

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of May 27, 2020 (the “Reconsideration Decision”), which denied the Appellant a monthly nutritional supplement because the Appellant had not satisfied the criteria set out in section 67(1.1)(a), (b), and (d) of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”), which requires confirmation by a medical doctor that:

- an individual applicant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition;
- as a direct result of the chronic, progressive deterioration of health, the applicant displays two or more of the following symptoms:
  - malnutrition;
  - underweight status;
  - significant weight loss;
  - significant muscle mass loss;
  - significant neurological degeneration;
  - significant deterioration of a vital organ; or
  - moderate to severe immune suppression
- for the purpose of alleviating a symptom set out above, the applicant requires one or more of the items set out in section 7 of Schedule C to the EAPDWR and specified in the request for a supplement; and
- failure to obtain the requested item will result in imminent danger to the applicant’s health.

APPEAL NUMBER  
2020-00154

**PART D – RELEVANT LEGISLATION**

Section 61.01, EAPWDR  
Section 67, EAPWDR  
Section 7, Schedule C to EAPWDR

## **PART E – SUMMARY OF FACTS**

### *Background*

The Appellant is a recipient of disability assistance. On March 24, 2020, the Appellant made an application for a monthly nutritional supplement (the “Application”), which was completed by the Appellant’s doctor. On April 21, 2020, the Ministry denied the Appellant’s request for a monthly nutritional supplement, having found that the Appellant had not satisfied the Ministry that:

- the Appellant was being treated for a chronic, progressive deterioration of health; or
- the Appellant was being treated for two or more of the symptoms described in section 67(1.1)(b) of the EAPWDR.

On April 24, 2020, the Appellant filed a Request for Reconsideration (“RFR”)

### *Information before the Ministry*

At the time of the Reconsideration Decision, the Ministry had the following information before it:

- The Application, in which the Appellant’s doctor confirmed the following:
  - the Appellant was being treated for “H. Pylori with related chronic Gastritis” and “Low weight”, which were described as severe medical conditions;
  - the Appellant was not being treated for a chronic, progressive deterioration of health as a result of the above-described severe medical conditions;
  - the Appellant required protein supplements, which would help the Appellant with weight gain;
  - it was not known whether the Appellant had a medical condition which resulted in the inability to absorb sufficient calories to satisfy daily requirements by following a regular diet;
  - the Appellant displayed signs of malnutrition and underweight status but none of the other symptoms set out in section 67(1.1)(b) of the EAPWDR;
  - the Appellant stood 5’11” tall and weighed 138 pounds;
  - the Appellant required vitamins and supplements which would help with weight gain; and
  - there was no imminent danger to the Appellant’s health;
- the Ministry’s Decision Summary, dated April 21, 2020;
- the Ministry’s letter to the Appellant, dated April 21, 2020, confirming the denial of a monthly nutritional supplement;
- the Appellant’s Request for Reconsideration, dated April 24, 2020, to which was attached:
  - a lab report, dated October 9, 2020, confirming the Appellant’s diagnosis of Helicobacter Pylori; and
  - a handwritten note from the Appellant, dated April 24, 2020, in which the Appellant described:
    - suffering from “H Pylori which is a common cause of stomach cancer”;
    - needing supplements to deal with pain and improve quality of life;
    - experiencing drastic weight loss and suffering from a host of other auto immune deficiencies; and
    - experiencing significant hair loss; and
    - doctors not liking to do paperwork.

In the Notice of Appeal, the Appellant stated: "I disagree because I have malnutrition, can't absorb nutrients, I have to eat 5 times a day to keep weight. Stomach ulcers, can cause stomach cancer. Antibiotics are not covered."

At the hearing of the appeal, the Appellant described not getting sufficient nutrients and getting bloated. The Appellant advised that it was hard to eat and described need to eat lots to maintain weight. The Appellant also described having stomach bacteria, very bad stomach ulcers, being underweight, and having a suppressed immune system. The Appellant also described ongoing hair loss, inflammation, and having an immune system that was not working the way it should. When asked about weight loss, the Appellant advised that this has been a problem for about a year and has resulted in a weight drop from about 150 to 160 pounds down to the Appellant's present weight of 138 pounds.

The Appellant also described suffering from ulcers which were caused by stomach bacteria and, in the Appellant's submission, this constituted a progressive deterioration of the Appellant's health.

Finally, the Appellant also described a lack of help from the doctor who completed the Application.

The Ministry relied on the Reconsideration Decision at the hearing of the appeal and advised that it took the position that where a person's body mass index ("BMI") was within a "healthy" range, that person could not be considered "underweight". In this case, the Appellant's BMI was 19.2 kg/m<sup>2</sup>, which was within the healthy BMI range of 18.5 to 25.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for a monthly nutritional supplement because the Appellant had not satisfied the criteria set out in section 67(1.1)(a), (b), and (d) of the EAPWDR.

### Applicable Legislation

Section 61.01 of the EAPWDR defines a “nutrition-related supplement” as follows:

“nutrition-related supplement” means any of the following supplements:

- (a) a supplement under section 66 [*diet supplement*];
- (b) a supplement under section 67 [*nutritional supplement — monthly*], other than a supplement for vitamins and minerals;
- (c) a supplement under section 67.001 [*nutritional supplement — short-term*];
- (d) a supplement under section 67.01 [*tube feed nutritional supplement*];
- (e) a supplement under section 2 (3) of Schedule C that is related to nutrition;

Section 67 of the EAPWDR authorizes the Ministry to provide a nutritional supplement and establishes the test of eligibility for a monthly nutritional supplement:

### 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.

Section 7 of Schedule C to the EAPWDR prescribes the amounts available for various types of monthly nutritional supplements:

#### **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.

#### **Panel Decision**

The Ministry found that the Appellant met the basic eligibility criteria for a monthly nutritional supplement set out in section 67(1) of the EAPWDR but not the criteria set out in section 67(1.1) of the EAPWDR.

The first of these requirements is that a medical practitioner, nurse practitioner or dietician must confirm that “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.” In this case, the Appellant’s doctor was asked to answer the following question on the Application: “As a direct result of the severe medical condition(s) noted above, is the applicant being treated for a chronic progressive deterioration of health?” The Appellant’s doctor answered “no”. In view of this answer, the panel finds that the Ministry was reasonable in its determination that the Appellant did not satisfy the requirements of section 67(1.1)(a) of the EAPWDR.

The second eligibility requirement under section 67(1.1) of the EAPWDR is that a medical practitioner, nurse practitioner or dietician must confirm that:

“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;”

With respect to this criteria, the Appellant’s doctor answered “yes” on the Application to “Malnutrition” and “Underweight Status”. However, the Appellant’s doctor offered no further explanation for either of these. In particular, the Appellant’s doctor entered the Appellant’s height and weight as 5’11’ and 138 pounds, resulting in a BMI of 19.2, which falls within the “normal” BMI range. The application sets out that height and weight information is specifically requested to determine an applicant’s BMI. In view of the doctor’s findings on the Appellant’s height and weight, which results in a BMI within the “healthy” range, , the panel finds that the Ministry was not unreasonable in its determination that the Appellant did not satisfy the requirements of section 67(1.1)(b) of the EAPWDR and, in particular, that the Appellant was not underweight.

The third eligibility requirement under section 67(1.1) of the EAPWDR is that a medical practitioner, nurse practitioner or dietician must confirm that “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.”

With respect to this requirement, although the Appellant’s doctor indicated that the Appellant required protein supplements, vitamins, and mineral supplements to aid with weight gain, the evidence from the Appellant’s doctor did not clearly support the doctor’s finding that the Appellant was, in fact, underweight or suffering from malnutrition, the two symptoms referred to in section 67(1.1)(b) of the EAPWDR that the doctor described the Appellant as suffering from. For example, despite answering “yes” to the Appellant being underweight, the doctor did not address the fact that the Appellant’s BMI, based on the information in the Application, does not reflect an underweight status. Likewise, the doctor stated on the Application that it was “unknown” if the Appellant had a medical condition that results in an “inability to absorb calories to satisfy daily requirements through a regular dietary intake.” As a result, the panel finds that the Ministry was reasonable in its determination that the Appellant did not meet the requirements of section 67(1.1)(c) of the EAPWDR to be eligible for a monthly nutritional supplement.

The final eligibility criteria under section 67(1.1) of the EAPWDR is that a medical practitioner, nurse practitioner or dietician must confirm that “failure to obtain the items referred to in paragraph (c) will result

in imminent danger to the person's life." With respect to this requirement, the Application specifically asks the practitioner completing it to describe "how this item or items will prevent imminent danger to the applicant's life." In answer to this query on the Application, the Appellant's doctor wrote simply "no imminent danger exists." In view of this, the panel finds that the Ministry reasonably determined that the Appellant did not meet the requirements of section 67(1.1)(d) of the EAPWDR.

In view of all of the foregoing, the panel finds that the Ministry's determination that the Appellant was not eligible for a monthly nutritional supplement was reasonable and the Appellant is not successful 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

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/July/02

PRINT NAME

Susan Mackey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/07/02

PRINT NAME

Roy Wares

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/07/02