

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry's reconsideration decision dated August 23, 2019 which held that the appellant was not eligible for Monthly Nutritional Supplement (MNS) benefits, as per the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 67 (1.1) (a), (b), (c) & (d) and Employment and Assistance for Persons with Disabilities Regulation Schedule C section 7. Specifically, the ministry found that it could not be established from her submitted medical report that she had a chronic, progressive deterioration of health.

**PART D – RELEVANT LEGISLATION**

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

**PART E – SUMMARY OF FACTS**

The following key dates and information were noted:

- June 10, 2019: application for Monthly Nutritional Supplement was received
- June 27, 2019: the ministry denied the request
- July 25, 2019: the ministry received the Request for Reconsideration. An extension until August 23, 2019 was granted to the appellant to submit further information
- August 23, 2019: the ministry reviewed the Request for Reconsideration

The ministry has determined that the appellant is not eligible for a Monthly Nutritional Supplement as she did not meet the criteria set out in section (1) of the EAPWDR because it could not be established from her submitted medical report that she had a chronic, progressive deterioration of health.

At the hearing and in her written submission for the hearing, the appellant provided the following information:

- She has cerebral palsy, low iron, potassium and calcium, osteoarthritis, osteoporosis and very symptomatic menopause
- She is now confined to a wheelchair as a result of having two strokes, causing muscle wasting and weakness
- She has experienced severe hot flashes and personality changes with menopause. She has been disciplined at the care home she lives in for angry outbursts due to menopause and now fears she will be evicted from this care home
- She has found it almost impossible to get a second medical opinion in her community due to a shortage of doctors and she is therefore reluctant to “rock the boat” with the doctor she does have
- She is unable to take prescription medication for her menopause symptoms due to potential side effects exacerbating her cerebral palsy or causing another stroke, so she must use the vitamin/herbal supplements her doctor prescribes. These supplements have had a positive effect on her menopause symptoms
- She cannot purchase these supplements outside of the care home’s own pharmacy due to the care home’s policies. She cannot afford the cost of these supplements at the care home’s prices

The appellant’s advocate corroborated and added to the appellant’s description of her symptoms and situation.

At the hearing the ministry relied upon the Reconsideration Decision, stating that the information provided from the appellant’s doctor was incomplete and unclear. Referring to the ministry’s Reconsideration Decision dated August 23, 2019, the ministry states that *“The ministry finds that the information provided in your application and Request for Reconsideration does not establish that a medical practitioner, nurse practitioner or dietitian has confirmed that a vitamin/mineral supplementation is required to alleviate a symptom identified in question three of the MNS Application or that failure to obtain vitamin/mineral supplementation would result in imminent danger to your life.”*

Based upon the appellant’s testimony at the hearing, it was suggested that the appellant entertain the idea of re-applying for a monthly nutritional supplement based upon the fact that she has cerebral palsy, osteoarthritis and osteoporosis all of which are underlying chronic, progressive diseases that could benefit from nutritional supplementation. The appellant used to receive this supplement, however the ministry stopped issuing it when the appellant began living at a care home.

**PART F – REASONS FOR PANEL DECISION**

The decision under appeal is the Ministry's reconsideration decision dated August 23, 2019 which held that the appellant was not eligible for Monthly Nutritional Supplement benefits, as per the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 67 (1) and Schedule C, section 7.

**Applicable Legislation:****EAPWDR: Section 67 (1)****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.

**EAPWDR, Schedule C, section 7: Monthly nutritional supplement**

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.

**Conclusion:**

In her submissions and during the hearing, the appellant provided testimony that she is significantly impacted by her menopausal symptoms. She stated that she suffers from cerebral palsy, osteoarthritis, osteoporosis, mineral deficiencies and menopause. She has had two strokes, which have rendered her unable to walk or stand and she is incurring a loss of muscle mass as a result. Since entering into menopause, her mood changes have caused her to have anger issues. She has caused incidents at the care home she lives in resulting in her being progressively disciplined. She is concerned that she may be evicted from the care home if any more incidents occur. She has been obtaining her prescribed treatment for menopause from her care home's pharmacy (as per their policy), however she states that they inflate the cost of these supplements making them unaffordable to her. The appellant and her advocate attest that her menopausal symptoms are greatly alleviated by the treatment, allowing her to more positively interact with her environment.

The ministry relied upon the reconsideration decision during the hearing, explaining the current legislation pertaining to this appeal and answering the appellant's questions. They noted that the medical report did not provide enough information that the appellant met any of the following criteria as described in EAPWDR section 67 (1)

(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;

All information submitted to the appeal panel was carefully reviewed and all of the appellant's testimony was considered. Although the appellant has disabling conditions, the extent and severity of the conditions was not reflected in the information that her physician provided to the ministry. Parts of the physician's Medical Report are left blank or are too vague. Gaps in information such as these led to the ministry being unable to establish the extent and severity of the appellant's symptoms.

The panel finds that the ministry's reconsideration decision of August 23, 2019 which held that the appellant's application for MNS was denied because it did not demonstrate that she met the criteria under the current legislation (Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 67 (1) and Schedule C, section 7 was a reasonable application of the legislation in the circumstances of the appellant.

The panel confirms the ministry's decision. The appellant is unsuccessful in her appeal.

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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

Jan Lingford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/10/29

PRINT NAME

Bill Haire

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/29

PRINT NAME

David Kendrick

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/29