

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of April 8, 2021 in which the Ministry determined the Appellant was not entitled to nutritional supplements pursuant to section 67(1)(b) and section 7 of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation*.

PART D – RELEVANT LEGISLATION

EAPWDR – *Employment Assistance for Persons with Disabilities Regulation*, Sections, 67(1)(b), & section (7) of Schedule C

PART E – SUMMARY OF FACTS

The information before the Ministry at the time of reconsideration included the following:

- 1) **January 29, 2021** – The Appellant submitted an application for the Monthly Nutritional Supplement – nutritional items. On the application, the physician indicated the Appellant displays the symptom of deterioration of a vital organ.
- 2) **February 25, 2021** – The Ministry denied the request.
- 3) **March 25, 2021** – The Appellant requested a Reconsideration of the Decision.
- 4) **April 8, 2021** – the Ministry completed its review of the Request for Reconsideration and denied the application.

Additional Information

The Appellant did not attend the hearing. After determining the Appellant had received a Notice of Hearing on June 17th, 2021 at 3:32 pm, and after waiting ten minutes after the start of the hearing, the panel proceeded in the absence of the Appellant, pursuant to section 86 of the *Employment and Assistance Regulation*.

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of April 8, 2021 in which the Ministry determined the Appellant was not entitled to nutritional supplements pursuant to section 67(1)(b) and section 7 of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation*.

Legislation

Employment and Assistance for Persons with Disabilities Regulation

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.

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.

Panel Decision

The Ministry's position is that the Appellant does not meet the threshold for eligibility under section 67(1) of the *Employment and Assistance for Persons with Disabilities Regulation*, due to not meeting two symptoms as is required. The Ministry relied on the Nutritional Supplement application, submitted January 29, 2021, where the

Appellant's physician indicated that there was only one symptom ((vi) deterioration of a vital organ) as a result of the Appellant's chronic and progressive deterioration of health.

Given the Appellant did not attend the hearing, the panel could only rely on the Notice of Appeal, and nutritional supplement application for information. The Appellant's physician's position is that they are in need of the nutritional supplement to assist with sugar control. The application had limited information on it for the panel to determine anything further. The physician indicated that the Appellant did not have a condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

As outlined in section 67(1) of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, 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.

The panel finds that the evidence establishes the Appellant's physician did not specify two symptoms being displayed for the Appellant on the nutritional supplement application as is required by the legislation for the Appellant to be eligible for the nutritional supplement.

Considering all of the evidence in this appeal that was reasonably required for a full and fair disclosure of all matters related to the decision under appeal, the panel finds that the Ministry was reasonable in its determination to deny the Appellant the nutritional supplement under section 67(1)(b) of the *Employment and Assistance for Persons with Disabilities Regulation*.

Accordingly, the panel confirms the Ministry's decision, and the Appellant is not successful in this appeal, pursuant to Section 24(1)(b) and (2)(a) of the *Employment and Assistance Act*.

APPEAL NUMBER:
2021-0122

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

Jennifer Armstrong

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/06/29

PRINT NAME

David Handelman

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/29

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/29