

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision, dated October 29th, 2019, which determined that the Appellant was not eligible for Monthly Nutritional Supplement of nutritional items and vitamin/mineral supplementation because the legislative requirements under Section 67(1.1) and Section 7 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) are not met. The Ministry is not satisfied that the Appellant requires the requested supplements because the criteria of "displaying two of the listed symptoms" and requiring the supplement to alleviate one of the listed symptoms (as part of caloric supplementation to a regular dietary intake for the nutritional items) and to prevent "imminent danger to life" are not met.

PART D – RELEVANT LEGISLATION**EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION - *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, (B.C. Reg. 145/2015) 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, (B.C. Reg. 145/2015)
- (e) Repealed (B.C. Reg. 145/2015)
- (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 item 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). (B.C. Reg. 68/2010)

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.C. Reg. 68/2010)
- (b) Repealed (B.C. Reg. 68/2010)
- (c) for vitamins and minerals, up to \$40 each month. (B.C. Reg. 68/2010)

PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration included:

- Summary of the information in the Application for Monthly Nutritional Supplement – this is key information
- A letter from the Appellant’s Registered Dietitian (RD), providing information related to vitamin and mineral supplements required by the Appellant, along with reference to scientific literature on the topic. Letter is dated September 09, 2019 and was received by the Ministry on October 1, 2019.
- A letter from the Appellant’s Registered Dietitian, providing specific dosages and quantities of supplements required by the Appellant. The letter is dated July 29, 2019 and was received by the Ministry on July 31, 2019.

Information provided on appeal by Appellant:

- A Case Report, entitled “Malnutrition secondary to non-compliance with vitamin and mineral supplements after gastric bypass surgery: What can we do about it?” from the Department of Internal Medicine at the University of Missouri (Columbia, MO) from 2012
- A report entitled “Nutritional Deficiencies after Gastric Bypass Surgery” from and Departments of Gastroenterology and Neurology at Gesinger Medical Center in Danville, Pennsylvania, from 2009

The Appellant provided no new evidence at the hearing. The Appellant mentioned having seen the Dietitian the previous day, but no new information was provided from that meeting. The Appellant indicated being fine now, after having had surgery on August 1st, 2019, but reiterated that the need to take the supplements is/was recommended by the medical professional in order to stay healthy. The Appellant:

- Is currently taking the supplements, and paying for them personally, at a cost of \$200/month
- Was advised before the surgery to take these supplements, as well as being told after the surgery that taking them is very important to maintaining good health
- Is concerned that if the supplements are not taken now, there will be negative side effects to health
- Is concerned that to stop taking the supplements now, for 2 weeks, would result in a deterioration of health, and even though the Appellant might then successfully qualify for assistance with the supplements, it would be risky and the Appellant’s health would deteriorate to an extent that it would be difficult (or more difficult) to restore
- Stated that if there is a test that the Ministry would like to have taken that would demonstrate successful results from the supplements currently being taken, the Appellant would like to take it
- Feels this is an issue of maintaining good health

The Ministry outlined the reasons for denying the request for funding for supplements, and directed the attendees at the hearing to the information supplied by the Registered Dietitian (RD) in the Application for Monthly Nutritional Supplement, as well as the applicable legislation. Key points included:

- RD indicated that Appellant “will be at risk” for malnutrition, significant muscle mass loss, significant neurological degeneration, and/or moderate to severe immune suppression if the recommended supplements are not taken, but also that at present, the Appellant does not have

these symptoms

- RD indicated that taking the supplements will prevent nutritional deficiencies, but not that they are currently present in the Appellant
- The Appellant currently receives \$35/month as a diabetic dietary supplement
- The Ministry is not satisfied that the Appellant has a chronic, progressive deterioration of health
- The Ministry is not satisfied that the Appellant displays two or more symptoms as a direct result of a chronic, progressive deterioration of health
- While the Appellant is at risk of negative consequences if the recommended supplements are not taken, the symptoms that would indicate severe health deterioration are not currently present.

The Ministry explained how they interpret “imminent” threats to health, and also explained the legislation and what the Ministry is empowered to do, and not do, under the legislation.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the reconsideration decision determining that not all of the requirements of section 67(1.1) and section 7 of Schedule C were met was reasonably supported by the evidence or a reasonable application of the legislation.

The Panel relied on the information from the RD in Application for Monthly Nutritional Supplement and letters cited above, the Appellant's discussion of the health situation and related events and considerations since the surgery, the Ministry's decision rationales, and the applicable legislation (EAPWDR - Nutritional supplement 67 (1.1) and SCHEDULE C, Monthly nutritional supplement 7).

Section 67(1.1) (b) requires that a person display two of the listed symptoms. In the Appellant's case, the RD indicates that the appellant is "*at risk*" of developing four of the listed symptoms, specifically:

- Malnutrition
- Significant muscle mass loss
- Significant neurological degeneration
- Moderate to severe immune suppression

The RD did not indicate that the Appellant displays or is at risk for the other three criteria (underweight status, significant weight loss, significant deterioration of a vital organ). The Panel finds that the Ministry reasonably determined that the Appellant was not displaying the symptoms because the RD indicated that they were not currently present.

The legislation (section 67(1.1) (c)), requires that the supplements are needed to alleviate a symptom. Section 7 of Schedule C includes the additional requirement that the additional nutritional items supplement be required as part of caloric supplementation to a regular dietary intake. The Appellant submitted information from the RD that establishes that the Appellant does not currently display any of the 7 symptoms cited, although if the recommended supplements are not taken, there is a risk that 4 of the symptoms will result. The RD also stated that insufficient consumption of protein, not low caloric intake, was a potential concern. The Ministry's conclusion that the Appellant does not qualify for supplements under the related legislation is supported by the evidence provided. The Panel finds that the Ministry's determination was reasonable because the evidence indicates a risk of symptoms, but not their presence.

Section 67 (1.1) (d) requires that failure to obtain the nutritional items referred to in paragraph (c) "will result in imminent danger to the person's life". The Appellant explained that currently, their state of health is good, they have no negative symptoms, and that they are taking the recommended supplements.

The Ministry explained their interpretation of "imminent danger", supported by a dictionary definition of the word "imminent". They concluded that since the symptoms of chronic, progressive deterioration of health are not present or displayed by the Appellant, the supplements are not required as there are no symptoms to alleviate. Having found this conclusion to be reasonable, the Panel also finds that the Ministry reasonably concluded that the information did not demonstrate that failure to provide the supplements will result in imminent danger to the appellant's life.

The Panel finds that, while the Appellant is diligently working on and attentive to the health situation, neither a severe medical condition nor symptoms of a chronic, progressive deterioration in health are present. Under the related legislation, the Appellant does not qualify for supplements from the Ministry. Although the Appellant will be at risk in future, should the supplements not be taken, at present the health issues required to qualify for funded supplements are not present. So the Panel finds that the legislative criteria for funding for supplements are not met.

Conclusion

The Panel finds that the Ministry was reasonable in determining that the Appellant does not meet the legislative criteria specified for receiving funding for supplements, and therefore confirms the Ministry decision. The Appellant is not successful in their appeal.

APPEAL NUMBER

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

Carla Gail Tibbo

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/12/03

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/12/04

PRINT NAME

Jane Nielsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/12/04