

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated October 26, 2017 which denied the appellant's request for a Monthly Nutritional Supplement (MNS) for nutritional items. The ministry found that the requirements of Section 67(1.1) (c) and (d) and Section 7 of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met.

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 information before the ministry at the time of reconsideration included the following:

- A letter dated March 7, 2016 in which a medical practitioner (MP) provided information that the appellant has a severe and chronic complex disease which includes chronic fatigue syndrome, appellant's mobility and self-care activity is reduced due to chronic staph infections and cellulitis, chronic recurrent fungal skin infections, auto immune thyroiditis and immune dysfunction, and a large baker's cyst in the right knee. The practitioner further explained that there has been new evidence of moderate degenerative arthritis in the right knee, and chest pain upon exertion which is further debilitating for the appellant.
- Application for Monthly Nutritional Supplement (MNS) dated March 9, 2017 in which the appellant's nurse practitioner (NP) reported:
 - the appellant's severe medical conditions are autoimmune hypothyroid, recurrent staph infections ("Ear canals and cellulitis [right] lower extremity"), large baker's cyst (chronic swelling, decreased range of motion), and chronic fatigue syndrome (insufficient energy for employment and self-care).
 - Included with the MNS application is a one-page self-report in which the appellant describes her medical history, medical conditions (including chronic infections).
 - 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 NP indicated the symptoms of malnutrition (note: "requires low glycemic gluten free foods"), underweight status (note: "no"), significant muscle mass loss (note: "no"), 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 NP wrote "ongoing need for: 1) mineral plus: zinc, calcium, magnesium, potassium; 2) compounded T4) thyroxine) – appellant's antibodies are increased with components of Synthroid.
 - In response to describe how the item will alleviate the specific symptoms identified, the NP wrote "mineral deficiencies results in poor nutrient absorption through gastro intestinal tract. Chronic inflammation from gluten and food allergies and intestinal dysbiosis.
 - In response to the request to describe how the vitamins and minerals will prevent imminent danger to the appellant's life, the NP wrote "low zinc and elevated copper interfered with proper iron absorption resulting in anemia/iron deficiency, low magnesium and potassium related to heart arrhythmias";
 - In response to a request to specify the additional nutritional items required, the NP referenced March 7, 2016 letter.;
 - 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 NP wrote "calories are absorbed, however there is very poor micro nutrient absorption, low minerals and vit absorption leading to poor immune function";
 - In response 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 NP wrote "mineral and vitamin supplementation is essential for thyroid and adrenal function, iron level all essential to improve chronic fatigue.
 - In response to a request to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the NP wrote "reduce risk of progressing

cellulitis/staff infection. Improve energy level allowing increased ability to care for health needs. The NP further lists compounded thyroxine/T4, and nutraceutical treatments as moringa olifera leaf, lauricidin, immune 7, hawthorne tincture, usnea barbata tincture, jeunesse reserve, melatonin, and intravenous curcumin as supplements.

- For additional comments, the NP wrote “the appellant has unique health needs related to chronic fatigue and chronic infections which respond well to botanical formulas.
- The MNS application included the appellant’s height and weight;
- Appellant’s self-report dated February 2017 which summarizes the appellant’s continuing struggles. This includes staph infections from ear surgery four years ago, constant dizziness and vertigo, sinuses damage from recurring ear infections (also results in pain in teeth), and vision loss. The appellant further explains that there is damage to her heart due to staph and strep and using Hawthorn tincture results in manageable chest pains. She explains further that the staph and strep infections from her right ear have spread thru to permanently damaging her lower right leg. She hasn’t experienced this pain prior to ear surgery and now is also experiencing baker’s cyst on her right knee and rashes which continue to spread and have been tested positive for staph. These medical struggles have resulted in poor sleep and her body no longer responds to oral antibiotics. Monetarily, she spends over \$300 a month on supplements and nutritional therapies.
- Request for Reconsideration dated October 26, 2017.

Additional information

- The appellant’s Notice of Appeal dated November 2, 2017, the appellant expressed her disagreement with the ministry reconsideration decision and wrote that “once you get a staph infection from bone surgery you have it for life. I have extensive medical needs and bills. I spend on an average of \$300 a month for medical expense. I need the max allowed for the monthly nutritional supplements.”
- The Appellant included 89 pages of medical bills from 2013 to present.
- The ministry relied on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry decision, which denied the appellant's request for additional nutritional items because the requirements of Section 67(1.1)(c) and (d) of the EAPWDR and Section 7 of Schedule C 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.

(2) In order to determine or confirm the need or continuing need of a person for whom a supplement is provided under subsection (1), the minister may at any time require that the person obtain an opinion from a medical practitioner or nurse practitioner other than the practitioner referred to in subsection (1) (c).

(3) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 8.]

SCHEDULE C: 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 NP confirmed that the information provided with the MNS application established that the appellant meets the eligibility criterion set out in the EAPWDR subsection 67(1.1) (a) and 67 (1.1) (b).

Nutritional Items

Section 67(1.1) (c) requires that the item(s) sought must be set out in Section 7 of Schedule C, specified in the request, and be required for the purpose of alleviating a symptom referred to in paragraph (b).

The ministry found that requirement of nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate symptoms, as set out in subsection 67(1.1) (b) due to a progressive deterioration of health and to prevent imminent danger to life, was not met. The ministry relied on the MNS application, specifically:

- The NP does not describe the nutritional items required and while making a reference to absorption of sufficient calories, the NP wrote “calories are absorbed, however there is very poor micro nutrient absorption, low mineral and vit absorption leading to poor immune function.”
- Referencing, whether nutritional items required would alleviate one or more of the symptoms specified and provide caloric supplementation to the regular diet, the NP wrote “mineral and vitamin supplement is essential for thyroid and adrenal function, iron levels – all essential to improve chronic fatigue.”
- Referencing, the nutritional items requested could prevent imminent danger to life, the NP wrote “Reduce risk of progressive cellulitis / staff infection. Improve energy level allowing increased ability to care for health needs.”
- The ministry further relied on the NP comments that the appellant has unique health needs related to chronic fatigue and chronic infections which respond well to botanical formulas.

The ministry found that these items do not speak to the need for a caloric supplementation on a regular dietary intake. Further, the ministry notes that there is no provision in the applicable legislation to consider any natural health product or natural/herbal products. The ministry found that with regards to the need for supplemental calories, the NP does not indicate that the applicant is currently consuming a regular dietary intake, and that in spite of this is experiencing weight loss, wasting or nutrient deficiency. The ministry found that specific caloric supplements are not indicated and there are no calories in addition to regular dietary intake that will be required on a long-term basis.

The panel finds that the ministry’s conclusion on this criterion was reasonable. The panel notes, the NP practitioner does not provide a description of the nutritional items required, indicates that the appellant has issues with micro nutrients absorption but doesn’t indicate that the supplement calories are necessary, the NP does not indicate that the appellant is currently regularly consuming these supplemental intake of calories, and in spite of this is still experiencing weight loss, or a nutrient deficiency. Therefore, the panel finds the ministry was reasonable. The panel also notes that the appellant has not provided an argument in relation to this criterion. The panel concludes that it is reasonable for the ministry to have found the appellant did not meet the requirements of this provision.

Imminent Danger

Section 67(1.1) (d) requires that failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

The ministry found at reconsideration that the evidence supplied by the medical practitioner does not establish that the failure to obtain additional nutritional items that are part of a caloric supplementation to regular dietary intake will result in imminent danger to the appellant's life. The ministry found that the information provided by the NP does not provide enough evidence to demonstrate that the need for caloric supplementation to a regular dietary intake will result in imminent danger to the appellant's life.

The panel finds that the ministry reasonably determined that the evidence does not establish that supplementation will prevent imminent danger to life. As previously discussed, the vitamins and minerals listed consist of recommendations for dietary changes, as specified in the MNS application, and are not specifically part of a caloric supplementation to a regular dietary intake. The panel agrees with the ministry's assessment that the information provided by the NP that the nutritional items will aid appellant's living, does not satisfy the legislative requirement for 'imminent' danger as it does not refer to an immediacy indicating that there is a danger to the appellant's life that is likely to happen soon. The ministry was reasonable in determining that the Appellant does not meet the requirements of sub-section 67(1.1) (d) of the EAPWDR.

Conclusion

The panel found the ministry's conclusions on each criterion at issue to be reasonable. Therefore, the panel finds that the ministry's decision finding the appellant ineligible for the Monthly Nutritional Supplement was a reasonable application of the legislation in the circumstances of the appellant.

The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.