

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") reconsideration decision dated February 19, 2019 which held that the appellant was not eligible for the Monthly Nutritional Supplement ("MNS") for either additional nutritional items that are part of a caloric supplementation to regular dietary intake or vitamins or minerals by reason that pursuant to Schedule C subsection 67(1.1) Employment and Assistance for Persons with Disabilities Regulations ("EAPWDR") a physician did not confirm that the appellant displayed two symptoms set out in subsection 67(1.1)(b) EAPWDR (the "Symptoms"), the appellant does not require the supplement to alleviate the Symptoms, and a failure to obtain the items would not result in imminent danger to the life of the appellant.

PART D – RELEVANT LEGISLATION

s. 22(4) Employment and Assistance Act ("EAA")
s.86 Employment and Assistance Regulation ("EAR")
s. 67(1.1), Schedule C subsection 7 Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR")

PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration was:

- The appellant is a person with disabilities in receipt of disability assistance.
- The appellant is currently in receipt of a high protein diet allowance in the amount of \$40 per month.
- The appellant's physician (the "Physician") completed a monthly nutritional supplement ("MNS") application on November 6, 2018.
- The MNS application contains:
 - o A diagnosis of Rheumatoid Arthritis ("RA") from the Physician
 - o In response to the question: As a direct result of the severe medical conditions, is the applicant being treated for a chronic progressive deterioration of health? The Physician writes: "Chronic lifelong immune suppressants, methotrexate, joint erosions on X-rays"
 - o In response to the question: As a direct result of the chronic progressive deterioration of health does the applicant display two or more of the following symptoms the Physician writes: "moderate to severe immune suppression due to medications"
 - o The Physician specifies the applicant's height and weight at 5 foot 8.5 inches and 153 lbs.
 - o In response to questions about how the mineral or vitamin supplement will assist the applicant the Physician responds: improved nutrition, availability of real food, improved diet will improve immune system.
 - o In response to the question 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 the Physician responds: no.
 - o The Physician also adds in additional comments: "The quality of his diet needs to be improved. Access to real food such as vegetables, meats, would benefit him. Fortified grains and cereals is not ideal for his diet. He needs to be able to afford a rich diversity in real food on an on-going basis."

The appellant's notice of appeal states: "they don't see what I pay for, meds, needle, dog food and care for service dog. Etc."

The Ministry did not attend the hearing. There was no telephone request from the Ministry. The panel confirmed that the Ministry received notice of the hearing by reviewing the fax and fax confirmation dated March 26, 2019. Pursuant to s.86(b) EAR the panel proceeded with the Hearing in the absence of the Ministry.

At the hearing, the appellant provided the following additional documentary evidence:

- Two receipts for medication that he paid for in the last two weeks. The first was a receipt for \$19.69. The medication is Alendronate and it is for allowing calcium to absorb from his body into the bone. The second receipt for \$39 is for a medication called Toradol and it reduces swelling. The panel finds that these receipts support the Physician's evidence about the appellant's medications and admits the evidence pursuant to s.22(4)(b) EAA.
- Hand written slip of expenses dated Feb 25, 2019 which lists the appellant's monthly expenses and income. The panel finds that this information is in support of evidence of the appellant's financial struggles, which was before the Ministry at reconsideration, and admits the evidence pursuant to s.22(4)(b) EAA.
- A document from a registered dietician at the hospital dated February 6, 2019 and a recommendation for the basic subsidy for food. The documents states that the appellant has limited access to foods due to finances and requires better nutrition. He has lost 20 pounds of weight. He has tried modified diets and high protein diets. The panel finds that this information is in support of the Physician's evidence of the appellant's lack of nutrition, which was before the Ministry at reconsideration, and admits the evidence pursuant to s.22(4)(b) EAA.
- An information sheet from dietitians of Canada titled "increasing your calcium intake" and an information from the Ministry of Housing and Social Development titled "persons with disabilities information." The panel found that this information is in support of the appellant's evidence about his diet and his financial struggles, which was before the Ministry at reconsideration, and admits the evidence pursuant to s.22(4)(b)EAA

At the hearing the appellant stated:

- The appellant stated that his physician was available to answer any questions we had. The appellant was advised by the panel that if the physician had evidence to give he would have to give the evidence at the hearing. The appellant was asked if he wanted to ask for an adjournment so that he could arrange to call his physician as a witness or obtain more evidence from his physician but the appellant did not wish to request an adjournment.
- The appellant stated that he loses weight every day and he fights every day to keep it on.
- The appellant stated that he is a chemo patient. When he gets home from the hearing he will have to put another needle in his leg. He has to take a pill that causes a massive amount of pain. He has been requiring this diet for three years but has been refused for three years.
- The appellant states that the Ministry is completely wrong in stating that there is no imminent danger to his life.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision to deny the appellant MNS for either additional nutritional items that are part of a caloric supplementation to regular dietary intake or vitamins or minerals by reason that pursuant to Schedule C subsection 67(1.1) EAPWDR a physician did not confirm that the appellant displayed two symptoms set out in subsection 67(1.1)(b) EAPWDR (the "Symptoms"), the appellant does not require the supplements to alleviate a Symptom, and a failure to obtain the items would not result in imminent danger to the life of the appellant is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides:

EAR

Procedures

86 The practices and procedures of a panel include the following:

- (a) a party to an appeal may be represented by an agent;
- (b) the panel may hear an appeal in the absence of a party if the party was notified of the hearing;

EAA

Panels of the tribunal to conduct appeals

22 (1) If a person commences an appeal in accordance with section 21 (1), the chair must appoint a panel consisting of up to 3 members of the tribunal to hear and determine the appeal.

(2) If a panel consists of more than one member, the chair must designate a chair of the panel from among the members of the panel, and if a panel consists of one member, that member is the chair of the panel.

(3) A panel must conduct a hearing into the decision being appealed within the prescribed period either

- (a) orally, or
- (b) with the consent of the parties, in writing.

(4) In a hearing referred to in subsection (3), a panel may admit as evidence only

- (a) the information and records that were before the minister when the decision being appealed was made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

(5) Evidence referred to in subsection (4) may be admitted whether or not it would be admissible as evidence in a court of law.

(6) The panel chair is responsible for deciding any question of practice or procedure that arises during a hearing and is not provided for in the regulations or in the practices and procedures of the chair under section 20 (2) (a) [powers and duties of the chair].

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 - 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:

The appellant provided a completed MNS form by his Physician wherein the Physician stated that the appellant displays moderate to severe immune suppression as a result of his severe medical condition. The Ministry accepted this as one of the appellant's symptoms pursuant to schedule C subsection 67(1.1)(b). The Ministry determined that the Physician failed to indicate a second symptom, and that two symptoms are required to qualify for MNS.

At the hearing the appellant testified about his significant weight loss and provided documentary evidence from a registered dietitian about his weight loss. The panel accepted this new evidence. The legislation requires that the determination of symptoms be made by either a medical practitioner or nurse practitioner.

A registered dietitian is not a medical practitioner or a nurse practitioner. Both definitions of medical practitioner and nurse practitioner are found in the regulations of Health Professions Act RSBC 1996, c 183. A medical practitioner belongs to the college of physicians and surgeons and a nurse practitioner belongs to the college of nursing professionals. The appellant provided oral evidence about his weight loss. However, the panel finds that the legislation requires two symptoms be confirmed by a medical practitioner or nurse practitioner. Although there is evidence of weight loss from the registered dietitian and from the appellant himself, it was not evidence from a medical practitioner or nurse practitioner.

The panel therefore finds, that based on the information before them at reconsideration and on review of the new information the Ministry was reasonable in determining that the appellant did not meet the criteria of two symptoms in schedule C subsection 67(1.1)(b).

The Physician determined that the appellant required healthy foods in his diet and "real food". However, the Physician failed to state that these types of foods were required for the purposes of alleviating the appellant's moderate to severe immune suppression. The panel finds that the Ministry was reasonable in determining that the appellant was not successful in schedule C subsection 67(1.1)(c) EAPWDR.

There was insufficient evidence about imminent danger to the appellant's life from the Physician. In response to the question about imminent danger the Physician responded "improved diet will improve immune status." The panel finds that it was reasonable for the Ministry to determine that this was not adequate information and the panel finds it was reasonable for the Ministry to determine that the appellant was not successful in schedule C subsection 67(1.1)(d) EAPWDR

For these reasons, the panel finds the Ministry's decision was reasonably supported by the evidence and confirms the decision.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION 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? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME
MEGHAN WALLACE

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)
2019/apr/24

PRINT NAME
LAURIE KENT

SIGNATUR

DATE (YEAR/MONTH/DAY)
2019/apr/24

PRINT NAME
LINDA SMERYCHYNSKI

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2019 April 23