

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the ministry”) reconsideration decision of January 4, 2018 in which the ministry denied the appellant a monthly nutritional supplement (MNS) of vitamins/minerals because his application failed to meet the eligibility criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67 (1.1) (a), (b), (c) and (d) and Schedule C, Section 7. Specifically, the ministry was not satisfied that:

- the appellant was being treated for a chronic, progressive deterioration of health on account of a severe medical condition;
- displayed two or more of the symptoms set out in EAPWDR Section 67 (1.1);
- required one or more of the items set out in Section 7 of Schedule C to alleviate the symptoms; and
- failure to obtain the items would result in imminent danger to his life.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):

- Section 67 (1), (1.1)
- Schedule C, Section 7

PART E – SUMMARY OF FACTS

The appellant is a single recipient of disability assistance (PWD).

The information before the ministry at reconsideration included the following:

- Application for MNS completed by the appellant's family doctor (GP) and submitted on October 4, 2017, summarized as follows:
 - o appellant has 2 severe medical conditions, namely Opiate Addiction ("methadone treatment") and Undernourished ("needs increased protein diet");
 - o as a direct result of these severe medical conditions the appellant is being treated for a chronic, progressive deterioration of health with "*medication as above*", referring to methadone and the need for an increased protein diet;
 - o as a direct result of chronic, progressive deterioration of health the appellant displays the symptom of "*underweight status*";
 - o the appellant's height is 6 feet, 3 inches and he weighs 210 pounds;
 - o the appellant *requires multivitamins* to alleviate his symptom of underweight status, which will "*improve his diet/vit (sic)*";
 - o these items will prevent imminent danger to the appellant's life by "*improving his health*".

- Request for Reconsideration received by the ministry on December 19, 2017 in which the appellant notes:
 - o he sustained a traumatic brain injury at 15 years of age;
 - o he suffers from opiate addiction which is treated with methadone;
 - o he has very little money left over after paying his monthly expenses;
 - o he suffers from chronic constipation caused by methadone treatment and requires fresh fruit (\$60 per month and stool softener (\$12 per month).
 - o due to his brain injury he suffers from difficulty walking, memory and concentration difficulties, body pains and anxiety for which he requires multivitamins (\$20 per month) and Boost nutritional supplement (\$100 per month);
 - o he also experiences insomnia and needs nightly melatonin (\$12 per month).

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry decision of January 4, 2018 in which the ministry denied the appellant the monthly nutritional supplement (MNS) of vitamins/minerals because his application failed to meet the eligibility criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67 (1.1) (a), (b), (c) and (d) and Schedule C, Section 7. Specifically, the ministry was not satisfied that a medical practitioner had confirmed that:

- the appellant was being treated for a chronic, progressive deterioration of health on account of a severe medical condition;
- displayed two or more of the symptoms set out in EAPWDR Section 67 (1.1);
- required one or more of the items set out in Section 7 of Schedule C to alleviate the symptoms; and
- failure to obtain the items would result in imminent danger to his life.

Relevant legislation:

EAPWDR:

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.

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.

The appellant argues that he needs a stool softeners and a diet of fresh fruit because he suffers from constipation resulting from methadone treatment for his opiate addiction. He also needs multivitamins and Boost nutritional supplement to control the ongoing problems arising from his brain injury, including difficulty walking, pain, anxiety and memory/concentration problems. He struggles with insomnia, for which he requires melatonin. In his Notice of Appeal dated January 18, 2018 the appellant noted that he disagrees with his GP's assessment of his height and weight and now that his GP has retired he is looking for a new family doctor to complete a new MNS application.

The ministry's position is that the appellant's GP has not provided sufficient information in the prescribed form to indicate that the appellant is experiencing a chronic, progressive deterioration of health as a direct result of severe medical conditions as required by EAPWDR Section 67 (1.1) (a), and that the appellant is not displaying two or more of the symptoms set out in Section 67(1.1) (b), namely: malnutrition, underweight status, significant weight loss, significant neurological degeneration, significant deterioration of a vital organ, and moderate to severe immune suppression. The ministry also argues that the GP has not provided sufficient information to establish that vitamin/mineral supplementation in the form of multivitamins will alleviate a symptom in 67(1.1) (b) or that failure to obtain vitamin/mineral supplementation will result in imminent danger to the appellant's life. The ministry argues further that because the appellant's GP did not complete Question 6 of the MNS application relating to the need for nutritional supplementation to alleviate one or more of the symptoms set out Section 3 and did not indicate that the appellant requires caloric supplementation to his diet to prevent imminent danger to the appellant's life. The appellant's MNS application does not include a request for a supplement for nutritional items.

Panel Decision

To qualify for a MNS for a vitamin/mineral supplement under EAPWDR Schedule C the applicant must meet the criteria set out in EAPWDR Section 67 (1) and (1.1). The ministry accepts that the appellant meets the requirements of Section 67 (1), namely that he is a PWD recipient who does not have resources to pay the cost of a MNS.

The applicant must then meet the remaining four criteria in Section 67 (1.1), which requires that a medical practitioner confirm that the applicant for a MNS:

- (a) suffers from 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 displays two or more of the symptoms listed in (i) – (vii);
- (c) requires nutritional items or a vitamin/mineral supplement to alleviate the symptoms in (b); and
- (d) failure to obtain either the nutritional items or vitamin/mineral supplement will result in imminent danger to the person's life.

The panel will address each of these criteria separately.

(a) Section 67 (1.1)(a) - Chronic, Progressive Deterioration of Health

In his request for reconsideration the appellant noted that he suffers from two medical conditions: opiate addiction and traumatic brain injury. On the MNS application the GP indicated that the appellant suffers from two severe medical conditions, namely “opiate addiction” and “undernourished”, but did not comment on the brain injury or how it impacts the appellant’s health. Although the panel accepts that the appellant experiences ongoing health problems as a result of his brain injury the legislation stipulates that a medical practitioner or nurse practitioner must confirm the severity of the medical condition. Because the GP did not include the traumatic brain injury as a severe medical condition in Section 1 of the MNS application the panel finds that the ministry reasonably determined that it could not establish that the appellant was experiencing a chronic, progressive deterioration of health as a result of his brain injury.

On Page 4 of the reconsideration decision (appeal record page 19) under the heading “Chronic Progressive Deterioration of Health” the reconsideration officer writes: “*However, the Medical Practitioner does provide information indicating that as a result of your medical conditions you are experiencing a chronic progressive deterioration of health*”. This statement is inconsistent with the next sentence, which reads: “*In other words, the Medical Practitioner does not describe an ongoing worsening of health*”, and with the concluding sentence in that section which states that a chronic progressive deterioration of health has not been established. The panel notes also that the sentence at issue begins with the word “*however*”, which implies that the appellant’s medical conditions, while chronic, do not necessarily amount to a chronic, progressive deterioration of health. In the context of the entire section it is clear that the reconsideration officer made a typographical error by failing to insert the word “not” between the words “does___ provide”. Accordingly the panel assumes that the ministry’s position is that that EAPWDR Section 67(1.1) (a) has not been met.

The ministry based its determination on the lack of information provided by the GP in Question 2 of the MNS application. The GP writes “*Rx as above*”, but does not provide additional treatment information describing how the medication prevents chronic, progressive deterioration of health as requested on the form. The panel finds that the ministry reasonably determined that due to the lack of additional information from the GP it could not be established that the appellant was experiencing a chronic, progressive deterioration of health on account of a severe medical condition.

(b) Section 67 (1.1)(b) – Displays 2 or More Symptoms Listed on the MNS Application

In his request for reconsideration the appellant reports that he experiences constipation, insomnia, difficulty walking, generalized pain, memory problems and anxiety. In Section 3 of the MNS application the GP indicates that the appellant displays only 1 of the symptoms listed on the form, namely “Underweight status”. In Question 4 the GP specifies that the appellant is 6 feet, 3 inches tall and weighs 210 pounds, which indicates that his Body Mass Index is in the slightly above average range. The GP does not provide any additional information to explain the discrepancy between the appellant’s above average BMI and the noted symptom of underweight status.

The panel therefore finds that the ministry reasonably determined that Section 67 (1.1) (b) has not been met because the GP has not confirmed that the appellant displays two or more symptoms of the symptoms listed in subsections (i)-(vii) and because the symptom of underweight status could not be established by the information provided.

(c) Section 67 (1.1)(c) – Requires Nutritional Items or a Vitamin/Mineral Supplement to Alleviate the Symptoms in (b)

In answer to Question 5 of the MNS application the GP writes that the appellant requires “*multivitamin treatment*”. He adds that the multivitamin treatment will alleviate the specific symptoms identified: “*improve diet/vit*”. The GP does not explain how multivitamin treatment will alleviate the symptom “underweight status” he identified in Question 3.

The panel finds that the ministry reasonably determined that Section 67 (1.1) (c) was not met because the appellant did not display 2 or more of the symptoms listed in subsection (b) of that section and the GP did not provide sufficient information to explain how one or more of the items set out in Section 7 of Schedule C will alleviate the appellant’s underweight status.

(d) Section 67 (1.1)(d) – Failure to Obtain the item(s) Will Result in Imminent Danger to the Person’s Life:

In Question 5 of the MNS application, when asked how the item(s) available under Section 7 of Schedule C will prevent imminent danger to the appellant’s life, the GP responds: “*will improve his health*”. The GP does not provide additional information to explain how failure to receive multivitamin treatment will result in imminent danger to the appellant’s life.

The panel finds that the ministry reasonably determined that subsection (d) of Section 67 (1.1) was not met because the GP did not provide sufficient information in the MNS application to demonstrate that failure to receive multivitamin treatment would result in imminent danger to the appellant’s life.

Nutritional Items

Although in his request for reconsideration the appellant noted that he requires Boost nutritional supplement on a daily basis the GP did not complete this section in the MNS application.

The panel finds that the ministry reasonably determined that it could not assess the appellant’s need for nutritional items in the reconsideration decision because the GP did not complete the required section in the MNS application.

Conclusion

The panel acknowledges that the appellant suffers from severe medical conditions including opiate addiction and a traumatic brain injury, but finds that the ministry reasonably concluded that the information provided by the medical practitioner failed to establish that:

1. on account of a severe medical condition the appellant is experiencing a chronic, progressive deterioration of health;
2. the appellant is displaying 2 or more symptoms as a result of his chronic, progressive deterioration of health;
3. the appellant requires the specified Schedule C items (in this case, a vitamin/mineral supplement) to alleviate the symptoms identified; and
4. failure to obtain a vitamin/mineral supplement will result in imminent danger to the appellant’s life.

The panel therefore finds that the ministry’s determination that the appellant’s request for a MNS of vitamin/mineral supplementation does not meet the eligibility criteria set out in EAPWDR subsections 67 (1.1) (a), (b), (c) and (d) is reasonably supported by the evidence, and confirms the decision. The appellant is not successful in his appeal.