

APPEAL NUMBER  
2020-00190

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the ministry's reconsideration decision dated July 13, 2020 which determined that the appellant's request for a monthly nutritional supplement for vitamins/minerals and nutritional items ("MNS") did not meet the eligibility requirements set out in the EAPWD regulations.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") sections 61.01, 67 and Schedule C section 7.

## **PART E – SUMMARY OF FACTS**

### **A. Preliminary Matter**

The telephone hearing of this appeal was scheduled to start at 9:30 a.m. As the appellant had not joined the phone conference, commencement of the hearing of the appeal was delayed until 9:40 a.m. The appellant did not attend the hearing. After confirming that the appellant was duly notified of the date and time of the appeal hearing, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

### **B. Summary of Facts**

The appellant is a person with disability and is therefore eligible to be considered for MNS provided the legislated criteria are met. In support of the application for MNS, the appellant provided the following:

1. The appellant's application for MNS dated February 17, 2020 and completed by the appellant's doctor (the "MNS Application").
2. An undated letter from the appellant's doctor (the "Dr. Letter") received as an Appendix to the submission from the appellant's advocate dated July 8, 2020.
3. A prescription from the appellant's doctor dated June 9, 2020 (the "Prescription").

The MNS application indicated that the appellant suffers from a severe medical condition – "chronic severe facial /sinus pain and neuropathic pain".

- i. In both the MNS Application and the Dr. Letter, the appellant's doctor stated that malnutrition and significant neurological degeneration are symptoms of the appellant's severe medical condition.

The MNS Application indicates that the appellant is 5'10" and 182 pounds. There was no new or other evidence to contradict this evidence.

In the MNS application, the doctor stated that the MNS was needed to "ensure nutrition requirements are met". Also in the MNS Application, the doctor was asked to describe how the MNS would prevent "imminent danger" to the appellant's life. In response, the doctor states only that the MNS would "Prevent infection & malnutrition".

## PART F – REASONS FOR PANEL DECISION

The issue on this appeal is whether the reconsideration decision of the ministry is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant sections of the EAPWDR are set out as follows:

### Definitions

**61.01** In this Division:

"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;

### 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).

(3) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 8.]

### **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.

There are four elements required to establish qualification for MNS. These elements are set out in subsections 67(1.1)(a) through 67(1.1)(d) of the EAPWDR. The first is that a medical practitioner or nurse practitioner must confirm in the prescribed form that the person with disabilities is being treated for a chronic progressive deterioration of health on account of a severe medical condition. In the present case the ministry accepted that this element was satisfied, being the appellant's chronic severe facial/sinus pain and neuropathic pain.

The second element to be established is that the applicant for MNS must display two or more of the seven symptoms listed in subsection 67(1.1)(b) as a result of the chronic, progressive deterioration of health. For the purposes of this appeal, the only two symptoms put forward on behalf of the appellant are malnutrition and significant neurological degeneration. On reconsideration, the ministry accepted that there was significant neurological degeneration. However, the ministry did not accept that there was malnutrition.

The third element to be established is that the MNS is required to alleviate one of the symptoms identified as affecting the appellant as set out in 67(1.1). On reconsideration, the ministry concluded that there was insufficient evidence to connect the appellant's stated symptom of malnutrition to the appellant's chronic severe facial/sinus pain and neuropathic pain.

The fourth element to be established is that failure to provide the MNS will result in imminent danger to the appellant's life. On reconsideration, the ministry found that there was no evidence that the appellant's life would be in imminent danger if the MNS was not provided.

The appellant's position can be summarized as follows:

1. The appellant suffers from a severe medical condition – chronic severe facial/sinus pain and neuropathic pain.
2. As a result of the severe medical condition, the appellant has the symptoms of significant neurological degeneration and malnutrition.
3. MNS is required to relieve the symptom of malnutrition.
4. The appellant's life is endangered absent the supply of the MNS.

At reconsideration, the ministry accepted that the appellant's MNS application established a severe medical condition. The ministry also accepted that the appellant suffered from the symptom of significant neurological degeneration as a result of the appellant's severe medical condition. However, the ministry did not accept:

- a. That the appellant has the symptom of malnutrition ... the ministry found that, based on the doctor's language in the MNS application, that MNS was being applied for to prevent malnutrition rather than treat it as a symptom of the accepted severe medical condition;
- b. That failure to supply the MNS to the appellant would result in imminent danger to the life of the appellant as is required in the legislation.

Although the Dr. Letter indicated that the appellant suffers from malnutrition, the ministry in its reconsideration decision points to information in the MNS Application also supplied by the doctor. The reconsideration decision of the ministry noted that the appellant's stated height and weight in the MNS Application indicates that the appellant has a Body Mass which is slightly in the over-weight range. In its reconsideration decision, the ministry also found that there was no evidence to show that the MNS would alleviate a symptom of the appellant's severe medical condition. In the MNS Application, the doctor stated that the MNS was needed to "ensure nutrition requirements are met." The ministry takes the position that this does not sufficiently connect the need for MNS to the alleviation of a symptom of the appellant's severe medical condition as is required by the legislation. In the MNS Application, the doctor was asked to describe how the MNS would prevent "imminent danger" to the appellant's life. In response, the doctor states only that the MNS would "Prevent infection & malnutrition." In its reconsideration decision, the ministry found that this statement and an absence of additional evidence does not establish the "imminent danger" to life as is required in the applicable legislation. The ministry noted that a person may experience a deterioration of health without concurrently having an imminent danger to their life.

Despite the Dr. Letter which indicated that the appellant suffers from malnutrition, the panel finds that malnutrition of the appellant has not been established. The doctor provided information as to the height and weight of the appellant in the MNS Application. This information itself indicates that the appellant is slightly over-weight, which is inconsistent with a finding of malnutrition. Section 67 (1.1)(b) of the EAPWDR requires display of two or more prescribed symptoms in order to receive MNS. Given the panel's finding that the appellant has not established the symptom of malnutrition, only one symptom (significant neurological degeneration) has been established in support of the appellant's MNS application.

Lastly, the panel finds that there is no evidence to support the conclusion that the appellant's life is in "imminent danger" if the MNS is not supplied. The requirement for "imminent danger" is set out at 67(1.1)(d) of the EAPWDR. The MNS Application required a description of how the MNS would prevent imminent danger to the appellant's life. In response, the appellant's doctor simply stated: "Prevent infection and malnutrition." The panel finds that such prevention falls short of establishing imminent danger to the appellant.

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For these reasons the panel finds that the ministry's decision was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful on 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

Chris McEwan

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/10/06

PRINT NAME

David Kendrick

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/10/07

PRINT NAME

Reece Wrightman

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/10/07P