

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated May 28, 2019, which denied the appellant's request for Monthly Nutritional Supplements (MNS) of nutritional items and vitamin/mineral supplements. The ministry found that an application for MNS in the form specified had not been submitted as it was incomplete.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 67(1); Schedule C, section 7

**PART E – SUMMARY OF FACTS**

The ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

Information before the minister at reconsideration included:

- A “sample” blank Application for Monthly Nutritional Supplement.
- A copy of a letter from the ministry to the appellant dated January 30, 2019 authorizing a four month supply of Boost.
- A copy of a letter from the ministry to the appellant dated September 30, 2018 authorizing a three month supply of Boost.
- A letter from a physician To Whom It May Concern dated September 21, 2018, requesting a supply of Boost for the appellant.
- A letter from a physician To Whom It May Concern dated June 13, 2018, confirming that the appellant is diagnosed with cancer, confirming that he requires a high protein diet.
- A Health Supplement Info Sheet.
- A ministry Monthly Nutritional Supplement Decision Summary dated March 6, 2019.
- A letter from the ministry to the appellant dated March 12, 2019, advising him that the ministry denied his request for an MNS.
- A copy of a letter from a physician To Whom It May Concern dated January 23, 2019, stating that the appellant has cancer and requires a 3 month supply of Boost.
- An application for MNS signed by the appellant on January 23, 2019, missing pages 4 and 6.
- The appellant’s Request for Reconsideration, signed April 26, 2019.

The appellant wrote a note on his Notice of Appeal to the Tribunal stating “Things have changed and my disease has returned.”

The appellant submitted a medical imaging report dated May 1, 2019 which reports a comparison with a previous January, 2019 CT scan which had no mention of scapular lesions. It reports a destructive lesion involving the right lateral scapula and multiple metastatic lesions within the bones of the spine. The appellant stated that the report of a second cancer is new evidence. The panel did not admit this document under section 22(4) of the Employment and Assistance Act as it was not before the ministry at reconsideration and it refers to matters not dealt with in the reconsideration decision.

At the hearing, the appellant referred to the background of his appeal. He stated that he was diagnosed with Stage 3 cancer in early 2018 and was declared cancer free this year. He has been recovering from the effects of chemotherapy. He stated that he was involved in an automobile accident that left him with shoulder pain, which eventually was diagnosed in May, 2019 as a new cancer. He has been in hospital since mid-June.

In response to questions from the panel, the appellant stated that the new cancer is new evidence. He stated that this does not change the fact that he is not cancer free as stated to the ministry by his physician at the time. The appellant stated that he was unaware that the MNS application submitted was incomplete.

The ministry, in the reconsideration decision, wrote that despite receiving an incomplete application, a decision was completed based on the information received, and the request for MNS was denied. The ministry wrote that they made several telephone calls to the appellant’s physician attempting to have the missing information provided, but it was not; however, the physician confirmed on March 12, 2019 that the appellant’s cancer treatment was completed and that there was currently no active cancer.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is the reasonableness of the ministry decision which denied the appellant's request for Monthly Nutritional Supplements (MNS) of nutritional items and vitamin/mineral supplements. The ministry found that an application for MNS in the form specified had not been submitted as it was incomplete.

**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 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).

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 thought his application was complete, and in any case, the cancer has returned in a different location, so he is still in need of the MNS.

The ministry's position is that the application for MNS that was submitted was incomplete because it did not include all of the information required in the form specified and the appellant's physician stated that he was cancer free. The ministry determined that no application was submitted.

The panel notes that the ministry made a determination that the appellant's incomplete application did not meet the criteria for an MNS, and then determined that the application was incomplete and therefore not submitted. The panel will deal with the conclusion of the Reconsideration Decision; that no application for MNS was submitted.

The application for MNS that is included with the appeal record is missing information, which as shown in the sample application provided to contain the medical practitioner's signature, stamp and date of completion. Follow up telephone calls by the ministry to the appellant's physician elicited the information that there was currently no cancer and the appellant's treatment was complete. As a result of this information and the lack of an application in the form specified, the appellant's application was denied.

The panel notes that the ministry appears to have made reasonable efforts to obtain a complete application and sufficient information to make a decision; however, the appellant's physician did not comply with the ministry's requests and provided information that contradicted the information he entered on the form that was submitted. As an application in the form in the form specified as required under section 67(1.1), EAPWDR was not received, the panel finds that the ministry reasonably determined that no application for Monthly Nutritional Supplement was received.

The panel confirms the ministry decision.

The appeal is not successful.

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**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

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 July 22

PRINT NAME

Carlos Garcia

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 July 22

PRINT NAME

Neena Keram

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 July 22