

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision dated April 27, 2020, made by the Ministry of Social Development and Poverty Reduction (the ministry), which determined the appellant does not qualify to receive a monthly nutritional supplement (MNS) because the appellant's application does not confirm the appellant requires nutritional items to provide caloric supplementation in order to alleviate symptoms of a progressive deterioration of health or failure to provide nutritional items will result in imminent danger to the appellant's life as required by section 67(1.1) and section 7 of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation*.

Specifically, the ministry found that:

No information regarding nutritional items is provided by the appellant's medical practitioner in the MNS application. The medical practitioner simply writes, "See vitamins/minerals."

The medical practitioner does not specify the nutritional items that the appellant requires.

No information is provided by the medical practitioner to confirm that the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

No information is provided by the medical practitioner to describe how nutritional items will alleviate one or more of the symptoms specified and provide caloric supplementation to a regular diet.

The medical practitioner does not indicate that nutritional items are required to prevent imminent danger to life.

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2020-00127

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 67 and Schedule 3, section 7.*

**PART E – SUMMARY OF FACTS**

The appellant is in receipt of disability assistance. In the same reconsideration decision as the one under appeal here, the ministry approved the appellant's application for a monthly vitamin/mineral supplement.

The evidence before the ministry at the time of the reconsideration decision consisted of an Application for MNS completed by the appellant's physician dated April 3, 2020 (Application). The Application states the appellant suffers from malnutrition, underweight status and moderate to severe immune depression and the appellant is 164cm in height and weighs 60kg. In the section of the Application dealing with vitamin/mineral supplementation, the physician indicates the appellant requires vitamins C, D, E, A, B, iron, calcium, folic acid, omega-3 and magnesium. The physician states appellant needs these supplements "to maintain energy levels and weight/health" and the imminent danger to appellant's health is "low immune system risk for COVID-19". In the section of the Application dealing with nutritional supplementation, the physician has written, "See vitamins/minerals".

In the appellant's request for reconsideration, it was reported the appellant is a single mother with 3 children, 2 of whom are disabled; has zero to very low income; the physician indicated appellant is high risk for COVID; takes many supplements which cost a lot but the appellant is "still anemic, dizzy, etc."; and the appellant needs the nutritional supplement to support the appellant and appellant's children.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's decision which determined the appellant does not qualify for the monthly nutritional supplement because the appellant's application does not confirm appellant requires nutritional items to provide caloric supplementation in order to alleviate symptoms of a progressive deterioration of health or that failure to provide nutritional items will result in imminent danger to appellant's life.

The relevant legislation is section 67(1) and (1.1) and section 7 of Schedule C of the 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, nurse practitioner or dietitian, in which the practitioner or dietitian has confirmed all of the following:

- (a) the person with disabilities to whom the request relates is being treated by a medical practitioner or nurse 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, nurse practitioner or dietitian other than the medical practitioner, nurse practitioner or dietitian who completed the form referred to in subsection (1.1).

### **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.

At the hearing, the appellant was not disputing the reasonableness of the ministry's decision but asked the panel to consider an exception to the legislation on humanitarian grounds due to the appellant's situation of supporting a family with three children on very little income.

The appellant's submission was the appellant qualifies as a person with disabilities due to a fall which caused head injuries and brain damage which affects memory. The appellant requires the vitamin/mineral supplementation in order to address a number of health issues which are the result of this injury, including anemia and nausea. However, when asked about the need for caloric supplementation the appellant stated there was no need for it, is not underweight and does not use protein or meal supplements.

The ministry reiterated its findings at reconsideration at the appeal, pointing to the fact the appellant's physician did not complete the section of the Application for the MNS and the Application does not specify the nutritional items the appellant requires; provide any information to confirm the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake; provide any information to describe how nutritional items will alleviate one or more of the symptoms specified and provide caloric supplementation to a regular diet; and does not indicate nutritional items are required to prevent imminent danger to life.

The appellant did not dispute any of the ministry's reasons for denying the MNS and supported the reasonableness of the decision.

While the panel is sympathetic to the circumstances of the appellant's submission, the panel's jurisdiction is limited to determining if the ministry's decision was reasonable based on the requirements of the relevant legislation. The panel does not have the authority to rescind the ministry's decision for humanitarian or compassionate reasons.

The panel finds the ministry fully and properly considered the information before it in assessing the appellant's eligibility for the MNS and concluding the appellant was ineligible for this supplement.

Accordingly, the panel concludes the ministry's decision that the appellant does not qualify for the MNS because the appellant does not meet the legislative requirements is reasonably supported by the evidence and confirms the ministry's decision.

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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

Marcus Hadley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/05 17

PRINT NAME

Katherine Wellburn

DATE (YEAR/MONTH/DAY)

PRINT NAME

Joe Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/05/25