

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 14 March 2018, which determined that the appellant was not eligible for a Monthly Nutritional Supplement (MNS) for nutritional items because he 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 he 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 his 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 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 **MNS Application** containing the following information pertaining to the request for nutritional items:

- The appellant has been diagnosed with schizophrenia and haemochromatosis
- The appellant's Nurse Practitioner (NP) indicates that the appellant is being treated for a chronic progressive deterioration of health and provides the following details: 1) lifestyle management for schizophrenia – medical intervention as required – eating well & active; 2) haemochromatosis – low iron diet & monthly phlebotomies.
- The NP indicates that the appellant displays the following symptoms: significant weight loss (*when mental health deteriorates*); significant muscle mass loss (*optimal diet helps*); significant neurological degeneration (*yes*); and significant deterioration of a vital organ (*heart & liver – iron overload; brain - schizophrenia*).
- The appellant's height is 6'1" and weight is 187 lbs.
- In response to a prompt to **specify the additional nutritional items required and expected duration of treatment**, the physician writes: *high protein diet & grass fed beef*
- The NP responds to the prompt as to whether the appellant has a medical condition that results in the inability to absorb sufficient calories through a regular dietary intake as follows: *when schizophrenia & mental health deteriorates, he does lose weight rapidly.*
- 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:** *neurological degenerations – support brain health & prevent relapse; significant weight loss - -when mental health suffers – additional caloric demand with exercise needs for mental health.*
- The physician responds to the prompt to **describe how the nutritional items requested will prevent imminent danger to the applicant's life:** *patient has a limited income and significant health issues He is presently managing well with diet & exercise and these items will help to support his well-being – mentally.*

A **Request for Reconsideration** dated 14 February 2018.

- A letter from the appellant's NP 16 February 2018, stating that the appellant is presently managing his mental illness with diet and lifestyle and urging the ministry to provide the appellant with funding to offset the financial burden of feeding himself well.
- A letter from the appellant's mother dated 20 February 2018, arguing that the appellant requires a nutrient-dense diet in order to stay well and avoid institutionalization, deteriorating mental and physical health, or death. Appended to this letter is several pages of information resources regarding nutrition for mental health.

Additional information before the panel on appeal consisted of:

Notice of Appeal

In the Notice of Appeal dated 26 March 2018, the stated reasons for appeal are: *\$40/month does not meet the costs of [appellant's] nutritional needs for stable mental health. Further financial support is requested.*

Appeal Submissions

Prior to the hearing the appellant submitted:

1. A written argument prepared by the appellant's mother (Appeal Argument)
2. A letter written by the appellant's NP (Appeal Letter)

3. A medical-legal report prepared by a psychiatrist who was asked to assess the appellant's mental health and provide an opinion on the appellant's ability to manage his affairs between 2002-2014 as well as his ability to direct litigation on his own behalf. (Psychiatrist's Report)

Hearing Submissions

At the hearing the appellant was represented by his mother. She argued that the appellant requires specific nutrient-dense foods in order to manage his mental illness. She reported that he says he could not survive without these foods, which are not readily available and are more expensive than standard grocery store fare. She argued that standard foods on the grocery store shelves have additives, GMOs, etc., which have been proven to negatively impact mental health. She argued that there are plenty of studies supporting what the appellant is asking for in terms of food rather than medications, which cause decline, as a treatment. She reported that the appellant's history demonstrates that his mental health declines when he has not been able to manage his diet with the foods he needs. She stated that the appellant has been stable and able to look after himself independently for the past 8-10 years but that he is barely making it financially and this is not sustainable; he needs additional funding to eat well. She argued that the appellant requires a higher fat diet for brain health. The appellant's mother also argued that his haemochromatosis is also a serious medical condition that requires increased nutrient density in his diet in order to recover from the effects of his phlebotomy treatments, which have a draining effect on his body. As well, she argued that this type of diet will help to reduce his risk of cancers and diabetes that are associated with haemochromatosis. She clarified that the appellant does not have any physician information to support an absorption problem, but that the appellant's past demonstrates that he does not do as well without a nutrient dense diet; he ends up in hospital. She argued that something like Ensure to increase caloric intake would do the appellant harm. She argued that it is the quality of calories not quantity of calories that matters because the appellant cannot absorb nutrients that are not in the food. The appellant's mother argued that his request is for supplementation with nutrient-dense foods rather than other types of supplements. The appellant's mother clarified that the appellant has submitted the Psychiatrist's Report for the purpose of demonstrating the severity and history of his illness.

The ministry relied on the reconsideration decision.

Admissibility

The panel finds that the information provided in the Notice of Appeal and at the hearing consists of argument and will be considered as such.

The panel finds that the information provided in the Appeal Argument and Appeal letter consist of information and argument in support of information and records that were before the ministry at reconsideration and both are admissible in accordance with section 22 (4)(b) of the *Employment and Assistance Act*. The panel notes that the ministry did not object to the admission of either the Appeal Argument or Appeal Letter.

The panel finds that the Psychiatrist's Report is partially admissible, in accordance with section 22 (4)(b) of the *Employment and Assistance Act*, for the purposes articulated by the appellant's representative because the information relating to the appellant's illness is in support of information that was before the ministry at reconsideration. However, the panel finds that the portions of the document that deal with the appellant's ability to manage his affairs between 2002-2014 as well as his ability to direct litigation on his own behalf are not in support of information and records that were before the ministry at reconsideration. Thus, these portions of the document are not admissible in accordance with section 22 (4)(b) of the *Employment and Assistance Act*. The panel notes that the ministry did not object to the admission of the Psychiatrist's Report.

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 for nutritional items 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 this appeal, the ministry is satisfied that the appellant suffers from a chronic progressive deterioration of health, as set out in section 67 (1.1)(a) and suffers from two or more of the symptoms listed in section 67(1.1)(b). Therefore, the last two criteria are at issue in this appeal; namely whether the ministry was reasonable in determining that the appellant had not demonstrated that he requires nutritional items as a part of caloric supplementation to a regular dietary intake to alleviate symptoms set out in section 67(1.1)(b) due to a chronic progressive deterioration of health and to prevent imminent danger to life.

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 his life. In reaching this conclusion the ministry found that the NP had not provided enough information to demonstrate that the appellant is displaying a symptom which would indicate a need for caloric supplementation, such as underweight status, significant weight loss, or significant muscle mass loss. As well, the ministry noted that the appellant's height and weight, as provided by the NP placed him in the upper normal range for Body Mass Index (BMI). The ministry determined that a need for a high protein diet and grass fed beef is not indicative of a need for caloric supplementation. As well, the ministry found that the NP's report, that the appellant loses weight rapidly when schizophrenia and mental health deteriorates, does not establish that the appellant experiences weight loss due to an inability to absorb sufficient calories through regular dietary intake. The ministry also determined that the NP's statement about the appellant's need for the items requested to support brain health and prevent relapse was not considered indicative of a need for caloric supplementation. The ministry found the NP's statement regarding additional caloric demand with exercise needs for mental health to be indicative of a need for extra calories due to exercise for treatment of mental health rather than a need for extra calories due to an inability to absorb sufficient calories through regular dietary intake. The ministry found that the NP's report that the appellant has limited income and significant health issues but is doing well with exercise and diet and the items requested will support his well-being mentally does not establish that the appellant requires caloric supplementation or that failure to provide caloric supplementation will result in imminent danger to his life. In addition, the ministry concluded that the NP's statement that the supplement will assist the appellant in maintaining his health and preventing institutionalization does not establish that the appellant requires caloric supplementation or that failure to provide supplementation will result in imminent danger to his life.

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 evidence provided does not establish that the appellant requires caloric supplementation to be reasonable. The panel notes that the NP has not 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. The panel notes the NP has indicated that the appellant requires a high protein diet and grass fed beef. As well, the panel notes that the thrust of the arguments made by the appellant's representative at the hearing was that the appellant requires specific foods in his diet to assist him with maintaining his health rather than caloric supplementation to his diet. The panel also observes that the appellant's advocate and the NP have argued that providing the appellant with a supplement so that he can maintain his health and independence through his diet is the more cost effective option as it may prevent hospitalization. However, the panel notes that these considerations are not a part of the criteria set out in the legislation to be used in determining MNS eligibility. The panel notes that the appellant's advocate argued that he requires good quality calories from nutrient-dense foods rather than an increased quantity of calories obtained from supplementation. Therefore, the panel finds that the ministry reasonably determined that the appellant's need for a high protein diet and grass fed beef is not indicative of a need for caloric supplementation under section 67(1.1)(c) and section 7(a) in Schedule C of the EAPWDR.

The panel also notes that the EAPWDR contemplates diet supplements, such as a high protein diet, gluten-free diet or low sodium diet, under section 66 and section 6 in Schedule C. Meanwhile, the monthly nutritional supplement set out in section 67 and section 7 in Schedule C contemplates supplements for vitamins and minerals and/or nutritional items that are part of caloric supplementation to a regular dietary intake. The panel notes that the supplement requested by the appellant was a monthly nutritional supplement for nutritional items and this is the supplement for which the ministry determined eligibility criteria had not been met.

The ministry's conclusion regarding imminent danger under section 67(1.1)(d) relies on its conclusion that caloric supplementation to a regular dietary intake is not required, which the panel has found to be reasonable. 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 reasonably supported by the evidence, the panel also finds that its conclusion regarding imminent danger is reasonably supported by the evidence.

Conclusion

The panel finds that the ministry's reconsideration decision, determining that the appellant is not eligible for MNS for nutritional items is reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.