

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision of October 5, 2016 in which the ministry denied the appellant the monthly nutritional supplement (MNS) of vitamins/minerals and nutritional items because her application failed to meet the eligibility criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67 (1), (1.1) (c) and (d) and Schedule C Section 7. Specifically, the appellant did not satisfy the ministry that she was being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):

- Section 67 (1), (1.1)
- Schedule C, Section 7

PART E – Summary of Facts

The appellant is a single recipient of PWD benefits.

The evidence before the ministry at reconsideration included the following:

- August 24, 2016 application for MNS completed by the appellant's general practitioner (gp) stating that:
 - the appellant has a diagnosis of Micronutrient Deficiency, with longstanding post-prandial (after meal) abdominal pain and bloating with recurrent steatorrhea (fat in stool) limiting intestinal absorption measurement;
 - she is currently being investigated by IM for potential ongoing post cholecystectomy syndrome vs biliary incompetence;
 - she suffers from malnutrition and significant weight loss (70+ pounds over the past 5 months);
 - she requires a vitamin/mineral supplement , namely: “ *Boost for calories TID for 3 months although timing may depend on response to pancreatic enzyme and potential result of investigation*”;
 - she requires a vitamin/mineral supplement “*for micronutrient supplementation*”;
 - the vitamin/mineral supplement will prevent imminent danger to the appellant's life by “*ongoing potential micronutrient deficiency could potentially lead to multisystem failure in the setting of drastic weight loss*”;
 - the appellant requires the following nutritional items: “*Boost 4 TID*”;
 - 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 he writes: *still being investigated, presumed biliary insufficiency? Pancreatic insufficiency TBD*”.
 - in describing how the provision of nutritional items will alleviate one or more of the symptoms specified and provide caloric supplementation to the appellant's regular diet the gp notes: “*provide adequate micronutrients. Provide needed calorie requirements*”;
 - in describing how the provision of nutritional items will prevent imminent danger to life the gp writes: “*for prevention of precipitous decline in micronutrient levels, for ongoing support. History of functional decline in otherwise healthy [person]*”.
- August 29, 2016 letter from the ministry denying the MNS and attached MNS decision summary;
- Request for Reconsideration submitted by the appellant to the ministry on September 21, 2016;
- September 21, 2016 supplementary letter from the appellant's gp, noting, in part:
 - “*It is difficult to objectively define the severity of [the appellant's] medical condition in the absence of quantified micronutrient deficiency the severity lies in the rapidity of her weight loss and ongoing limitation to oral intake . . . While here are not objective criteria met I would argue that in the setting of ongoing symptoms currently being investigated she would warrant support. . . . Severity in this case is not quantifiable but a pre-test probability for likelihood of ongoing harm as it relates to her symptoms. . . . there is prudence in early management of her suspected micronutrient deficiency*”
The medical condition is still being evaluated however as a direct result she has been unable to sustain a catabolic diet due to post prandial abd pain w/subsequent 70 lb weight loss over an 8 month period. . . . I feel that [her] case is severe in re our ability to control her symptoms with subsequent functional health and nutritional deficiency.

These are difficult to quantify.”

- *“ . . .her dietary intake has been insufficient insofar as functionality has been limited and marked loss of weight has occurred. . . . With the advice of the hospital dietician, have discussed the need for caloric supplementation. While pancreatic insufficiency is a potential etiology I do not feel a diagnosis has been made and that pancreatic supplementation has had only a moderate effect in alleviating her symptoms. . . . BMI is not limited to patient weight and rather the severity of the underlying medical condition. . . . BMI is not a reference point for severity of micronutrient deficiency and that assuming adequate caloric intake in the setting of obesity and a GI malabsorptive condition runs the risk of deterioration of patient health.”*

At the hearing the appellant added the following information:

- it hasn't been easy with blockages from gallstones. Doctors still haven't figured out what is going on, so she has an upcoming CT scan;
- she eats a "brat" diet of white bread, chicken, potatoes;
- her gp wants her to increase her consumption of Boost to 6 times daily to stop her ongoing weight loss. If she doesn't get Boost she will require tube feeding;
- in February 2016 se was admitted to hospital in her local town for gallstone blockages, then transferred to a tertiary hospital for removal of the blockages;
- at age 16 she suffered a severe concussion and a broken wrist in a snowboarding accident. Her pituitary gland was seriously affected, and she gained 200 pounds;
- at age 21 she suffered significant knee, hip and back damage in a motor vehicle accident;
- 3 years ago her adrenal gland malfunctioned, causing fatigue, lack of energy and insomnia.
- in 2014 she was bitten by a tick and contracted Lyme Disease, for which she underwent 2 years of antibiotic treatment;
- she is on thyroid medication for hypothyroid function;
- she has seen several specialists in other parts of the province.

The panel finds that the oral evidence of the appellant is admissible under Employment and Assistance Act Section 22 (4) as evidence in support of the information before the ministry at reconsideration because it provides historic background and greater detail to the gp's evidence that the appellant's medical conditions are symptoms-based and still under investigation.

The ministry was not represented at the appeal hearing.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of October 5, 2016 in which the ministry denied the appellant the monthly nutritional supplement (MNS) of vitamins/minerals and nutritional items because her application failed to meet the eligibility criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67 (1), (1.1) (c) and (d) and Schedule C Section 7. Specifically, the appellant did not satisfy the ministry that she was being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition.

Relevant legislation:

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,

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.

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 suffers from a severe medical condition that has produced malnutrition, muscle wasting and significant weight loss, and that unless she drinks 4-6 cans of Boost daily she will have to be tube fed in the near future. Her gp states that her ongoing potential micronutrient deficiency could potentially lead to multisystem failure in the setting of drastic weight loss, and that she requires both the nutritional and vitamin/mineral MNS in order to prevent ongoing weight loss and muscle wasting.

The ministry's position is set out in the reconsideration decision, summarized as follows:

- Micronutrient Deficiency with a history of longstanding post prandial pain and bloating with recurrent steatorrhea limiting intestinal absorption is not a "severe medical condition" but is a symptom of an underlying medical condition that is currently under investigation. The appellant's diagnosis is still under investigation; therefore it cannot be determined that she suffers from a chronic progressive deterioration of health on account of a severe medical condition;
- although the appellant displays the symptoms of malnutrition, significant weight loss and significant muscle mass loss it has not been established that these symptoms result from a chronic progressive deterioration of health on account of a severe medical condition;

-
- the information provided does not establish that failure to obtain a mineral/vitamin supplement will result in imminent danger to her life as required by the legislation;
 - the information provided does not indicate that the appellant requires additional nutritional items as part of a caloric supplementation to her regular dietary intake and to prevent imminent danger to life.

Panel Decision

To qualify for a MNS for nutritional items or a vitamin/mineral supplement under EAPWDR Schedule C the applicant must meet the criteria set out in EAPWDR Section 67 (1) and (1.1). The ministry accepts that the appellant meets the requirements of Section 67 (1), namely that she is a PWD who does not have resources to pay the cost of a MNS.

The applicant must then meet the criteria in Section 67 (1.1), which requires that **a medical practitioner confirm** that the applicant for a MNS:

- (a) is a PWD who has **a chronic, progressive deterioration of health on account of a severe medical condition**; and
- (b) as a direct result of the chronic, progressive deterioration of health **displays two or more** of the **symptoms** listed in (i) – (vii); and
- (c) requires **nutritional items** or a **vitamin/mineral supplement** to alleviate the symptoms in (b); and
- (d) failure to obtain either the nutritional items or vitamin/mineral supplement will result in **imminent danger to the person's life**. (Emphasis added.)

(a) Chronic, progressive deterioration of health on account of a severe medical condition:

The opinion of the medical practitioner (in this case, the appellant's gp) that the appellant has a severe medical condition causing a chronic, progressive deterioration of health is the threshold requirement which must be met before criteria (a), (b) and (c) can be considered. In this instance the appellant's gp states: "*it is difficult to objectively define the severity of the appellant's medical condition*" and suggests that the severity of her condition lies in her symptoms. The gp adds: "*severity in this case is not quantifiable*" and "*the medical condition is still being investigated*". In more specific terms the gp also notes that "*she is currently being investigated by IM for potential ongoing post cholecystectomy syndrome vs biliary incompetence*".

The evidence indicates that the appellant is experiencing a progressive deterioration of health as evidenced by her rapid weight loss and muscle wasting. However, the panel finds that the ministry reasonably determined that because the appellant's gp has not confirmed that the appellant suffers from a severe medical condition the threshold requirement in (a) has not been met.

(b) Displays two or more symptoms:

The panel finds that the ministry reasonably determined that the appellant suffers from at least two of the symptoms listed in Section 67 (1.1) (b), namely malnutrition, significant weight loss and significant muscle mass loss, but because subsection (a) was not established these symptoms are not the result of a chronic, progressive deterioration of health on account of a severe medical condition.

(c) Requires vitamin/mineral supplement or nutritional items to alleviate the symptoms in (b):

Vitamin/mineral supplement:

The panel finds that the ministry reasonably determined that the appellant's application does not

meet the criteria for a vitamin/mineral supplement for the following reasons:

1. because criteria (a) and (b) have not been met the appellant has not met the legislative requirement that a vitamin/mineral supplement is needed to alleviate the symptoms referred to in (b);
2. in the application section relating to vitamin/mineral supplement the appellant's gp refers to the need for Boost, which is a nutritional supplement for caloric supplementation.

Nutritional supplement:

The panel finds that the ministry reasonably determined that the appellant's application does not meet the criteria for a nutritional supplement for the following reasons:

1. because criteria (a) and (b) have not been met the appellant has not met the legislative requirement that a nutritional supplement is needed to alleviate the symptoms referred to in (b);
2. The reason for a nutritional supplementation as a caloric supplement to regular dietary intake is still being investigated. The gp writes: "*Still being investigated, presumed biliary insufficiency? Pancreatic insufficiency TBD (to be determined). . . . "I believe that the issue is more one of decreasing symptoms of ongoing weight loss and managing postural instability which requires a modification of diet."*

(d) Failure to obtain the item(s) will result in imminent danger to the person's life:

The panel finds that the ministry reasonably concluded that although the appellant is experiencing a progressive deterioration in her health, there is insufficient evidence from the appellant's gp to indicate that failure to obtain a vitamin/mineral supplement will result in imminent danger to the appellant's life, for the following reasons:

1. A chronic, progressive deterioration of health on account of a severe medical condition has not been established;
2. The gp does not state that failure to obtain the vitamin/mineral supplement or the nutritional supplement will result in imminent danger to the appellant's life. Rather, when speaking to the appellant's BMI the gp uses the phrases: "*BMI is not a reference point for severity and a GI malabsorptive condition runs the risk of deterioration of patient health*" and "*ongoing potential micronutrient deficiency could potentially lead to multisystem failure in the setting of drastic weight loss*".

Conclusion

The panel acknowledges that the patient is suffering from a number of serious health problems that date back many years and have produced severe weight loss, malnutrition and muscle wasting, and is sympathetic to the fact that a diagnosis has not yet been made and is still under investigation. However, for the reasons above the panel finds that the ministry reasonably determined that the appellant's medical practitioner has not confirmed that she is being treated for a chronic progressive deterioration of health on account of a severe medical condition. Because all remaining criteria for a MNS flow from the threshold finding of a chronic progressive deterioration of health on account of a severe medical condition the panel finds that the ministry's determination that the appellant is not eligible for a MNS of vitamin/mineral supplements or nutritional item is a reasonable application of the applicable legislation in the circumstances of the appellant.

The panel therefore confirms the reconsideration decision of the ministry.