

PART C – DECISION UNDER APPEAL

The Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated May 19, 2021 determined that the appellant was not eligible for the Monthly Nutritional Supplement (MNS) for nutritional items under section 67(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The ministry determined that the appellant met the following criteria:

- The appellant is in receipt of disability assistance and therefore meets the requirements of section 67(1)(a) and (b) of the EAPWDR.

The ministry determined that the appellant did not meet the following criteria:

- A medical practitioner did not confirm that the appellant is being treated for a chronic, progressive deterioration of health as required by section 67 (1.1)(a) of the EAPWDR.
- A medical practitioner did not confirm that the appellant displays at least two symptoms set out in section 67 (1.1)(b) as a result of a chronic progressive deterioration of health.
- The requirements set out in section 67 (1.1) (b), (c) and (d) have not been met to be eligible for MNS for vitamins/mineral supplementation. That is, the ministry determined that the evidence from a medical practitioner did not confirm that vitamins/minerals supplements were needed to alleviate symptoms set out in section 67 (1.1) (b).
- The requirements set out in section 67 (1.1) (b), and (c) have not been met to be eligible for MNS for nutritional items. That is, the ministry determined that the evidence from a medical practitioner did not confirm that nutritional items are necessary as a part of caloric supplementation to a regular dietary intake to alleviate symptoms set out in section 67 (1.1) (b).
- A medical practitioner did not confirm that a failure to obtain the nutritional item suggested will lead to an imminent danger to the appellant's life pursuant to section 67 (1.1) (d).

APPEAL NUMBER
2021-0121

PART D – RELEVANT LEGISLATION

EAPWDR, section 67(1) and (1.1)

EAPWDR, Schedule C, section 7

PART E – SUMMARY OF FACTS

Evidence at Reconsideration

Application for Monthly Nutritional Supplement which was signed and dated May 10, 2020 and indicated the following:

- The appellant's severe medical condition was diagnosed as allergy and allergic rhinitis. The 'description' section of the application was left blank by the Medical Practitioner (MP).
- To the question 'is the appellant being treated for a chronic progressive deterioration of health?' the MP indicated 'yes' and commented "patient has severe reaction to canned food and processed food. She has to have high protein and calories diet to maintain her weight".
- The chronic progressive deterioration of health is causing 'malnutrition, under weight status and significant weight loss' and the MP did not comment further.
- The appellant's height (167 cm) and weight (53kg) were provided.
- The entire section regarding vitamins or minerals supplements was left blank by the MP.
- In response to 'specify the additional nutritional items required and expected duration of need', the MP indicated "she has to be on high protein diet to maintain her weight" but did not indicate which items were specifically needed or the expected duration of the need.
- In response to 'does this applicant have a medical condition resulting in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake?' the MP indicated "she has allergy to foods, particularly to canned and processed food".
- In response to 'describe how the nutritional items required will alleviate one or more of the symptoms specified and provide caloric supplementation to the regular diet', the MP commented "she is losing weight and gets underweight if she doesn't take high protein diet".
- In response to 'describe how the nutritional items requested will prevent imminent danger to life' the MP left the question blank.
- Under "additional comments, the MP did not provide any information.

Request for Reconsideration (RFR) signed by the appellant. The RFR, in part, stated the following:

- She is under weight.
- In addition to the problems described by the MP, she has allergic reactions to most food.
- She needs protein powder, plus other vitamins, and herbal medicines, to keep up weight and nutrition needs.
- She feels better since using the supplements.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated June 2, 2020, which, in part, stated the following:

- She needs supplements and her family doctor's information regarding her condition was ignored by the ministry.
- She has always been under weight.
- Upon receiving education about diet and various treatments after a car accident she gained 7kg.
- She has been using supplements for almost 1-year and they cost \$200.00 per month.

The panel considered the information in the NOA as facts in support of the appellant's argument.

Evidence on Appeal

At the hearing the appellant stated reiterated her argument from the RFR and NOA and, in part, added the following:

- She has had anxiety and depression for many years and is unable to work full-time. As a result, it is hard to manage financially.
- Due to being under weight and hypoglycemic she cannot put on weight or muscle.
- She has malnutrition, under weight status and significant weight loss.
- She is very weak and often has infections from lack of a good immune system.
- She needs help with the cost of the protein powder.
- She realizes that she is not dying but is malnourished, under weight and has significant weight loss.
- She did not see a dietician.
- She is going through menopause and seen significant changes with her body.
- She did not lose weight but has always been under weight.
- She understands that the application that was completed by the MP is incomplete.

At the hearing, the ministry relied on its reconsideration decision.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's decision that the appellant was not eligible for the MNS for nutritional items under section 67(1) of the EAPWDR was a reasonable application of the legislation or reasonably supported by the evidence. Specifically, was the ministry reasonable in determining that it was not established that:

- (i) the appellant is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;
- (ii) the appellant displays two or more symptoms of deterioration as listed in the legislation, and
- (iii) the requested nutritional items and vitamin/mineral supplements would be required as part of a caloric supplementation to a regular dietary intake to alleviate a symptom of the chronic, progressive deterioration of health and prevent imminent danger to life under section 67(1.1) (a) (b), (c) and (d) of the EAPWDR.

Section 67(1) and (1.1) of the EAPWDR set out the eligibility requirements which are at issue on this appeal for providing the additional nutritional supplement, as follows:

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.

Section 7 of Schedule C of the EAPWDR provides as follows:

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.

The Appellant's Position

The appellant argued that nutritional items and vitamin/mineral supplements are needed due to the complications from her allergies and allergic rhinitis. The appellant argued that she is malnourished, under weight and has had significant weight loss, and since using protein powder she has been able to put on weight. She argued that she cannot afford the protein powder which costs \$200.00 per month.

The Ministry's Position

The ministry argued that it is not satisfied that the evidence established that appellant is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition and requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate a symptom as set out in section 67(1.1) (b) of the EAPWDR and to prevent imminent danger to life, as set out in the legislation pursuant to section 67 (1.1) (a), (b), (c) and (d) of the EAPWDR. The ministry also argued that the evidence does not establish that the appellant suffers from two or more of the symptoms listed in section 67 (1.1) (b) and therefore the legislative requirement had not been met.

The Panel's Decision

Section 67(1)(1.1) states that in order to receive a nutritional supplement the ministry must receive a request completed by the medical practitioner or nurse practitioner and the request must confirm that the recipient has a chronic, progressive deterioration of health resulting from a severe medical condition, displays two or more the of symptoms of chronic progressive deterioration of health, requires the requested items to alleviate a symptom of chronic progressive deterioration, and failure to obtain the items requested will result in imminent danger to the recipient's life. In this case, the appellant must meet these criteria.

Section 67 (1.1) (a)

Section 67 (1.1) (a) of the EAPWDR states that the requestor a MNS must be treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition. In the reconsideration decision, the ministry noted that in the MNS application the MP indicated that the appellant has allergies and allergic rhinitis but did not explain how these conditions are severe medical conditions. The ministry also noted that the MP indicated that a high protein diet is required to maintain weight, but the appellant's BMI is within normal range. Finally, the ministry noted that the MP did not indicate that the appellant is undergoing treatment for a chronic, progressive deterioration of health resulting from a severe medical condition.

The panel notes that the MNS application specifically asks the MP to list severe medical conditions and describe them. The panel concurs with the ministry that the MP failed to describe how the appellant's medical conditions are severe in nature or that the appellant is being treated for a chronic progressive deterioration of health. The MP did not provide any clinical or diagnostic reports or information regarding a treatment plan. The panel finds that the MP failed to sufficiently explain how the condition of allergies to canned and processed foods cause a chronic, progressive deterioration of health. The legislation clearly states that the requestor must be treated by the practitioner for a chronic, progressive deterioration of health. Without information about the severe medical condition or the treatment it is difficult to determine that the appellant meets the legislative criteria. As a result, the panel finds that the ministry reasonably determined that the evidence does not demonstrate that the appellant meets the criteria as set out in section 67 (1.1) (a) of the EAPWDR.

Section 67 (1.1) (b)

Section 67 (1.1) (b) of the EAPWDR states that as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the listed symptoms. The evidence provided by appellant's MP indicated that the appellant displays the symptoms of malnutrition, underweight status and significant weight loss. The ministry has argued that the MP evidence did not provide further detail or explanation regarding the appellant's symptoms even when asked to describe in detail. The ministry noted that in regard to malnutrition, the MP did not provide details to allow an evidence-based decision such as blood test results or other test results that indicate malnutrition. In regard to underweight status, the MP indicated that the appellant's weight is 53kg and height is 167cm, which when translated to BMI is within normal range. In regard to significant weight loss the MP did not provided details as to how much weight the appellant lost and over what period of time. As a result, the ministry was not satisfied that the appellant met the legislative criteria.

The panel notes that in addition to the points noted by the ministry, the MP did not explain how malnutrition, underweight status and significant weight loss are related to allergies to canned and processed foods or allergic rhinitis or how previously prescribed treatment have failed. Without the collective detailed information that the ministry noted, it is reasonable that a determination would be difficult to reach. That is, the information provided by the MP is insufficient. As a result, the panel finds that the ministry reasonably determined that the evidence does not demonstrate that the appellant meets the criteria as set out in section 67 (1.1) (b) of the EAPWDR.

Vitamins/Minerals Supplement

Section 67 (1.1) (c) of the EAPWDR states that for the purpose of alleviating a symptom referred to in section 67 (1.1) (b) of the EAPWDR, the appellant may be eligible for one or more of the items set out in section 7 of Schedule C. The ministry argued that the evidence provided by the physician does not establish that the appellant requires a vitamins/minerals supplement to alleviate the symptoms identified in section 67 (1.1) (b) of the EAPWDR because the section was left blank. The ministry noted that the appellant indicated in the RFR that she requires vitamins and herbal supplements, however this information was not confirmed by the MP

Without any information, it is reasonable that a determination would be difficult to reach. As a result, the panel finds that the ministry reasonably determined that the evidence does not demonstrate that the appellant meets the criteria as set out in section 67 (1.1) (c) of the EAPWDR.

Nutritional Items

Section 67 (1.1) (c) of the EAPWDR states that for the purpose of alleviating a symptom referred to in section 67 (1.1) (b) of the EAPWDR and failure to receive the request items will result in imminent danger to the requestor, the appellant may be eligible for one or more of the items set out in section 7 of Schedule C if the items are part of a caloric supplementation to a regular dietary intake. First, the ministry argued that the evidence provided by the MP does not establish that the appellant suffers from two of the symptoms listed in section 67 (1.1) (b) as discussed previously here. Second, the ministry argued that the MP has not confirmed or provided evidence that confirms that a high protein diet is necessary as caloric supplementation to a regular dietary intake. Third, the ministry argued that the MP indicated that the appellant cannot absorb sufficient calories to satisfy daily requirements through a regular diet due to her food allergies. Finally, the ministry argued that the MP did not confirm or demonstrate that a high protein diet will prevent imminent danger to life.

The panel has already found that the ministry reasonably determined that the MP failed to establish that the appellant suffers from two or more symptoms as listed in subsection (b). The panel finds that the ministry was reasonable in its determination that it has not been established that a high protein diet is necessary as a caloric supplementation to the appellant's regular dietary intake as the MP did not explain how high protein adds weight in this case. The MP did not indicate that the appellant suffers from muscle loss, therefore the panel is left wondering why high protein is necessary. Furthermore, in the panel's view, caloric supplementation to a regular dietary intake typically indicates that the requestor would need more food (calories) not a specific diet. The panel also finds that the ministry was reasonable in its determination that the MP failed to establish that the appellant cannot absorb sufficient calories. The appellant is within the normal BMI range and the MP did not explain why a change in diet does not meet the appellant's caloric needs. Specifically, the MP did not explain why avoiding trigger foods, canned foods and processed foods did not alleviate the appellant's condition. The MP did not explain what past treatments were used or provide the evidence that those treatments failed. The MP did not explain what the appellant's allergic reaction is to specific foods and how the reaction blocks absorption. The panel also finds that the ministry was reasonable when it determined that there is a lack of evidence to support that a high protein diet will prevent imminent danger to the appellant's life as the MP left that question blank in the application. Though the appellant felt that the information provided by the MP was ignored by the ministry, the panel finds that the MP failed to provide sufficient evidence to support the appellant request.

Without the collective detailed information that the ministry noted, it is reasonable that a determination would be difficult to reach. As a result, the panel finds that the ministry reasonably determined that the evidence does not demonstrate that the appellant meets the criteria as set out in section 67 (1.1) (c) and

(d) of the EAPWDR.

Conclusion:

The panel finds that the ministry reasonably concluded that the evidence establishes that the appellant's request for MNS of nutritional items and vitamins/minerals supplement did not meet the legislative criteria set out in section 67 (1.1) (a), (b), (c) and (d) of the EAPWDR. The panel confirms the ministry's decision and therefore the appellant is not successful at appeal.

APPEAL NUMBER
2021-0121

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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/06/28

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/28

PRINT NAME

Arshdeep Dhaliwal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/28