

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 12 December 2017, which determined that the appellant was not eligible for a Monthly Nutritional Supplement (MNS) for nutritional items because she had not met the legislated criteria under section 67(1.1) and section 7, Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). The ministry found that the appellant had demonstrated that she suffers from a chronic progressive deterioration of health, as set out in section 67 (1.1)(a). The ministry also found that the appellant, as a result of her chronic progressive deterioration of health, suffers from two or more of the symptoms listed in section 67(1.1)(b). However, the ministry determined that it was not satisfied that the appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate symptoms of a chronic progressive deterioration of health, in accordance with section 67(1.1)(c) and section 7, Schedule C, and to prevent an imminent danger to her life, as set out in section 67(1.1)(d).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation section 67 and Schedule C section 7.

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration consisted of the following:

- The appellant is a person with disabilities (PWD) and is a recipient of PWD benefits;
 - The appellant applied for monthly nutritional supplement (MNS) for vitamins and minerals and nutritional items;
 - The appellant's request for MNS for vitamins and minerals was approved; and
 - The appellant's request for MNS for nutritional items was not approved.
 - A letter from a medical clinic dated 18 September 2017, stating that the appellant has multiple medical conditions and has lost a significant amount of weight; because of this she requires updated fitted clothing. Hospitalist's report dated 31 August 2017, regarding the appellant's hospital admission.
 - Laboratory Specimen Results dated 13 September 2017.
 - Laboratory Report dated 18 August 2017.
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- A **MNS Application** containing the following information pertaining to the request for nutritional items:
 - The appellant has been diagnosed with Crohn's Disease, PTSD/Anxiety and ADHD
 - The appellant's physician indicates that the appellant is being treated for a chronic progressive deterioration of health and provides the following details: *Yes – Cachexia, poor [illegible] intake [illegible], on immunomodulators for colon, [illegible]*
 - The physician indicates that the appellant displays the following symptoms: malnutrition (*yes, lost > 50lbs since past 6 months*); underweight status (*worsening*); significant weight loss (*yes, as above*); significant muscle mass loss (*yes, [illegible]*); moderate to severe immune suppression (*possible, [illegible] frequent, on immunosupport*); and significant deterioration of a vital organ (*liver & [illegible]*).
 - In response to a prompt to **specify the additional nutritional items required and expected duration of treatment**, the physician writes: *Patient unable to afford certain [illegible], Crohn's diet very specific & can get expensive.*
 - The physician confirms that the appellant has a medical condition that results in the inability to absorb sufficient calories through a regular dietary intake (*Yes, Crohns*)
 - The physician responds to the prompt to **describe how the nutritional items required will alleviate one or more of the symptoms specified and provide caloric supplementation to the regular diet**: *Help with absorption [illegible] intake*
 - The physician responds to the prompt to **describe how the nutritional items requested will prevent imminent danger to the applicant's life**: *malabsorption syndrome, flare ups of Crohn's & prevent surgery*
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- A **Request for Reconsideration** dated 20 November 2017, in which the appellant writes: *I feel more information was needed.* With the request for reconsideration, the appellant included several documents:
 - 1-page letter from the appellant dated 28 November 2017, stating that her diet is poor because she was recently homeless and had to rely on community resources for meals. She stated that while she appreciates the resources, they are not adequate to meet her needs. She spends 80% of her income on rent, which leaves her with little money to take care of her basic needs. She explained that the nutritional supplement would allow her to follow the diet she needs and manage her Crohns disease.
 - 1-page letter from a nurse specialist dated 28 November 2017, stating that the appellant has a medical condition that significantly limits food choices. The appellant's 'poor oral intake' is from food intolerance rather than not consuming a regular diet. The Crohn's diet restricts pre-packaged/processed foods, and this

is what the appellant can afford. MNS would enable the appellant to afford foods that offer the best control of her disease and help to prevent further deterioration of her health.

- A copy of the recommended Crohn's diet.
- A 1-page letter from a client service worker dated 28 November 2017, stating that the appellant recently stayed at the local shelter and there is no capacity to accommodate food preferences or special dietary needs. There is nowhere for residents to store their own food and this can be a huge issue for people like the appellant who require a special diet to meet their medical needs. The appellant has moved to her own place but can only afford the cheapest and most basic food items. MNS would allow the appellant to purchase specialized foods that will not aggravate her condition.

Notice of Appeal

In the Notice of Appeal dated 30 December 2017, the appellant gives as reasons for appeal: *I cannot afford to eat the recommended diet for my Crohn's disease. I continue to lose weight & hair is falling out. 85% of \$ is on rent. Every cent I have goes on food I need for a healthy Crohn's diet. I am trying so hard to manage and improve my life, but my health is holding me back. I need & require this nutritional supplement.*

Hearing Submissions

At the hearing the appellant stated that she cannot afford to purchase the items that make up a Crohn's diet. She explained that she requires a diet that is high protein, high fat with no pre-packaged foods, but cannot afford this because 85% of her income goes to rent. She argued that her health is deteriorating as a result of her inability to afford the items she is supposed to consume.

The ministry relied on the reconsideration decision.

Admissibility

The panel finds that the information provided by the appellant at the hearing and in the Notice of Appeal consists of argument. As such, the panel finds that there is no information before it requiring an admissibly determination in accordance with section 22 (4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision determining that the appellant did not meet the statutory requirements of Section 67 and section 7, Schedule C of the *EAPWDR* for MNS eligibility is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The following sections of the *EAPWDR* apply to this appeal:

Nutritional supplement

67 (1) The minister may provide a nutritional supplement in accordance with section 7 [*monthly nutritional supplement*] of Schedule C to or for a family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who

(a) is a person with disabilities, and

(b) is not described in section 8 (1) [*people receiving special care*] of Schedule A, unless the person is in an alcohol or drug treatment centre as described in section 8 (2) of Schedule A,

if the minister is satisfied that

(c) based on the information contained in the form required under subsection (1.1), the requirements set out in subsection (1.1) (a) to (d) are met in respect of the person with disabilities,

(d) the person is not receiving another nutrition-related supplement,

(e) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 7 (c).]

(f) the person complies with any requirement of the minister under subsection (2), and

(g) the person's family unit does not have any resources available to pay the cost of or to obtain the items for which the supplement may be provided.

(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.]

[am. B.C. Regs. 317/2008, s. 8; 68/2010, ss. 1 and 2; 145/2015, Sch. 2, ss. 7 and 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.

In order to receive a monthly nutritional supplement, a person must demonstrate that: they suffer from a chronic progressive deterioration of health, as set out in section 67 (1.1)(a); as a result of the chronic progressive deterioration of health, they suffers from two or more of the symptoms listed in section 67(1.1)(b); for the purpose of alleviating a symptom, the person requires one or more of the items set out in section 7 of Schedule C and specified in the request; and failure to obtain the items referred to in paragraph will result in imminent danger to the person's life. Section 7(a), Schedule C provides for additional nutritional items that are part of a caloric supplementation to a regular dietary intake.

In the reconsideration decision the ministry determined that the appellant is not eligible for MNS because, it was not satisfied that the appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate symptoms of a chronic progressive deterioration of health and to prevent an imminent danger to her life. In reaching this conclusion the ministry noted that the physician has indicated that the appellant is unable to afford certain elements of her diet. As well, the ministry considered the physician's confirmation that the appellant has a medical condition that results in an inability to absorb sufficient calories through a regular dietary intake and the items requested would 'help with absorbing appropriate nutrients'. The ministry also notes the physician's indication that the nutritional items will prevent imminent danger to the appellant's life by assisting with malabsorption and reducing Crohn's flare-ups. In addition, the ministry considered the information provided in the letter from the nurse specialist. The ministry concluded that the information provided did not indicate that the appellant requires extra calories (caloric supplementation) over and above those found in her regular diet. The ministry further found that the appellant requires specific foods as a part of a balanced diet to assist her with managing Crohn's disease but that this reflects appropriate choices within the appellant's regular dietary intake rather than caloric supplementation.

The panel notes that the ministry has conducted a combined analysis of section 67(1.1)(c) and (d). The panel finds that the ministry's determination that the appellant does not require caloric supplementation to be unreasonable. The panel notes that the physician has clearly indicated in the MNS application that the appellant is unable to absorb sufficient calories through a regular dietary intake as required by section 67(1.1)(c) and section 7(a) in Schedule C of the EAPWDR. Furthermore, the panel notes that the physician has indicated that nutritional items will alleviate one or more of the listed symptoms and provide caloric supplementation to the regular diet through help with absorption and prevent imminent danger to the appellant's life (*malabsorption syndrome, flare-ups of Crohn's & prevent surgery*). The panel finds that this information specifically indicates that the appellant requires caloric supplementation. As such, the panel finds that the ministry's conclusion on this criterion is not reasonably supported by the evidence.

The ministry's conclusion regarding imminent danger under section 67(1.1)(d) relies on its conclusion that caloric supplementation is not required, which the panel has found to be unreasonable. As the panel has determined that the ministry's conclusion regarding caloric supplementation under section 67(1.1)(c) and section 7, Schedule C is not reasonably supported by the evidence, the panel also finds that its conclusion regarding imminent danger is not reasonably supported by the evidence.

Conclusion

The panel finds that the ministry's reconsideration decision, determining that the appellant is not eligible for MNS because she is not in receipt of disability assistance, was not reasonably supported by the evidence. The panel rescinds the ministry's reconsideration decision. The appellant is successful on appeal.