

## PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 7 September 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.
- A **MNS Application**, dated 13 July 2018, containing the following information pertaining to the request for nutritional items:
  - The appellant has been diagnosed with Crohn's Disease (Active) and Encephalitis (In remission)
  - The appellant's physician indicates that the appellant is being treated for a chronic progressive deterioration of health.
  - The physician indicates that the appellant displays the following symptoms: significant neurological degeneration (*autoimmune encephalitis*) and moderate to severe immune suppression (*yes, from medication usage*).
  - In response to a prompt to **specify the additional nutritional items required and expected duration of treatment**, the physician indicates: Ensure, Fish Oil, Vitamins (multi-vitamins). Ongoing.
  - 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, Crohn's Disease*).
  - 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**: *will aid in better absorption of nutrients.*
  - The physician responds to the prompt to **describe how the nutritional items requested will prevent imminent danger to the applicant's life**: *These nutrients (Ensure, Vitamins) are not needed to prevent imminent danger. He can still receive nutrition from diet. These nutritional items will help aid with better absorption.*
- The appellant's request for MNS for vitamins and minerals and nutritional items was denied on 16 August 2018.
- A **Request for Reconsideration** dated 28 August 2018. With the request for reconsideration is a 1-page typed document entitled Appendix 1 Reasons for Reconsideration Request. Appendix 1 is undated, and its author is not indicated. The author of Appendix 1 argues that the adjudicator's decision is wrong and contrary to law. The author describes the appellant's Crohn's condition as severe and he suffers from constant pain. The author argues that the appellant is reliant on Ensure as regular food cannot be tolerated and also must use several expensive vitamins to maintain health and prevent deterioration. The author argues that failure to use nutritional and vitamin supplementation will result in deterioration of health and risk to the appellant's life. The author argues that the appellant's condition is complicated by encephalitis, which requires medication that interferes with the natural absorption of nutrients and causes severe weight gain.

### Notice of Appeal

In the Notice of Appeal dated the 15 September 2018, the stated reasons for appeal are: *should be eligible for nutritional supplement due to [e]ffects of Crohn's disease.*

### Appeal Submissions

The appellant did not make appeal submissions.

### Hearing Submissions

The ministry relied on the reconsideration decision.

### Admissibility

The panel finds that the information provided in the Notice of Appeal consists of argument. As such, the panel finds that there is no information before it that requires an admissibility 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 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 suffer 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 vitamin/mineral supplement and nutritional items as a part of caloric supplementation to a regular dietary intake to alleviate a symptom(s) 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 doctor had not provided enough information to establish that the appellant is displaying a symptom that would indicate a need for caloric supplementation, such as underweight status, significant weight loss or significant muscle mass loss. The ministry noted that the appellant's BMI is in the obesity range. The ministry found that the information provided by the doctor does not establish how caloric supplementation would alleviate a symptom(s) listed in the MNS application.

In the reconsideration decision the ministry determined that the appellant is not eligible for MNS because, it was not satisfied that the appellant requires vitamin/mineral supplementation to alleviate a symptom set out in section 67(1.1)(b). In reaching this conclusion the ministry found that the doctor had not provided evidence to establish that the appellant is suffering from malnutrition, which would indicate a need for vitamin/mineral supplementation. As well, the ministry found that the doctor's statement (*helps with Crohn's disease [symptoms]*) had not specified how vitamin/mineral supplementation would alleviate a symptom(s) listed in the MNS application. The ministry also noted that the doctor has explicitly stated that the nutritional items will not prevent imminent danger to the appellant's life.

The panel notes that the ministry has conducted a combined analysis of section 67(1.1)(c) and (d) for vitamin/mineral supplements and for nutritional items.

The panel finds that the ministry's determination that the evidence provided does not establish that appellant requires caloric supplementation to be reasonable. The panel notes that the doctor has 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 doctor has indicated that the appellant requires Ensure. However, the panel finds that while the doctor has indicated that the nutritional items will aid in better absorption of nutrients, the doctor has not described how the nutritional items will alleviate one or more symptoms in the MNS Application. The panel notes that Appendix A does address the appellant's inability to absorb nutrients despite his BMI and does explain that medications are interfering with nutrient absorption. However, the information in Appendix A does not have been provided by a medical practitioner as required in the legislation, nor is it endorsed by the appellant's medical practitioner. Therefore, the panel finds that the ministry reasonably determined that the appellant's need caloric supplementation under section 67(1.1)(c) and section 7(a) in Schedule C of the EAPWDR has not been established. The panel notes that the doctor has explicitly stated in the MNS application that the nutritional items are not required to prevent imminent danger to the appellant's life. Thus, the panel also finds that the ministry's conclusion regarding imminent danger under section 67(1.1)(d) is reasonably supported by the evidence.

The panel finds that the ministry's determination, that the evidence provided does not establish that the appellant requires vitamin/mineral supplement as a part of caloric supplementation to a regular dietary intake to alleviate a symptom(s) set out in section 67(1.1)(b) due to a chronic progressive deterioration of health to be reasonable. In reaching this conclusion, the panel notes that the information provided in Appendix A has not been provided by a medical practitioner as required in the legislation, nor it is endorsed by the appellant's medical practitioner. Rather, the information in Appendix A contradicts the information provided by the doctor in the MNS application. The panel finds that the information provided by the doctor does not link the vitamin/mineral supplementation or nutritional items to alleviation of a symptom in section 67(1.1)(b). As such, the panel finds the ministry's conclusion on this criterion to be reasonably supported by the evidence. The ministry's conclusion regarding imminent danger under section 67(1.1)(d) relies on its conclusion that vitamin/mineral supplementation for the purpose of alleviating a symptom is not required, which the panel has found to be reasonable. As the panel has determined that the ministry's conclusion regarding vitamin/mineral 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 under section 67(1.1)(d) 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.

<b>PART G – ORDER</b>	
<b>THE PANEL DECISION IS: (Check one)</b> <input checked="" type="checkbox"/> <b>UNANIMOUS</b> <input type="checkbox"/> <b>BY MAJORITY</b>	
<b>THE PANEL</b> <input checked="" type="checkbox"/> <b>CONFIRMS THE MINISTRY DECISION</b> <input type="checkbox"/> <b>RESCINDS THE MINISTRY DECISION</b>	
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	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b> <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"/>	

<b>PART H – SIGNATURES</b>	
PRINT NAME Jennifer Smith	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/10/22
PRINT NAME Angie Blake	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/10/22
PRINT NAME Marlene Russo	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/10/22