

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated February 5, 2019 which held that the Appellant is not eligible for a Monthly Nutritional Supplement (MNS) for vitamin/mineral supplement or additional nutritional items pursuant to Section 67(1) and Section 7 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The Ministry found that the evidence provided by the Appellant's medical practitioner does not confirm that:

- that he displays two or more of the symptoms listed in section 67(1.1)(b)
- the Appellant requires a vitamin/mineral supplement or additional nutritional items, which are part of a caloric supplementation to a regular dietary intake, for the purposes of alleviating a symptom referred in section 67(1.1)(b) [section 67(1.1)(c)], or;
- failure to obtain the items requested would result in imminent danger to the Appellant's life [section 67(1.1)(d)].

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Sections 67 and Section 7 of Schedule C.

[REDACTED]

PART E – SUMMARY OF FACTS

The evidence before the Ministry at the time of reconsideration included:

1. Application for MNS dated November 28, 2018 and signed by the Appellant's medical practitioner on December 4, 2018 which lists the Appellant's medical conditions as "Hep C". The medical practitioner confirms the Appellant is being treated for a chronic, progressive deterioration of health as a result of severe medical conditions.

Question 3 on the MNS application asks "As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms? If so, please describe in detail." The Appellant's physician responds indicating two areas:

- Moderate to severe immune suppression, and adds low "production of antibodies"
- Significant deterioration of a vital organ, and adds Liver/Hepatitis

In addition:

- The Appellant's physician does not detail what vitamin or mineral supplements are required and simply drew a line through that section of the application. Nor does he indicate how the vitamins and minerals will alleviate a specific symptom identified under Section 67(1.1)(b) of the EAPWDR. The Appellant's physician does not indicate how vitamin or mineral supplements will prevent imminent danger to the applicant's life.
 - The Appellant's physician specifies "high protein diet" under "Nutritional Items" required by the Appellant but does not indicate the duration of need as required by the application.
 - The Appellant's physician indicates "Hep C" but provides no other explanation 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 regular dietary intake? If yes, please describe".
 - The Appellant's physician indicates that the supplementary nutritional items will alleviate one or more of the symptoms specified in Question 3 and provide caloric supplementation to the regular diet. He notes beside the question that the supplementary dietary intake "will improve Q3 amino acids" and indicates "same" in response to whether the nutritional items requested will prevent imminent danger to the applicant's life.
2. A letter dated October 4, 2017 by a specialist which summarizes the Appellant's medical history and lists diagnoses of chronic Hepatitis C, BPH, ADHD, COPD, Back Pain and some Dysphagia and a follow up letter by the same specialist dated February 7, 2018 detailing planned treatments. In this letter the specialist indicates the Appellant has lost weight from the previous 213 pounds to his current weight of 174 pounds and has a Body Mass Index (BMI) of 27.6.
 3. A letter written by an RN dated November 21, 2018 detailing planned treatments for Hepatitis C.

Additional Information

In his Notice of Appeal dated February 12, 2019, the Appellant provides no reasons for his appeal.

Admissibility of Additional Information

Section 22(4) of the *Employment and Assistance Act (EAA)* provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the Ministry when the decision being appealed was made and "oral and written testimony in support of the information and records" before the Ministry when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA: to determine whether the Ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the Ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The Appellant did not attend the hearing.

At the hearing, the Ministry relied on the Reconsideration Decision and clarified the following points from the decision:

The Ministry confirmed that the eligibility for Monthly Nutritional Supplements (MNS) varies depending on the type of accommodations that an applicant is in. For example, people who are in long term care homes are not eligible for such supplements because they receive them as part of the services that are available in such accommodations. The Ministry representative also stated that applicants for MNS must meet 9 criteria as stipulated in the legislation. In the Appellant's case the ministry deemed him to have met the first two criteria and were satisfied that he had been prescribed supplements for a severe and chronic condition but there was insufficient evidence that the condition was the cause of the Appellant's weight loss and that without the supplements his health was in immediate danger. The ministry reached this conclusion because the Appellant's doctor did not provide details in the application form about the Appellant's progressive and chronic deteriorating condition. The ministry acknowledged that people diagnosed with Hepatitis C require a high protein diet and confirmed that the Appellant was in receipt of \$40/month to permit him to supplement his diet with more protein. The ministry confirmed that this \$40 supplement would continue even if the Appellant was unsuccessful in his bid for MNS. The ministry indicated that the additional MNS sought by the Appellant was for the purpose of addressing an immediate danger to a person from a progressive and chronic condition which the ministry deemed was not the case for the Appellant.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision, which held that the Appellant is not eligible for a Monthly Nutritional Supplement (MNS) because he failed to meet the legislative criteria set out in the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

In particular, was the Ministry reasonable in determining that the evidence provided by the Appellant's medical practitioner does not confirm the Appellant suffers from a chronic progressive deterioration of health and that he displays two or more of the symptoms listed in EAPWDR Section 67(1.1)(b), that a vitamin or mineral supplement is necessary for the purpose of alleviating a symptom referred to in EAPWDR Section 67(1.1)(b), or that failure to obtain the items requested would result in imminent danger to his life? Similarly, are the additional nutritional items, which are part of a caloric supplementation to a regular dietary intake, necessary for the purpose of alleviating a symptom referred to in section 67(1.1)(b), or that failure to obtain the items requested would result in imminent danger to his life?

The relevant legislation is as follows:

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.

(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).

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's position is that he is eligible for MNS because he has been diagnosed with a serious chronic illness which is deteriorating his health and poses a serious risk to him.

The Ministry position is that the Appellant does meet the requirement of EAPWDR 67(1.1)(a) because they are a person with disabilities under the Act and their physician has confirmed they are receiving treatment for a chronic, progressive deterioration of health on account of a severe medical condition. However, the ministry is not satisfied that the Appellant has provided sufficient evidence to conclude that he meets the requirements of EAPWDR 67(1.1)(b) which requires that as a direct result of the chronic, progressive deterioration of health the person displays two or more of the symptoms specified under this section. The Appellant's physician indicated the Appellant has "significant deterioration of a vital organ" and "moderate to severe immune suppression" which are two of the conditions necessary to qualify

under this section of the Act. However, the ministry notes that while the physician's reports indicate immune suppression explained by a decrease in the production of antibodies, there are no reports of recent infections to support a moderate or severe immune suppression. Also, while the physician's reports indicate a significant deterioration of a vital organ, those reports indicate the Appellant's fibroscan is consistent with fibrosis stage 1, and the physician does not indicate that the patient is experiencing a moderate to severe progression or deterioration of a vital organ. The ministry also notes that there is no explanation from the physician about how vitamin supplements would prevent any of these conditions from worsening.

The Panel's Decision

Section 67(1)(a) of the EAPWDR requires that a PWD to whom the request for an MNS relates be treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition. The Panel and ministry are satisfied that the Appellant is receiving treatment for a severe medical condition.

Section 67(1.1) (b) of the EAPWDR requires that as a direct result of the chronic, progressive deterioration of health, an eligible person displays two or more of the listed symptoms. The evidence provided by medical practitioner suggests that the Appellant does display two of the listed symptoms. Specifically, the physician indicates the Appellant has "significant deterioration of a vital organ" and "moderate to severe immune suppression. However, the Panel notes there is a lack of detail to support a conclusion that this constitutes a progressive deterioration.

Section 67(1.1) (c) and (d) of the EAPWDR also require that the medical practitioner confirm that the items requested as MNS will alleviate the symptoms of deterioration that are listed in section 67(1.1) (b) of the EAPWDR, and that failure obtain the requested items will result in imminent danger to the person's life. The Panel notes the physician indicated the supplements would enhance the appellant's amino acid levels but he failed to connect this in any way to mitigating an imminent danger to the appellant's health. In fact, the physician crossed out the sections asking:

- Specify the vitamin or mineral supplement(s) required and expected duration of need;
- Describe how this item will alleviate the specific symptoms identified; and
- Describe how this item or items will prevent imminent danger to the applicant's life.

Based on the lack of information provided by the Appellant and their physicians it would be reasonable to conclude that MNS would improve the Appellant's condition but there is insufficient evidence provided to conclude that it would prevent an imminent danger to the Appellant's life as required by the legislation. There is no sign of malnutrition. The Panel notes that the Appellant has lost significant weight but no reason for the weight loss was provided and the Appellant's BMI does not indicate malnutrition or a current weight that is of concern. The MNS applied for is not intended as a supplement to a person's regular nutritional diet but is intended for specific needs to prevent imminent danger to someone's life. There was insufficient evidence in this case to conclude that the request was necessary for that purpose.

Conclusion

The Panel finds that the Ministry reasonably concluded that the evidence establishes that the Appellant's request did not meet the legislative criteria set out in section 67(1.1) (c) and (d) of the EAPWDR to be eligible for MNS. Therefore, the Panel confirms the ministry's decision. The Appellant is not successful in his appeal.

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 type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Fazal Bhimji	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/April/14

PRINT NAME Sanjay Gulati	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019 April 15
PRINT NAME Carla Tibbo	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY)