

APPEAL NUMBER
2020-00104

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated March 25, 2020 which held that the appellant was not eligible for a Monthly Nutritional Supplement under sections 67 (1) of the Employment and Assistance for Persons with Disabilities Regulations (EAPWDR) and Schedule C section 7 of the Employment and Assistance for Persons with Disabilities Regulations (EAPWDR).

Specifically, the ministry noted that as per Section 67 (1.1) (b) of the EAPWD Regulation, to be eligible for the MNS an applicant must display two or more symptoms as a result of chronic, progressive deterioration of health, and it has not been confirmed by a medical practitioner that two symptoms are present.

PART D – RELEVANT LEGISLATION

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

PART E – SUMMARY OF FACTS

The following key dates and information were noted:

On December 23, 2019, an application for the Monthly Nutritional Supplement items of vitamin/mineral supplements and nutritional items was submitted

On January 22, 2020 the ministry denied the request for the Monthly Nutritional Supplement of nutritional items. The ministry notes the appellant is already in receipt of vitamin/mineral supplements.

On March 11, 2020 the ministry received a Request for Reconsideration.

On March 25, 2020 the ministry completed its review of the Request for Reconsideration

On March 25, 2020 the ministry denied the request for the Monthly Nutritional Supplement (MNS)

Background:

All information submitted with the original applications and Request for Reconsideration has been reviewed in the making of this decision.

Section 67(1) of the EAPWDR lists the criteria that must be met to be approved for MNS. Section 7 of Schedule C outlines the additional eligibility criteria for nutritional items and limits to the amount the ministry may provide for MNS items. The following is a summary of the information considered in this case.

Medical:

The appellant is a Person with Disabilities (PWD) in receipt of disability assistance, including the monthly Vitamin Mineral Supplement (VMS). A medical practitioner has confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically renal failure, insulin dependent diabetes, and hypertension / severe hyperlipidemia.

In their reporting, the medical practitioner advises, “Renal failure, possible dialysis in future. Poorly controlled diabetes. Started on insulin, multiple antihypertensives [and] lipid lower drugs.” Included in the Request for Reconsideration application was a note from the appellant’s physician dated March 10, 2020 advising that the appellant suffers from renal failure [and] is starting dialysis. Further, it is stated that a kidney dialysis diet will be required for at least 2 years. The medical practitioner reports as a direct result of chronic, progressive deterioration of health, symptoms of significant deterioration of a vital organ (kidney failure) are present. Vascular disease, insulin dependent diabetes, hypertension / hyperlipidemia and a high risk for coronary disease are also involved.

The medical practitioner specifies that the appellant requires a high protein diabetic diet emphasizing vegetables with the avoidance of sodium / salt and processed carbohydrates. The medical practitioner states: "Salt retention causing edema worsening hypertension / renal failure. Processed carbs aggravating diabetes [and] hyperlipidemia." Further, in describing how dietary changes will prevent imminent danger to life, the medical practitioner states: "Prevent hyperglycemia [and] worsening renal failure." They further prescribe that a kidney dialysis diet should be followed for at least 2 years.

Ministry's Position:

The ministry finds the information provided in the application and request for reconsideration, does not indicate a requirement for extra calories (caloric supplementation) over and above those found in a regular diet. Rather, the information demonstrates that the appellant needs to eat specific foods as part of a balanced diet. The ministry notes that the medical practitioner makes dietary recommendations that involve appropriate food choices within a regular dietary intake, rather than caloric supplementation to a regular dietary intake.

The ministry notes, as per Section 67 (1.1) (b) of the EAPWD Regulation, to be eligible for the MNS an applicant must display two or more symptoms as a result of chronic, progressive deterioration of health. As it has not been confirmed by a medical practitioner that two symptoms are present (the appellant displays one symptom: significant deterioration of a vital organ), eligibility to receive the MNS of nutritional items is not met. The ministry notes that the vitamin/mineral supplementation is already being provided.

The ministry is not satisfied that nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of a chronic, progressive deterioration of health and to prevent an imminent danger to life are required.

Appellant's Position:

In their submission for the Request for Reconsideration application, the appellant states that they need the extra money each month to buy healthy, good quality food to try and extend life. They do not have a proper medically necessary, nutritional diet to manage their health conditions due to a lack of funding. They require kidney dialysis 3-4 times per week. They feel they have "fallen through the cracks" within the system that won't allow the funding to purchase the food required to maintain good health.

Applicable Legislation:

Employment and Assistance for Persons with Disabilities Regulation

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).

(3) The minister may provide a nutritional supplement for a period of 3 calendar months to or for a family unit if the supplement is provided to or for a recipient of disability assistance or a dependent child of a recipient of disability assistance if

(a) the recipient or dependent child is not receiving a supplement under subsection (1) of this section or section 2 (3) of Schedule C, and

(b) a medical practitioner or nurse practitioner confirms in writing that the recipient or dependent child has an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from

(i) surgery,

(ii) a severe injury,

(iii) a serious disease, or

(iv) side effects of medical treatment.

Monthly nutritional supplement: Schedule C

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.

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the Ministry's reconsideration decision dated March 25, 2020 which held that the appellant was not eligible for a Monthly Nutritional Supplement under sections 67 (1) of the Employment and Assistance for Persons with Disabilities Regulations (EAPWDR) and Schedule C section 7 of the Employment and Assistance for Persons with Disabilities Regulations (EAPWDR).

Specifically, the ministry noted that as per Section 67 (1.1) (b) of the EAPWD Regulation, to be eligible for the MNS an applicant must display two or more symptoms as a result of chronic, progressive deterioration of health, and in this case it has not been confirmed by a medical practitioner that two symptoms are present.

Findings of the Panel:

All information submitted to the appeal panel was carefully reviewed and the appellant's submissions and testimony were thoroughly considered.

The panel finds that the ministry's reconsideration decision of March 25, 2020 which held that denial of the appellant's application for a MNS was a reasonable application of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 67.1, as well as the (EAPWDR) Schedule C, section 7, considering the information submitted at the time of reconsideration and the circumstances of the appellant. While the appellant's medical professional noted that the appellant suffers from significant deterioration of a vital organ (kidney) failure, as well as diabetes, vascular disease, hypertension / hyperlipidemia and a high risk for coronary disease, Section 67 (1.1) (b) of the EAPWDR regulates that to be eligible for the MNS you must display two or more symptoms as a result of chronic, progressive deterioration of health. The medical practitioner has identified just one qualifying symptom, under section 67.1 (b) (vi): significant deterioration of a vital organ.

The panel is sympathetic to the appellant's circumstances and would encourage the parties to continue discussions to see what, if any, supplements or programs may be available.

The panel confirms the ministry's decision that the criteria in Section 67.1 of the EAPWDR for a Monthly Nutritional Supplement were not met, therefore the appellant is unsuccessful in this 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)

2020/05/08

PRINT NAME

Wendy Marten

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/05/08

PRINT NAME

Robert Kelly

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/05/08