

PART C – DECISION UNDER APPEAL

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated September 21, 2020, which held that the appellant is not eligible for a monthly nutritional supplement (MNS) for additional nutritional items because all of the requirements of section 67(1.1)(a)-(d) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) were not met. The minister was not satisfied the medical practitioner confirmed that:

- as required by paragraph (c), for the purpose of alleviating a symptom referred to in paragraph (b), the appellant requires, as set out in section 7(a) of Schedule C, additional nutritional items that are part of a caloric supplementation to a regular dietary intake, and
- as required by paragraph (d), failure to obtain the items will result in imminent danger to the appellant's life.

The ministry was satisfied the medical practitioner confirmed the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition meeting the requirement of paragraph (a), and that, as a direct result of a chronic, progressive deterioration of health, the appellant displays two or more symptoms listed in paragraph (b).

The ministry approved the appellant's request for a MNS for vitamins and minerals.

PART D – RELEVANT LEGISLATION

EAPWDR, section 67 and section 7 of Schedule C

PART E – SUMMARY OF FACTS

Summary of Relevant Information Available at Reconsideration

The appellant is a Person with Disabilities in receipt of disability assistance. In support of the appellant's request for MNS, the appellant submitted the ministry's Application for Monthly Nutritional Supplement form (the MNS application), completed by a medical practitioner on March 10, 2020. At reconsideration, the appellant submitted an undated letter from the same medical practitioner.

Information included in the MNS application:

Diagnosis:

- Iron deficiency anemia – fatigue, reduced focus, concentration and mentation

The medical practitioner identified the following symptoms from those listed in the MNS application. Commentary provided by the medical practitioner is italicized.

- Malnutrition (*low hemoglobin, low ferritin*)
- Moderate to severe immune suppression (*rash, fatigue*)

Where asked to specify an applicant's height and weight to "assist in determining your patient's Body Mass Index (BMI)", only the appellant's height is provided.

The following questions and responses appear in the "nutritional items" section of the MNS application.

Specify the additional nutritional items required and expected duration of need:

- *Fe gluconate 300, 3x daily – 2 yrs +*

Does the applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake? If yes, please describe.

- No response provided.

Describe how the nutritional items will alleviate one or more of the symptoms specified in Question 3 and provide caloric supplementation to the regular diet.

- No response provided.

Describe how the nutritional items requested will prevent imminent danger to the applicant's life.

- No response provided.

Additional comments:

- No response provided.

Information included in the medical practitioner's letter:

- Has required blood transfusions to increase hemoglobin levels.
- Suffers from severe fatigue, lack of focus, concentration and mentation.
- Suffers from malnutrition as she cannot get enough iron – dark green vegetables, red meat, and lentils – in her diet.
- Suffers from moderate to severe immune suppression due to rashes caused by a lack of iron.
- Ability to fight skin infections secondarily caused by the rashes is severely compromised by the anemia.
- Neurologically depressed by lack of oxygen to the brain caused by anemia.
- Supplementation with iron/vitamins and minerals will help reverse the malnutrition, immunosuppression and mental/neurological deterioration.
- Iron supplementation will prevent early death.

Information Provided on Appeal and Admissibility

In the Notice of Appeal dated September 29, 2020, the appellant writes “blood flow to my organs. The nutrients and minerals from foods and supplements required to help to return absorption in skin and help repair organs, skin, heart, liver, lymph system & 67(1.1) some symptoms.”

The appellant requested and was granted four adjournments to provide additional information. The appellant submitted a 2-page December 11, 2020 letter from an outpatient registered dietitian (the dietitian). The appellant attended the dietitian clinic by telephone and was “counselled on dietary modifications for anemia on the background of multiple food allergies/intolerances.”

Information included in the dietitian's letter:

- The appellant has a history of depression and psychosis.
- The appellant reports significant challenges related to her dermatitis in the past year with steroid treatment leading to several new dietary intolerances including soy, dairy and gluten.
- The appellant is 157.5 cm in height and weighs 59.1 kg with a BMI of 23.8 and reports being close to her usual body weight.
- The most recent blood work that the dietitian had access to (February 2020) indicated low hemoglobin and ferritin levels diagnostic of iron deficiency.
- The appellant reports that fatigue and various dietary intolerances have made it difficult for her to eat a balanced diet. Her protein sources are nuts, legumes and some fish. She takes a hemp based protein powder. She eats 3 meals per day. Despite this her fatigue

is ongoing.

- Nutritional diagnosis:
 - Malnutrition secondary to inadequate oral intake related to fatigue and dietary intolerances evidenced by decreased hemoglobin and ferritin.
 - Significant muscle mass loss secondary to malnutrition evidenced by patient reports of decreased stamina for completing instrumental activities of daily living (including grocery shopping, cooking and cleaning).
- Recommendations:
 - Eat a diet that includes iron rich foods. Considering her dietary intolerances and fatigue, this may be difficult to achieve with food alone. Therefore, may benefit from an oral nutrition supplement in addition to her diet which can provide calories, protein, and iron to alleviate her malnutrition and muscle loss.
- No follow up is planned.

At the hearing, the appellant explained that she had been misinformed by the ministry as to what information was required to receive the MNS supplements. As a result, she needed to obtain additional information from the medical practitioner. However, the medical practitioner did not write about the appellant's weight loss and skin problems so the appellant provided information from the dietitian. The appellant stated that in addition to the vitamins and minerals she takes, including vitamins (B, C, D, and E), iron, and calcium she requires a hemp protein supplement and has to "increase food" to get her skin and organs back to where they were. The appellant stated that her skin condition has been improving with the increased iron, vitamins and a topical cream.

At the hearing, the ministry acknowledged and did not object to the information provided by the dietitian. The ministry questioned how the appellant's need for iron supplementation to address anemia and its symptoms, including the appellant's skin condition, was not addressed by the provision of the MNS for vitamins and minerals. The ministry also noted that the appellant receives a diet supplement for a gluten free diet and that there are limits on the amount of funding that may be provided for the various nutritional/diet supplements. As the ministry has not based its denial on the funding limits being exceeded, the panel will not address the matter.

A ministry observer attended the hearing with the consent of the appellant.

The panel admitted the information provided on appeal by both parties in accordance with section 22(4) of the *Employment and Assistance Act* on the basis that it related to the need for nutritional supplementation and was therefore as being information required for a full and fair disclosure of the matters related to the appeal.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue under appeal is whether the ministry's reconsideration decision that the appellant is not eligible to receive the MNS of additional nutritional items under section 67(1.1) of the EAPWDR is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances. That is, has the ministry reasonably determined that a practitioner has not confirmed that:

- As required by paragraph (c), for the purpose of alleviating a symptom referred to in paragraph (b), the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake; and
- As required by paragraph (d), failure to obtain the items would result in imminent danger to the appellant's life?

Panel Decision

Section 67(1.1) allows for the provision of two types of MNS set out in section 7 of Schedule C – “vitamins and minerals” and “additional nutritional items” – if a medical practitioner, nurse practitioner, or dietitian confirms that the requirements described in paragraphs (a) through (d) are met:

- (a) the person is being treated by a medical or nurse practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;
- (b) the person displays at least two of the symptoms listed in this paragraph;
- (c) one or more of the items set out in section 7 of Schedule C is required for the purpose of alleviating a symptom listed in paragraph (b); and
- (d) failure to obtain the items will result in imminent danger to the person's life.

While these requirements apply to both MNS, the language of section 7 of Schedule C describing the additional nutritional items has the effect of adding the requirement to paragraph (c) that the additional nutritional items be required as “part of a caloric supplementation to a regular dietary intake” for the purpose of alleviating a symptom.

In this case, the medical practitioner requested iron supplementation for the appellant. The ministry concluded that the requirement of paragraph (a) was met based on the diagnosis of iron deficiency anemia. The ministry also accepted that the requirement of paragraph (b) that was met based on the medical practitioner's description of malnutrition, moderate to severe immune suppression and neurological deterioration resulting from anemia.

Respecting the vitamins and minerals MNS, the ministry also accepted that the requirements of paragraphs (c) and (d) were met.

Respecting, the additional nutritional items MNS, the ministry accepted that the requirements of paragraphs (a) and (b) were met, as described above, but that the requirements of paragraphs (c) and (d) were not met.

Additional Nutritional Items - Section 67(1.1)(c) and (d)

Positions of the Parties

The appellant's position is that the dietitian has confirmed that the appellant requires the oral nutritional supplement in addition to the protein and vitamin/mineral supplements the appellant already takes to address skin and other problems resulting from anemia.

The ministry's position is that the information provided by the medical practitioner (in the MNS application and at reconsideration) does not establish that the appellant requires nutritional items as part of a *caloric supplementation* [emphasis included] to a regular dietary intake to alleviate the symptoms of the appellant's chronic progressive deterioration of health and to prevent imminent danger to the appellant's life.

In reaching this decision, the ministry notes that the medical practitioner has not:

- provided information confirming a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake;
- provided information to describe how nutritional items will alleviate one or more of the symptoms; or
- specified that nutritional items will prevent imminent danger to the appellant's life.

The ministry finds that the medical practitioner's identification of the need for "supplementation with iron/vitamins [and] minerals" cannot be considered nutritional items required for the purpose of providing caloric supplementation to a regular dietary intake.

Panel Analysis

Information provided by the medical practitioner in the MNS application and at reconsideration confirms that the appellant suffers from a chronic progressive deterioration of health due to iron deficiency anemia which results in severe fatigue, lack of focus and concentration, malnutrition, moderate to severe immune suppression, and rashes. The medical practitioner further explains that the appellant's ability to fight skin infections secondarily caused by the rashes is severely compromised by the anemia. However, in the MNS application, except for identifying the need for iron, which the panel finds is reasonably viewed by the ministry as not being the same as additional nutritional items required as caloric supplementation, the medical practitioner does not complete the section of the MNS application relating to "nutritional items." The panel also finds that the medical practitioner's information at reconsideration does not address the need for additional nutritional items, limiting discussion to the need for "iron/vitamins + minerals" as supplementation to address the symptoms of anemia.

On appeal, information from a dietitian is provided. The dietitian confirms the need for an iron rich diet to address the symptoms of malnutrition and significant muscle mass loss caused by anemia. The dietitian also requests an oral nutritional supplement which can provide calories, protein and iron to alleviate these symptoms. The dietitian does not identify a medical condition resulting in the inability to absorb calories and, as noted, identifies the oral nutritional

supplement as a source of iron. However, that the oral nutritional supplement is a source of iron does not preclude it from also being a source of caloric supplementation and, in fact, the dietitian identifies the supplement as a source of calories. Additionally, the dietitian reports that despite eating three meals a day the appellant's oral intake is inadequate to address the malnutrition and muscle mass loss. Based on this information, the panel finds that the dietitian confirms that an oral nutritional supplement is required as caloric supplementation to a regular dietary intake to alleviate two symptoms listed in paragraph (b) thereby meeting the requirements of paragraph (c).

The final requirement is that the dietitian confirm that oral supplementation is required to prevent imminent danger to the appellant's life. The panel finds that the information provided supports the dietitian's conclusion that appellant "may benefit" from oral supplementation in addition to her diet but does not establish that the appellant's life is in imminent danger without the supplement. In reaching this conclusion the panel notes that in addressing the need for vitamin/mineral supplementation the medical practitioner confirmed that the appellant has already required blood transfusions and requires ongoing iron supplementation to prevent an early death. The panel finds that the same degree or urgency of need is not reflected in the information respecting the oral nutritional supplement. For these reasons, the panel finds that the requirements of paragraph (d) are not met.

Conclusion

The panel concludes that the ministry's decision that all of the eligibility requirements of section 67(1.1)(a)-(d) of the EAPWDR for the additional nutritional items MNS have not been met was reasonably supported by the evidence. Accordingly, the reconsideration decision is confirmed and the appellant is not successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation, B.C. Reg. 265/2002

Nutritional supplement

67 (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 dietician, 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 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.

Schedule C

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.

APPEAL NUMBER
2020-00229

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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/1/12

PRINT NAME

Wendy Marten

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/1/12

PRINT NAME

Bob Fenske

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/1/12