b) as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms:
 - (i) malnutrition;
 - (ii) underweight status;
 - (iii) significant weight loss;
 - (iv) significant muscle mass loss;
 - (v) significant neurological degeneration;
 - (vi) significant deterioration of a vital organ;
 - (vii) moderate to severe immune suppression;
 - (c) for the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more of the items set out in section 7 of Schedule C and specified in the request;
 - (d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

Section 7 of Schedule C of the EAPWDR provides as follows:

Monthly nutritional supplement

- 7** The amount of a nutritional supplement that may be provided under section 67 [*nutritional supplement*] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):
- (a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;
 - (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
 - (c) for vitamins and minerals, up to \$40 each month.

At reconsideration, the ministry acknowledged that the MP confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically paraplegia and neurogenic bladder related to a spinal cord injury, pursuant to Section 67(1.1)(a) of the EAPWDR.

Symptoms

The ministry wrote in the reconsideration decision that while the MP indicated in the MNS application that the appellant displays symptoms of malnutrition, underweight status, significant muscle mass loss, and moderate to severe immune suppression, the MP did not provide a detailed description regarding malnutrition. The ministry wrote that neither the MP nor the neuro-urologist describe a vitamin or mineral deficiency and, although they describe a need for cranberry extract, probiotics and D-Mannose, these are not considered by the ministry to be vitamin and mineral supplements and, therefore, the symptom of malnutrition was not established.

In response to the question whether the appellant displays two or more of the symptoms listed in section 67(1.1)(b) of the EAPWDR, the MP indicated “yes” to malnutrition, significant muscle mass loss, and moderate to severe immune suppression and “mild” to underweight status. The panel notes that the ministry accepted that the MP had confirmed the symptoms of significant muscle mass loss, moderate to severe immune suppression and underweight status without further description from the MP and wrote that clarification with regard to this criterion was not required. The ministry noted that the page from the MNS application with the appellant’s height and weight recorded resulted in a BMI of 14.8, which is in the underweight range. In the Questionnaire dated November 2, 2017, the appellant’s regular MP indicated that, for the appellant’s condition of paraplegia, his weight or BMI will not necessarily be relevant; however, the appellant’s regular MP confirmed in the Questionnaire that the appellant has *significant* malnutrition [emphasis included by the MP]. Therefore, the panel finds that the ministry reasonably concluded that the MP has confirmed that the appellant displays two or more of the symptoms listed in section 67(1.1)(b) of the EAPWDR that are as a direct result of the chronic progressive deterioration of health. Further, the panel finds that, in consideration of the additional information provided on the appeal, the ministry was not reasonable to find that there was insufficient evidence that the MP has confirmed that these symptoms include malnutrition.

Vitamins and Minerals

In the reconsideration decision, the ministry wrote that there was not sufficient information from the MP to show that, for the purpose of alleviating one of the symptoms referred to in sub-section (b), the appellant requires the vitamins and minerals as set out in Section 7 of Schedule C. The ministry considered that the MP and the neuro-urologist indicated that the items required by the appellant are: “cranberry extract, probiotics, and D Mannose,” and wrote that these items are not considered by the ministry to be vitamin or mineral supplements; however, the ministry does not define what these items are. At the hearing, the ministry stated that the items that are included within the category of “vitamins/ minerals” are open to interpretation. The advocate relied on the provision of the *Interpretation Act* that states that every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

The advocate argued that it is the particular vitamin and mineral make-up of cranberry extract that is the medical reason for prescribing it, that it is the preferred delivery agent for the particular vitamin/mineral combination in the extract that is required for effectively treating bladder infections. The appellant provided information on the appeal from a product website

regarding preventing recurrent UTI that included the benefits of cranberry extract as being “rich in Vitamin C,” among other qualities. The advocate argued that the active ingredient that prevents bacteria from adhering to the bladder wall is A-type proanthocyanidins (PAC’s), which can only be found in sufficient quantity in cranberry extract capsules

The ministry wrote that when the MP was asked to describe how the item will alleviate the specific symptoms identified, he wrote: “improve bladder control” as opposed to alleviating a symptom. However, for or additional comments, the MP also wrote that the appellant needs the supplements “to improve immunity, improve bladder function, and supplement diet.” One of the symptoms confirmed by the MP in the MNS application is moderate to severe immune suppression and the appellant’s regular MP reported in the Questionnaire that the appellant has *significant* immune suppression [emphasis included by the MP]. In the letter dated March 27, 2017, the neuro-urologist provided information that due to his neurogenic bladder associated with spinal cord injury the appellant experiences nearly continuous UTI and he recommended conservative methods to avoid UTI, including cranberry extract, probiotics and D Mannose. The panel finds that, in consideration of the additional information provided on the appeal, the ministry’s determination that sufficient information had not been provided from the MP to establish that the appellant requires specific vitamins and minerals to alleviate a symptom of his chronic, progressive deterioration of health, as required by Section 67 (1.1)(c) of the EAPWDR, was not reasonable.

The ministry considered that in response to the request to describe how the vitamins and minerals will prevent imminent danger to the appellant’s life, the MP wrote “prevent infection, pyelonephritis sepsis, improve immunity.” “Pyelonephritis” is defined as a potentially organ and/or life-threatening infection that often leads to renal scarring. In the Questionnaire, the appellant’s regular MP wrote that cranberry extract, probiotics, D Mannose are given in an effort to reduce the risk of recurrent UTI, which can result in imminent danger to the appellant’s life. The MP wrote that frequent, recurrent UTI can cause renal failure, sepsis and death. In the letter dated March 27, 2017, the neuro-urologist wrote that the appellant experiences nearly continuous UTI characterized by fevers, foul-smelling and cloudy urine, and he “has been admitted for polynephritis recently.” Given that specialist’s letter indicates a recent occurrence of a life-threatening condition and the MP confirmed the danger of “renal failure, sepsis and death” due to constant UTI, the panel finds that the ministry was not reasonable to conclude that there is not sufficient information from the MP to establish that failure to obtain the vitamins and minerals will result in imminent danger to the appellant’s life, pursuant to Section 67(1.1)(d) of the EAPWDR.

Additional Nutritional Items

In the reconsideration decision, the ministry wrote that it is not satisfied that the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate a symptom of his chronic, progressive deterioration of health and to prevent an imminent danger to the appellant’s life. The ministry wrote that the MP did not indicate in the MNS Application that nutritional items used for caloric supplementation are required (e.g. Boost, Ensure), the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, and the appellant requires nutritional items to alleviate an identified symptom. The ministry noted that although the appellant has a BMI in the underweight range, there is no indication by the medical professionals that the appellant is underweight due to an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

In the Questionnaire, the appellant's regular MP indicated that the appellant has *significant* muscle mass loss and *significant* malnutrition [emphasis added by MP], but there was no further information provided on the appeal regarding the appellant's need for additional nutritional items to alleviate one of these symptoms. The panel finds that the ministry was reasonable to conclude that there is insufficient information from the MP to confirm that the appellant requires specified additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate a related symptom, as set out in Section 67(1.1)(c) of the EAPWDR.

Section 67(1.1)(d) requires that the MP confirm that failure to obtain the nutritional items that are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the person's life. The ministry wrote that the MP did not describe how caloric supplementation will prevent imminent danger to the appellant's life. Given that there was no response by the MP in the MNS application to the questions regarding the appellant's need for additional nutritional items, and no further information provided from the MP on the appeal, the panel finds that the ministry reasonably concluded that the MP has not confirmed that failure to obtain nutritional items that are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the appellant's life.

Conclusion

The panel finds that in consideration of the additional information provided on the appeal, the ministry's reconsideration decision, which denied the appellant's request for a MNS for vitamins and minerals because the requirements of Section 67(1.1) of the EAPWDR and Section 7 of Schedule C of the EAPWDR were not met, was not reasonably supported by the evidence and the panel rescinds this part of the ministry's decision. Therefore, the appellant's appeal is successful in part.

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a MNS for additional nutritional items because the requirements of Section 67(1.1) of the EAPWDR and Section 7 of Schedule C of the EAPWDR were not met, was reasonably supported by the evidence. The panel confirms this part of the ministry's reconsideration decision.