

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated August 28, 2018 which found that the appellant is not eligible for the Monthly Nutritional Supplements of nutritional items as the appellant did not meet the eligibility criteria set out in Sections 67 (1.1) (c) and (d) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry determined that the evidence does not establish that

- a medical practitioner or nurse practitioner has confirmed that the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating one of the following symptoms -
 - malnutrition;
 - significant neurological degeneration;
 - moderate to severe immune suppression; and that
- failure to obtain items requested would result in imminent danger to her life.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)– Section 67.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)– Schedule C section 7.

PART E – SUMMARY OF FACTS

The appellant is a Person with Disabilities in receipt of disability assistance.

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

A. Application for Monthly Nutritional Supplement (MNS) dated June 27, 2018 completed by the appellant's doctor who notes:

1. List and description of appellant's severe medical conditions

- Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME): pathological fatigue, post...malaise, sleep dysfunction, pain, neuro.....immune manifestations.
- Fibromyalgia (FM): widespread pain, fatigue, trouble thinking, remembering.

2. As a result of the severe medical condition(s) is the applicant being treated for a chronic, progressive deterioration of health?

- Yes, this patient received treatment at Complex Chronic Disease Program at a BC Hospital and Health Centre

3. When asked if as a direct result of the chronic, progressive deterioration of health noted, does the applicant display two or more of noted symptoms, the doctor identified:

- Malnutrition: Iron deficiency
- Significant neurological degeneration: widespread severe cognitive symptoms
- Moderate to severe immune suppression: as result of ME/FM – recent Shingles

4. Applicant's height and weight

- 162.7 cm
- 71.1 kg

5. Vitamin or Mineral Supplementation available to alleviate one or more of the symptoms specified in part 3 above if those symptoms are a direct result of a chronic, progressive deterioration of health and to prevent imminent danger to the applicant's life.

- Specify vitamin or mineral supplement(s) required and expected duration of need:
 - Iron, Vitamin D, Magnesium, Fish Oil, B Complex, Acetyl - L – Carnetine, Vitamin C
 - All long term
- Describe how the item will alleviate the specific symptom identified:
 - Boost immune system
 - Improve neurological symptoms
- Describe how this item or items will prevent imminent danger to the applicant's life:
 - Without the vitamin/mineral supplements the malnutrition, immunity and neurological degeneration will become worse putting the patient at risk of life threatening infections, malnutrition and injury.

6. Nutritional Items available to alleviate one or more of the symptoms specified in part 3 above if those symptoms are a direct result of a chronic, progressive deterioration of health and the nutritional items are medically essential; will provide caloric supplementation to a regular dietary intake and are required to prevent imminent danger to the applicant's life.

- Specify the additional nutritional items required and expected duration of need:
 - High protein foods, high iron foods, fruits/vegetables, healthy fats and whole grains
 - All long term
- Does the applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake?
 - There is a connection between FM/ME related to poor nutrient absorption described in the literature and research as a result of mitochondrial and intestinal dysfunction.
- Describe how the nutritional items will alleviate one or more of the symptoms specified in question 3 and provide caloric supplementation to the regular diet.
 - All food items listed contribute to improved nutrition. High iron meats and vegetables and other foods will improve iron status. All foods will contribute to improved neuro function.
- Describe how the nutritional items requested will prevent imminent danger to the applicant's life.
 - Without these items the patient will have worsening malnutrition, neurological degeneration and immunity putting the patient at risk of life threatening infection and injury.

Under Additional Comments:

- The patient requires additional caloric and nutrient supplementation beyond a regular diet. All items will contribute to improved nutrition, neurological c...eration and immunity.

B. At reconsideration the doctor provides a letter dated August 20, 2018 which includes the following information:

- “Due to low income [the appellant] has not been able to afford the ... recommended nutritional items that have been prescribed...to reduce the symptoms listed above...Nutritional items listed in the original application will all contribute to improving the above symptoms listed and are required as additional nutrients and caloric supplementation to a regular diet, regardless of the need for specialized food items. If the patient is not able to meet her estimated increased daily protein and total caloric requirements, this will contribute to additional neurological symptoms and immune suppression. Poor absorption of nutrients is common in patients with ME and FM, therefore the appellant has increased nutrient needs. More importantly, this patient is not able to meet her basic nutritional need with her current income. “
- “[The appellant’s] medical conditions and symptoms require higher protein and nutrient needs than a person without these conditions. These additional funds will empower the patient to meet her nutritional needs and improve her function, which will most likely reduce costs to the health care system such as hospital admissions or specialist visits due to fall, infection, or making dangerous choices due to poor cognition/memory.”
- “We urge you to approve this patient for the Monthly Nutrition Supplement funds as she clearly meets the criteria based on expert medical and interdisciplinary assessment and is at high risk of life threatening consequences if her nutrition status does not improve.”

In her Notice of Appeal dated September 6, 2018, the appellant wrote:

- “I don’t agree with the decision of the ministry.”

She included a letter dated September 15, 2018 wherein she states that

- She wanted to meet in person but it would be too stressful.
- She is constantly in pain which makes her stress worse.
- Having money for healthy food would help her to deal with the pain of Fibromyalgia.
- She is malnourished because she lives on pasta and affordable food which causes her to gain weight.
- The unhealthy food is causing problems and pain for her body.

Admissibility of new evidence

The panel admitted the appellant’s letter on appeal pursuant to section 22(4) of the *Employment and Assistance Act* as this information corroborates information about her medical condition that was before the ministry at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision which found that the appellant is not eligible for the Monthly Nutritional Supplements of nutritional items as the appellant did not meet the eligibility criteria set out in Sections 67 (1.1) (c) and (d) of the EAPWDR is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Did the ministry reasonably determine that the evidence does not establish that

- a medical practitioner or nurse practitioner has confirmed that the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating one of the following symptoms -
 - malnutrition;
 - significant neurological degeneration;
 - moderate to severe immune suppression; and that
- failure to obtain items requested would result in imminent danger to her life?

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.

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 she does not agree with the ministry because she needs money to buy healthy food to help her deal with her Fibromyalgia. She is malnourished because she has to live on pasta and other inexpensive and unhealthy foods which is causing problems and pain for her body. She is constantly in pain which makes her stress worse.

The ministry determined that due the medical evidence the appellant is eligible for the vitamin/mineral supplementation in accordance with section 67(1.1) and Schedule C section 7(c).

However, the ministry is not satisfied that the appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate symptoms due to a progressive deterioration of health and to prevent danger to life in accordance with section 67(1.1) and Schedule C section 7(c). The ministry finds that information provided in her MNS application and Request for reconsideration does not confirm that she requires additional nutritional items as part of a caloric supplementation to a regular dietary intake and to prevent imminent danger to life; in the medical assessment included with the appellant's MNS application the physician does not speak to a need for caloric supplementation or symptoms which would suggest a need of caloric supplementation.

The ministry argues that

The doctor does not provide enough evidence to demonstrate that the appellant is displaying a symptom set out in the EAPWDR section 67(1.1)(b) which would indicate a need for caloric supplementation, such as underweight status, significant weight loss, or, significant muscle loss.

The height/weight recorded in her application indicates that her BMI is 26.9 which is in the overweight range.

A need for a high protein diet, high iron foods, fruits, vegetables, whole grains, and generally healthy food is not considered indicative of a need for caloric supplementation.

The doctor's statement that that "there is a connection between FM/ME related to poor nutrient absorption described in the literature and research as a result of mitochondrial & intestinal dysfunction" does not establish that the appellant is personally experiencing the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

The doctor's statement that "all foods items listed contribute to improved nutrition. High iron meals and vegetables and other foods will improve iron status. All foods will contribute to improved neuro function" does not establish how nutritional items in the form of caloric supplementation will alleviate a symptom as specified in question 3 of the MNS application.

Although the doctor writes that “Without these items the patient will have worsening malnutrition, neurological degeneration and immunity putting the patient at risk of life threatening infection and injury”, the required items described in the MNS application are not considered indicative of items required for caloric supplementation. Therefore, it is difficult to establish that failure to provide nutritional items in the form of caloric supplements will result in imminent danger to the appellant’s life.

In his reconsideration letter the doctor writes: “The vitamin/mineral supplements ... and nutritional items listed in the original application will all contribute to improving the above symptoms listed and are required as additional nutrients and caloric supplementation to a regular diet, regardless of the need for specialized food items”. However, the required items described in both MNS application and reconsideration letter are not considered indicative of items for caloric supplementation.

Panel Decision

In examining the evidence, the panel finds that, in accordance with section 67(1.1)(b) the ministry reasonably determined that there is insufficient evidence 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 loss. The panel further finds that the ministry reasonably determined that the doctor’s statement that “there is a connection between FM/ME related to poor nutrient absorption described in the literature and research as a result of mitochondrial & intestinal dysfunction” does not establish that the appellant is personally experiencing the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

In addition, the panel finds that there is insufficient evidence to establish that caloric supplements are necessary to alleviate the symptoms of malnutrition, significant neurological degeneration or moderate to severe immune suppression. While the appellant’s doctor recommends high protein foods, high iron foods, fruits/vegetables, healthy fats and whole grains the panel finds that these are foods that can be part of a regular dietary intake; they are not caloric supplements such as Ensure or Boost. Thus the ministry was reasonable to determine that the appellant did not meet the criterion of section 67(1.1) (c).

While the appellant’s doctor states that “without these items the patient will have worsening malnutrition, neurological degeneration and immunity putting the patient at risk of life threatening infection and injury” the panel finds that there is insufficient evidence that failure to obtain caloric supplements will result in imminent danger to her life. Thus the panel finds that the ministry was reasonable in determining that the appellant did not meet the criterion of section 67(1.1) (d).

In conclusion, the panel finds the ministry’s decision was reasonably supported by the evidence and confirms the decision.

PARTG-ORDER	
THE PANEL DECISION IS:(Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BYMAJORITY	
THEPANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION	
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PARTH-SIGNATURES	
PRINTNAME Inge Morrissey	
	DATE(YEAR/MONTH/DAY) 2018/10/17

PRINTNAME Angie Blake	
SIGNATUREOFMEMBER	DATE(YEAR/MONTH/DAY) 2018/10/17
PRINTNAME Barbara Thompson	
SIGNATUREOFMEMBER	DATE(YEAR/MONTH/DAY) 2018/10/17