

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry)'s reconsideration decision dated October 29, 2015, finding the appellant is not eligible to receive a monthly nutritional supplement (MNS) because she does not meet the legislated criteria in section 67(1.1) or section 7 of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

Specifically, the ministry found that a medical practitioner has not confirmed the following:

- The appellant displays at least two of the symptoms set out in paragraph (b) of section 67(1.1);
- The appellant requires nutritional items under paragraph (c) of section 67(1.1) to alleviate a symptom specified in paragraph (b); and
- The appellant did not require additional nutritional items as part of a caloric supplementation to a regular dietary intake as contemplated in section 7 of Schedule C.

PART D – Relevant Legislation

The relevant legislation is section 67 and section 7 of Schedule C of the EAPWDR.

PART E – Summary of Facts

The appellant is in receipt of disability assistance.

The evidence before the ministry at the time of the reconsideration consisted of:

(1) An Application for MNS dated September 24, 2015, completed by a Student Nurse Practitioner (NP) and signed by a Nurse Practitioner. Section 3 of the application asks the NP to indicate which of the legislated symptoms are displayed by the applicant as a direct result of the applicant's health issue. All are completed with the word "No". The NP then specifies the required supplements as 2000 units per day of vitamin D and 1000mg per day of calcium. The application then asks for a description of how these items will alleviate the symptoms identified above, which is completed, "Element and vitamin replacement as directed by Oncology". The application then asks for description of how the items will prevent danger to the applicant's life, which is completed, "Element and vitamin replacement as directed by Oncology". In response to the question "Does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake?" the NP answers "No". To the last two questions on the application, "Describe how the nutritional items required will alleviate one or more of the symptoms ... and provide caloric supplementation to the regular diet" and "Describe how the nutritional items requested will prevent imminent danger to the applicant's life" the NP writes: "Element and vitamin replacement as directed by Oncology".

(2) The appellant's statement on the Request for Reconsideration form which reads:

I required these items (Vitamin D; Calcium) as prescribed by my Oncologist who's the specialist that follow-up for my health issue after my operation of my breast cancer! Please issue funds to cover cost! I need it all year long! Year after year in order to prevent osteoporosis and also prevent me from falling (I've fell down twice already in the last 2 months).

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision dated October 29, 2015, finding the appellant does not qualify to receive a MNS because she does not meet the legislated criteria was reasonably supported by the evidence, or was a reasonable interpretation of the legislation in the circumstances of the appellant.

The relevant legislation is section 67(1) and (1.1) and section 7 of Schedule C of the 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 person with disabilities in a family unit who receives disability assistance under

(a) section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A, or

(b) section 8 [*people receiving special care*] of Schedule A, if the special care facility is an alcohol or drug treatment centre,

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 a supplement under section 2 (3) [*general health supplement*] of Schedule C,

(e) the person is not receiving a supplement under subsection (3) or section 66 [*diet supplements*],

(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.

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/read 2010, s. 3 (b).]
- (c) for vitamins and minerals, up to \$40 each month.

The appellant did not attend the hearing. The panel confirmed that the appellant had been served notice of the hearing in accordance with section 86(b) of the *Employment and Assistance Regulation*.

In her Notice of Appeal the appellant writes: "Oncologist (the follow-up specialist after my breast cancer operations require me to take it to prevent me from having osteoporosis. He said vitamin D and calcium supplement is required to prevent osteoporosis."

The ministry based its submissions on the legislative requirements and the MNS application form as completed by the appellant's physician.

Section 67(1.1)(b): The ministry found that the physician's report indicates that the appellant is not suffering from any of the prescribed symptoms.

Section 67(1.1)(c) and 7(a) of Schedule C: The ministry determined that the appellant does not require "caloric supplementation to a regular dietary intake" but vitamins and minerals.

Section (1.1)(c) and 7(c) of Schedule C: The ministry found that the appellant does not require vitamins and minerals for the purpose of alleviating the symptoms identified, as there were no symptoms identified.

The panel finds the following:

Section 67(1.1)(b): The Application for MNS indicates that the appellant is not suffering from any of the prescribed symptoms. As the legislation requires that the applicant be suffering from at least 2 of the listed symptoms, the ministry was reasonable in determining that the appellant has not met the requirements of this provision.

Section 67(1.1)(c) and 7(a) of Schedule C: The Application for MNS clearly states that the applicant does not have a medical condition which results in an inability to absorb sufficient calories. The ministry was reasonable in finding that the appellant is not in need of caloric supplementation and so does not meet the requirements of this provision.



Section (1.1)(c) and 7(c) of Schedule C: As there were no symptoms identified, the appellant cannot require vitamins and mineral supplements to alleviate them. The ministry was reasonable in determining that the appellant does not meet the requirements of this section.

Based on the above analysis, the panel finds the ministry reasonably determined that the appellant failed to meet the criteria in section 67(1.1) and section 7 of Schedule C of the EAPWDR and therefore the ministry's decision not to provide the appellant with a MNS was reasonable.

Accordingly, the Panel finds that the Ministry's decision is a reasonable application of the relevant legislation in the circumstances of the appellant and confirms the ministry's decision pursuant to section 24(1)(b) and 24(2)(a) of the Employment and Assistance Act.