

APPEAL NUMBER
2020-00102

PART C – DECISION UNDER APPEAL

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 19 March 2020 that denied the appellant's request for a monthly nutritional supplement (MNS) under section 67 of the Employment and Assistance for Persons with Disabilities Regulation. Specifically, the ministry determined that the information provided did not establish that a medical practitioner, nurse practitioner or dietician has confirmed that as a direct result of a chronic, progressive deterioration of health, the appellant is displaying at least two of the symptoms set out in paragraph (b) of subsection 67(1.1); that the appellant requires vitamin/mineral supplementation for the purpose of alleviating a symptom referred to in paragraph (b); or that failure to obtain the items requested would result in imminent danger to his life.

The ministry also found that the information provided with the appellant's application indicates that nutritional items were not requested.

PART D – RELEVANT LEGISLATION

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

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration

1. The appellant is designated as a person with disabilities and is a recipient of disability assistance.
2. An Application for Monthly Nutritional Supplement dated 12 February 2020, completed by a physician as follows:
 - The physician reports that the appellant's severe medical conditions are IBS-C [irritable bowel syndrome with constipation], which the physician describes as "chronic constipation/abdominal pain;" and MDD [major depressive disorder], described as "disrupted eating patterns."
 - As a direct result of these conditions, the physician states that "treatment includes focus fiber rich diet including hydration; repeat colonoscopy pending June/July 2020."
 - As a direct result of the above conditions, the physician marks Ø against each of the listed symptoms.
 - The appellant's height is reported to be 175 cm and weight is 113.8 kg.
 - **Vitamin or mineral supplementation:** the physician indicates that magnesium supplementation is required.
 - In describing how the required item would alleviate the specific symptoms identified, the physician writes "natural laxative."
 - In describing how the item will prevent imminent danger to appellant's life, the physician states, "Patient is in no imminent danger."
 - **Nutritional items:** additional nutritional items required: the medical practitioner marks Ø.
 - When asked whether the appellant has a medical condition that results in the inability to absorb calories to satisfy daily requirements through a regular dietary intake, the physician states "no."
 - In describing how additional nutritional items required would alleviate symptoms identified and provide caloric supplementation to the regular diet, the medical practitioner marks Ø.
 - In describing how the requested nutritional items will prevent imminent danger to the appellant's life, the physician marks Ø.

The medical practitioner comments:

"Patient has had chronic IBS-C symptoms many years, positive FIT test 2015. Initial colonoscopy prep was not clear 2/2. Poor bowel prep due to IBS-C. Report scheduled June/July 2020. Would benefit from healthier diet → explained to patient. Additionally explained that he does not have IBD [inflammatory bowel disease]."

3. The ministry's Monthly Nutritional Supplement Decision Summary, dated 27 February 2020, denying the appellant's request for an MNS for vitamins and minerals and

indicating that a MNS for nutritional items was not requested. The ministry noted that the appellant was in receipt of a diet supplement.

4. The appellant's Request for Reconsideration, dated 03 March 2020. In the handwritten Reasons, the appellant writes of being denied the MNS four times, but the rest of the reasons given is difficult to read.

Notice of Appeal

The appellant's Notice of Appeal, in which a hearing in written was requested, is dated 14 March 2020. Under Reasons for Appeal, the appellant has provided a 4-page handwritten statement. Unfortunately, the handwriting is difficult to decipher, and the panel is therefore unable to summarize the appellant's argument in the form submitted.

The hearing

As noted above, with the consent of both parties, the hearing was originally scheduled to be conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

On 03 April 2020 the appellant submitted a Written Submission Extension Request, explaining "Need 3-4 weeks to get Doctors notes." The ministry consented to this request on 07 April 2020.

On 27 April 2020 the tribunal received a 20-page handwritten submission dated 16 April 2020. Again, the handwriting was difficult to decipher. From what the panel is able to make out, the appellant is recovering from an injury after being in a stressful workplace situation. Not now being able to work, the appellant argues that this has caused much financial stress, with apartment rent taking up most of the CCP disability pension received and [after deducting the CPP disability] the remaining ministry portion of disability assistance is only \$414. In this context the appellant makes reference to an application for \$100 for a "clothing allowance," and the need to continue receiving the diet supplement. The appellant refers to having hemorrhoids and irritable bowel disease as one of the reasons for applying for the MNS, denied 4-5 times in the past.

In an email dated 13 May 2020, the ministry stated that its submission will be the reconsideration summary provided in the Record of Ministry Decision.

In a telephone conversation with the appellant on 19 May 2020, a member of the tribunal staff explained that the appellant's handwriting was difficult to read and, with the approval of the tribunal chair, suggested that in the interest of fairness it would be preferable to have the hearing by teleconference. The appellant agreed with this suggestion and to the hearing being at 9:30 AM on 28 May 2020, the same time and date as originally scheduled. Accordingly, the hearing was rescheduled as a teleconference hearing.

After office hours (7:42 PM) on 27 May 2020, the appellant left a voicemail message with the tribunal requesting the hearing be rescheduled to a later date, preferably in the afternoon. The same member of the tribunal staff tried to make contact the next morning before the scheduled

9:30 AM start of the hearing, leaving 3 messages to the effect that if the appellant wanted to seek an adjournment, such a request would have to be made at the hearing.

The appellant did not attend the teleconference hearing. Prior to the hearing, the panel had been advised of the message left by the appellant the day before and of the tribunal's attempts to make contact earlier that morning. At the hearing, the panel was guided by the tribunal's *Practices and Procedures*, which states that "If a party requests an adjournment within one (1) business day prior to the hearing, the party must make the request to the panel at the hearing either by telephone or in person..." Accordingly, after confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

At the hearing, the ministry stood by its position at reconsideration.

Admissibility of additional information

The panel accepts the appellant's Notice of Appeal and the 20-page written submission as argument in support of the appellant's MNS application.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry was reasonable in denying the appellant's request for a monthly nutritional supplement (MNS) under section 67 of the EAPWDR. More specifically, the issue is whether the following ministry determination is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant: the information provided did not establish that that a medical practitioner, nurse practitioner or dietician has confirmed that:

- as a direct result of a chronic, progressive deterioration of health, the appellant is displaying at least two of the symptoms set out in paragraph (b) of section 67(1.1);
- the appellant requires vitamin/mineral supplementation for the purpose of alleviating a symptom referred to in paragraph (b); and
- failure to obtain the items requested would result in imminent danger to his life.

The ministry also found that the information provided with the appellant's application indicates that nutritional items were not requested.

The relevant legislation is from 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 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).

And from Schedule C of the EAPWDR:

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.

Analysis

The position of the appellant

From what the panel can decipher from the appellant's submissions, the appellant is frustrated by being denied the MNS four times. The appellant points to being in financial stress due to the inability to work and the limited amount of disability assistance provided, and having a medical condition related to poor nutrition. This leads the appellant and the physician to the conclusion that it is unreasonable for the ministry to deny the MNS after the physician has supported previous applications four times.

The position of the ministry

At reconsideration, the ministry found that the appellant's request for the MNS for vitamin/mineral supplementation and for nutritional items met the basic eligibility requirement of the appellant being designated as a person with disabilities and in receipt of disability assistance. The ministry also found that the appellant met the criterion set out in EAPWDR sub section 67(1.) paragraph (a). However, the ministry determined that the appellant did not meet the eligibility criteria set out in subsection 67(1.1) paragraphs (b), (c) and (d) and Schedule C, subsection 7(a). The ministry therefore denied the appellant's MNS request. In making this determination, the ministry noted that section 67 of the EAPWDR sets out that the ministry must rely on information from a medical practitioner, nurse practitioner, or dietitian to determine eligibility for MNS. No further information from a practitioner was received with the appellant's

Request for Reconsideration.

In the reconsideration decision, the ministry reviewed in detail the information provided by the physician in the MNS Application, noting that in the Application the physician has not identified that the appellant experiences any of the symptoms set out in subsection 67(1.1) (b).

Regarding the request for vitamin/mineral supplementation, with none of the listed symptoms identified, the ministry stated that information has not been provided to establish that the appellant requires vitamin or mineral supplementation to alleviate one of the legislated symptoms. While the physician indicates that the appellant will have symptom relief with magnesium supplementation as it is a natural laxative, the symptom reported (constipation) is not among the symptoms listed in legislation. Further, the ministry found that the information provided by the physician in the MNS Application does not constitute confirmation that failure to obtain vitamin/mineral supplementation will result in imminent danger to life, as the physician has indicated the appellant is in no imminent danger.

With respect to nutritional items, the ministry noted that the physician reported that the appellant did not require additional nutritional items. However, the ministry was not satisfied that the physician's "Ø" did not constitute a "Did not apply for this item." The ministry took, in the panel's view, the redundant approach of applying the EAPWDR section 67(1.1) (b) to (d) criteria, including the Schedule C section 7 (a) "caloric supplementation" requirement, to the information provided in the Application.

The ministry noted that the physician indicated that the appellant does not have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, does not require nutritional items to alleviate one or more of the specified symptoms, and that no description is provided regarding how a specified nutritional item will prevent imminent danger to life. The ministry also explained that the information provided by the physician does not confirm that the appellant is displaying the symptoms of *underweight status, significant weight loss, or significant muscle mass loss*, which would indicate a need for caloric supplementation. Further, the height or weight recorded in the application indicates that the appellant's BMI is 37.2, a level in the obese range and does not indicate that the appellant is experiencing symptoms associated with wasting.

On this basis, the ministry concluded that the information provided in the Application and Request for Reconsideration does not establish that a medical practitioner, nurse practitioner, or dietitian has confirmed that the appellant require additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating one of two symptoms that are the direct result of a chronic, progressive deterioration of health due to a severe medical condition and that failure to obtain the items requested will result in imminent danger to life.

Panel finding

The legislation – section 67 of the EAPWDR – requires that an applicant for the MNS meet the basic eligibility criterion of being designated as a person with disabilities and being in receipt of

disability assistance. The ministry found that the appellant met this requirement.

The legislation also requires the applicant to meet, based on information provided by a medical practitioner, nurse practitioner or dietician, each of the medical criteria listed in subsection 1.1 of section 67. These criteria are set out in consecutive order, as can be seen from the rewording of the criteria and the high-lighted texts below:

- (a) the person 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 *symptoms referred to in paragraph (b)*.
- (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 section 7 of Schedule C and specified in the request** will result in imminent danger to the person's life.

Note that for the second and subsequent criteria, the preceding criterion must first be met. Put another way, if the information provided does not establish that one of the criteria has been met, then none of the subsequent criteria can be met.

In this case, the ministry found that the information provided by the physician that the appellant is being treated for IBS-C and MDD established that the paragraph (a) criterion has been met. However, the physician indicated that, as a result of the IBS-C and MDD, the appellant was not displaying any symptoms listed in paragraph (b). With this criterion not being met, this would be sufficient reason for the ministry to reasonably find that the appellant not eligible for the requested magnesium vitamin and mineral supplementation. That the physician also stated "Patient is in no imminent danger" simply adds a further reason for this finding.

As to any requirement for additional nutritional items, given that the physician indicated that the appellant was not displaying any symptoms listed in paragraph (b) and in fact did not indicate that the appellant required the item listed in section 7(c) of Schedule C to alleviate a symptom listed in paragraph (b), the panel finds that the ministry was reasonable in finding the appellant not eligible for this item.

Conclusion

Based on the above analysis, the panel finds that the ministry's decision to deny the appellants request for the MNS is reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant's appeal is thus 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

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 June 01

PRINT NAME

Bob Fenske

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 June 01

PRINT NAME

Jeremy Sibley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 June 01