

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated December 4, 2018 which held that the appellant was not eligible for the Medical Nutritional Supplement (“MNS”) of vitamin mineral supplementation because the appellant did not meet the criteria set out in s. 67(1.1)(c) or (d) of the employment and assistance for persons with disabilities regulation (“EAPWDR”).

PART D – RELEVANT LEGISLATION

Section 22(3)(b) of the Employment and Assistance Act (“EAA”)
Section 67, section 7 of schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”)

PART E – SUMMARY OF FACTS

The information before the Ministry at reconsideration was:

- The appellant applied for MNS of nutritional items and vitamin/mineral supplements on Aug 22, 2018.
- The Ministry denied the appellant's application for MNS on Sept 24, 2018.
- The appellant requested reconsideration.
- The appellant is in receipt of a gluten-free diet allowance in the amount of \$40 per month.
- The appellant's application contained the following notes from his physician:
 - o A diagnosis from his doctor of back pain and arthritis (hands)
 - o "as a result of chronic pain which has progressively worsened patient has not been able to maintain adequate nutrition"
 - o Patient has lost approximately 10-15 pounds over the last year
 - o Patient is very thin
 - o Gluten free and lactose free diet will allow patient to maintain weight. He will need this diet indefinitely.
 - o Patient has gluten and lactose intolerance
 - o He is unable to mange fluids as a result of intolerance. As a result he has lost weight and has poor muscle mass. Gluten and lactose free diet will add calories.
 - o This will prevent him from being too weak to ambulate
- Medical imaging report which provided:
 - o Rheumatoid disease of the hands and wrists and degenerative changes of the spine
 - o Chronic hepatitis C
 - o As a result of chronic progressive deterioration of health the appellant is displaying the symptoms of significant weight loss ("patient has lost approx. 10-15 lbs over the last year") and significant muscle mass loss ("patient very thin")
- Updated letter from appellant's physician dated December 12, 2018:
 - o "this gentleman has a history of hepatitis C. As a result he has malnutrition and is losing muscle mass. An increase in caloric intake is essential for him to overcome malnutrition, weight loss, and muscle loss. He needs extra caloric intake to maintain his weight. I would recommend he be supplemented with lean meat, chicken breast, fish, fruit, vegetables, whole greens, yams, avocados, green tea, and organic foods."
 - o "It is also necessary for him to have vitamin and mineral supplementation as a result of his Hepatitis C. He is unable to absorb appropriate vitamins from his diet. He requires selenium, vitamin c, folic acid, ALA. He needs these vitamins to boost his immune system as the immune system has been affected by chronic hepatitis C. He will require this vitamin supplementation life long."
 - o

The appellant's notice of appeal states:

- "was on it before and need it to maintain my health and weight"

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act ("EAA").

PART F – REASONS FOR PANEL DECISION

The issue is whether the Ministry's decision to deny the appellant the Medical Nutritional Supplement ("MNS") of vitamin mineral supplementation because the appellant did not meet the criteria set out in s. 67(1.1)(c) or (d) of EAPWDR is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides:

s.67 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.

(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.]

Schedule C section 7 EAPWDR

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 panel finds:

To qualify for MNS, the appellant must show that he meets all four criteria as set out in s.67(1.1)(a), (b), (c), and (d) of EAPWDR.

The Ministry determined that the appellant met the criteria in 67(1.1)(a) and (b) EAPWDR. With respect to (b), the Ministry determined that the appellant had symptoms of malnutrition (i) and (vii) but the Ministry was not satisfied that he appellant had symptoms of significant weight loss and significant muscle mass loss. As such, the Ministry determined that the appellant met at least two of the symptoms set out in s. 67(1.1)(b), being (i) and (vii), and was therefore successful in meeting the eligibility criteria of s.67(1.1)(b).

To qualify for MNS, the appellant must also meet the criteria in s.67(1.1)(c) and (d). The Ministry determined that the appellant was not successful on either of these criteria.

With respect to s.67(1.1)(c) EAPWDR, the Ministry determined that the Physician did not provide evidence on how the vitamin or supplements would alleviate a condition found in s.67(1.1)(b). The panel finds that the Physician specially states that "it is necessary for [the appellant] to have vitamin and mineral supplementation as a result of his Hepatis C he is unable to absorb appropriate vitamins from his diet. He requires selenium, vitamin c, folic acid, ALA. He needs these vitamins to boost his immune system as the immune system has been affected by chronic hepatitis c. The panel finds that the Physician specifically refers to how the supplements would alleviate a condition found in s.67(1.1)(b). The condition that the physician references is the moderate to severe immune suppression that the appellant suffers from. The physician explains that these vitamins would boost the appellant's immune system. The panel finds that vitamins are one of the items referred to in s.67(1.1)(c) as they are an items set out in s.7(c) of schedule C EAPWDR. There is evidence that the appellant already receives the maximum \$40.00 per



month for vitamins. However, the Ministry did not provide that for their reason as to why the appellant was unsuccessful in meeting the criteria in s.67(1.1)(c) EAPWDR.

Also with respect to s.67(1.1)(c) EAPWDR, the physician also states that the appellant requires an increase in caloric intake for the appellant to overcome his malnutrition. The panel finds that malnutrition was one of the accepted symptoms of the appellant determined by the Ministry in s.67(1.1)(b)(i) EAPWDR. The Physician's confirms in his letter that an increase in caloric intake would alleviate the appellant's symptom of malnutrition. The panel finds that additional nutritional items that are part of a caloric supplementation are one of the items referred to set out in s.7(a) of schedule C EAPWDR

Therefore, with respect to s.67(1.1)(c), the panel finds that it was not reasonable for the Ministry to determine that the appellant had not met this criteria. The physician confirms that additional vitamins would alleviate the appellant's symptom of immune suppression and that additional caloric intake through nutritional foods would alleviate the appellant's symptom of malnutrition.

In order for the appellant to be successful on his application for MNS he must also demonstrate that he requires the items s.67(1.1)(c) EAPWDR are necessary to prevent imminent danger to life of the appellant. The Ministry found that because the Physician did not provide information on how the item will prevent imminent danger to the appellant's life, they were unable to find the appellant successful on this criteria and were therefore not able determine that the appellant qualified for MNS. The panel finds this analysis by the Ministry to be reasonable. The physician did not provide information about how a failure to obtain either the caloric supplementation or vitamins would cause imminent danger to the appellant's life. The physician did not include this information in the evidence before the Ministry or in his additional letter provided with the request for reconsideration.

For these reasons, the panel finds the Ministry's decision to deny the appellant MNS was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant. The panel and confirms the decision of the Ministry.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <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 checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME MEGHAN WALLACE	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/jan/24

PRINT NAME ANIL AGGARWAL	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/Jan/25
PRINT NAME RICK BIZARRO	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/jan/24