

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated October 7, 2021, which determined that the appellant was not eligible for a monthly nutritional supplement for additional nutritional items that are part of a caloric supplementation to a regular diet, as per section 67(1.1)(c)(d) and Schedule C, section 7(a) of the Employment and Assistance for Persons with Disabilities Regulation.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 67 and Schedule C

Part E – Summary of Facts

Relevant Evidence Before the Minister at Reconsideration

Request for Reconsideration (September 8, 2021)

Reconsideration Decision (October 7, 2021)

The ministry stated that upon review, it approved a \$40 monthly nutritional supplement (MNS) for vitamin/mineral supplementation and also a \$35 diabetic diet supplement. However, the ministry determined the appellant was ineligible for an MNS for nutritional items.

Ministry records show:

- The appellant is in receipt of disability assistance. He does not reside in a special-care facility.
- The ministry is satisfied the family does not have the resources to obtain the items requested.
- The ministry determined that a medical practitioner confirmed the appellant is displaying malnutrition, significant muscle mass loss, and significant neurological degeneration.

Letter from Dr. K (March 5, 2013)

Re: appellant

Nutritional supplements will prevent imminent danger to the appellant's life. Vitamin supplements are required to relieve symptoms and prevent further health deterioration.

Letter from Dr. A (June 25, 2020)

The appellant has multiple comorbidities including coronary disease, diabetes, hypertension and vertebral artery stenosis. He recently underwent abdominal surgery for herniation repair. The appellant has recently been stressed out and needs regular follow-up appointments.

Application for Monthly Nutritional Supplement, signed by Dr. A (July 15, 2021)

1. Diagnosis

- Paraumbilical hernia repair – post hemicolectomy
- Diabetes Mellitus– high blood sugar
- Coronary artery disease, Myocardial infarction – heart attack, artery disease
- Hypertension – high blood pressure
- Dyslipidemia – high cholesterol

2. The appellant is taking multiple medications for the above medical conditions.

3. As a direct result of the chronic, progressive deterioration of health noted above, the applicant displays the following symptoms: malnutrition, underweight status, significant muscle mass loss and significant neurological degeneration.

4. height – 170 cm, weight – 64 kilograms

5. Vitamin or Mineral Supplementation (questions on the form are noted in quotes with the response below)

“Specify the vitamin or mineral supplement(s) required and expected duration of need”

- vitamin D, (1000 international units/daily) calcium (1000 milligrams daily), omega 3, vitamin E

“Describe how this item will alleviate the specific symptoms identified”

- prevent osteoporosis and malabsorption

“Describe how this item or items will prevent imminent danger to the applicant’s life.”

- Nutritional supplements will prevent imminent danger to this patient’s life and vitamin supplements are required to relieve symptoms and prevent further health deterioration.

6. Nutritional Items (questions on the form are noted in quotes with the response below)

“Specify the additional nutritional items required and expected duration of need”

- vitamin D, 1000 international unit/daily
- calcium 1000 milligrams/daily

“Does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake?”

- Patient had laparoscopic right hemicolectomy. He had paraumbilical hernia repaired and is unable to absorb sufficient calories.

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

- prevent osteoporosis

“Describe how the nutritional items requested will prevent imminent danger to the applicant’s life”

- prevent osteoporosis and also further health deterioration

Letter from Dr. A (September 23, 2021)

The appellant has issues with malnutrition due to previous gastrointestinal surgery, is losing weight compared with pre-surgery and has significant muscle atrophy and significant peripheral neuropathy. A nutritional supplement will prevent imminent danger to the appellant’s life. The appellant needs vitamin B12 and folic acid due to malabsorption, as well as calcium and vitamin D to prevent osteoporosis. It is recommended that the appellant eats fish and leafy green vegetables to build muscle mass and keep up caloric intake. Without this he will lose muscle mass fast and it will cause imminent danger to his life. Omega-3 and vitamin B supplements are crucial. Moreover, vitamin supplements are required to relieve the appellant’s symptoms and prevent further health deterioration.

Additional Information

Notice of Appeal (October 13, 2021)

Monthly nutritional supplement of nutritional items - for additional nutritional items that are part of caloric supplementation to regular intake.

Appellant Submission (received October 22, 2021)

Application for Monthly Nutritional Supplement, signed by Dr. K (October 1, 2012)

1. Diagnosis

- Diabetes Mellitus (DM) – high sugar (blood sugar)
- Hypertension– high blood pressure (BP)
- Chronic back pain with radiation to left leg
- Coronary artery disease – heart disease

- Left hand weakness/numbness

2. The appellant is taking several medications for the above medical conditions.

3. As a direct result of the chronic, progressive deterioration of health noted above, the applicant displays the following symptoms: significant neurological degeneration (left arm/hand and left leg numbness/weakness), moderate to severe immune suppression (DM).

4. height – 173.5 cm, weight – 88 kilograms

5. Vitamin or Mineral Supplementation (questions on the form are noted in quotes with the response below)

“Specify the vitamin or mineral supplement(s) required and expected duration of need”

- vitamin D, (1000 international units/daily) calcium (1000 milligrams daily)

“Describe how this item will alleviate the specific symptoms identified”

- prevent osteoporosis

Describe how this item or items will prevent imminent danger to the applicant’s life”

- prevent further health deterioration

6. Nutritional Items (questions on the form are noted in quotes with the response below)

“Specify the additional nutritional items required and expected duration of need”

- high protein diet
- diet – low fat, low salt

“Does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake?”

- “no”

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

- As his DM is under control, his immune system will be strengthened.

“Describe how the nutritional items requested will prevent imminent danger to the applicant’s life”

- It will help keep his DM, BP and high cholesterol under control.

At the hearing, the appellant stated that he received nutritional supplements (including a nutritional supplement for additional calories) from 2012 to 2018 - \$220.00/month, until he became a senior. He received the funds from the ministry and then bought the nutritional supplements from a supermarket. He has many medical issues which have become worse (diabetes, hernia, colon cancer surgery, blood clotting behind neck and heart disease). He believes his doctor has already explained this information. He is now receiving \$70/month from the ministry, but the caloric supplement is missing.

Ministry

At the hearing, the ministry stated that in order for it to approve a caloric supplementation, the doctor has to indicate that the appellant requires a high caloric diet in addition to supplements, needed to alleviate symptoms and prevent imminent danger to life. However, the doctor did not indicate the need for additional calories to a regular diet. The ministry added that the appellant can re-apply for the MNS and also clarified that a person can only receive either the monthly nutritional supplement for additional nutritional items or the diet supplement. The ministry also stated that ministry records indicate an

application for MNS was never made and if the appellant had ever been approved for MNS, it would not have been discontinued. The ministry was unsure what the \$220.00 monthly payment was for and stated the appellant could contact the ministry to enquire.

The panel determined the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which determined that the appellant was not eligible for a monthly nutritional supplement for additional nutritional items that are part of a caloric supplementation to a regular diet, as per section 67(1.1)(c)(d) and Schedule C section 7(a) of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Appellant Argument

The appellant argues that he received nutritional supplements (including a nutritional supplement for additional calories) from 2012 to 2018 for \$220.00/month. He has many medical issues which have become worse (diabetes, hernia, colon cancer surgery, blood clotting behind neck and heart disease). However, he is now receiving \$70/month from the ministry; the caloric supplement is missing.

Ministry Argument*Nutritional Items EAPWDR, 67(1.1)(c)(d), Schedule C, 7(a)*

The ministry is not satisfied the appellant requires additional nutritional items as part of caloric supplementation to a regular dietary intake and to prevent imminent danger to life and provides the following argument.

- Dr. A lists vitamin D and calcium as being additional nutritional items that are required. However, these are vitamin and mineral supplements, not caloric supplements and as such cannot be considered as nutritional items required for caloric supplementation.
- The doctor notes the appellant's weight is lower post-surgery. However, it was not established that the appellant was underweight nor was continuing to experience significant weight loss.
- Dr. A recommends the appellant eat fish and leafy green vegetables. However, the information is insufficient to establish that these items are required for caloric supplementation over and above a regular dietary intake. The ministry accepts that fish is being prescribed to alleviate the appellant's symptoms, contains heart healthy omega-3 fatty acids, and is a higher caloric-density food. The doctor also states the appellant is currently unable to absorb sufficient calories post-surgery. However, the ministry argues it is unclear if the appellant is currently consuming a regular dietary intake post-surgery, and there is no information to suggest the appellant is losing weight. As such, as the appellant is well within the normal weight range and is not reported to be losing weight, the ministry is unable to conclude that the appellant currently requires additional nutritional items such as fish for caloric supplementation over and above a regular dietary intake to alleviate his symptoms.
- The ministry notes that although the items noted may assist in preventing osteoporosis, as this is not one of the established symptoms, this reason does not satisfy the eligibility criteria.
- The ministry acknowledges that the doctor indicates that omega-3 and vitamin B are critical for the appellant. However, these items were already prescribed in the supplement section. As it has not been established that the nutritional items listed are part of caloric supplementation to a regular dietary intake, it cannot be established that failure to provide the additional nutritional items will result in an imminent danger to life.

Analysis

Section 67 - nutritional supplement

Section 67(1) states the minister may provide a nutritional supplement as per section 7 [*monthly nutritional supplement*] of Schedule C if the supplement is provided for a person with disabilities and the person is not in a special care facility, is not receiving another nutrition-related supplement, and the family does not have any resources to pay the cost.

The panel notes ministry records show:

- The appellant is in receipt of disability assistance and does not reside in a special-care facility.
- The ministry is satisfied the family does not have the resources to obtain the items requested.

Schedule C, section 7 states, the amount of a nutritional supplement that may be provided under section 67 [*nutritional supplement*] is the sum of the following required items.

- for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month
- for vitamins and minerals, up to \$40 each month.

Section 67(1.1)(b) states in order to receive a nutritional supplement, the request must be completed by a medical practitioner, confirming the person is being treated for a chronic, progressive deterioration of health on account of a severe medical condition and as a direct result 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;

The panel notes the ministry determined that a medical practitioner confirmed the appellant is displaying malnutrition, significant muscle mass loss, and significant neurological degeneration.

Section 67(1.1)(c)(d) – alleviating a symptom and failure to obtain the items will result in imminent danger to the person's life

Section 67(1.1)(c) states, for the purpose of alleviating a symptom the person requires one or more of the items set out in section 7 of Schedule C and (d) states, failure to obtain the items will result in imminent danger to the person's life.

The panel notes that the letter from Dr. A (September 23, 2021), states the appellant needs vitamin B12 and folic acid due to malabsorption, as well as calcium and vitamin D. The doctor believes omega-3 and vitamin B supplements are crucial and that vitamin supplements are required to relieve his symptoms

and prevent further health deterioration. The panel notes in the Application for Monthly Nutritional Supplement (July 15, 2021), Dr. A stated vitamin D and calcium were required for vitamin/mineral supplements as well as for additional nutritional supplements. The panel notes that along with a \$35 diabetic diet supplement, the ministry has already approved a \$40 monthly nutritional supplement (MNS) for vitamin/mineral supplementation.

In the Application for Monthly Nutritional Supplement (July 15, 2021), in response to the question, "Describe how the nutritional items requested will prevent imminent danger to the applicant's life", Dr. A stated that they prevent osteoporosis and also further health deterioration. The panel notes osteoporosis is not listed under section 67(1.1)(b) of the EAPWDR as a symptom displayed as a direct result of chronic progressive deterioration of health.

In the letter (September 23, 2021), Dr. A stated the appellant has issues with malnutrition due to previous gastrointestinal surgery, is losing weight compared with pre-surgery and has significant muscle atrophy and significant peripheral neuropathy and recommends the appellant eats fish and leafy green vegetables to build muscle mass and keep up caloric intake. Without this, Dr. A states, the appellant will lose muscle mass fast and it will cause imminent danger to his life. The panel finds the recommendation to eat fish and leafy green vegetables to build muscle mass and "keep up" caloric intake, indicates maintenance of caloric intake and not caloric intake over and above a regular diet. Therefore, the panel finds this evidence insufficient to demonstrate that the requested items are part of a caloric supplementation to a regular diet, and failure to obtain them will result in imminent danger to the appellant's life, as per section 67(1.1)(d).

The Application for Monthly Nutritional Supplement (September 25, 2012), letter from Dr. K (March 5, 2013) and letter from Dr. A (June 25, 2020) were given little weight as this information is not considered current and as a health situation can change rapidly, it is important to rely on current medical information.

For the above reasons, the panel finds the ministry reasonably concluded the appellant was not eligible for additional nutritional items that are part of a caloric supplementation to a regular diet, as per section 67(1.1)(c)(d) and Schedule C, 7(a) of the EAPWDR.

The panel encourages the appellant to contact the ministry and enquire about the reasons for the \$220.00 payment from 2012 to 2018.

Conclusion

In conclusion, the panel finds the ministry's reconsideration decision, which determined that the appellant was not eligible for a monthly nutritional supplement for additional nutritional items that are part of a caloric supplementation to a regular diet, as per section 67(1.1)(c)(d) and Schedule C(7)(a) of the EAPWDR was reasonably supported by the evidence. The appellant is not successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

Division 4 — Health Supplements

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.

APPEAL NUMBER 2021-0194

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)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name
Connie Simonsen

Signature of Chair

Date (Year/Month/Day)
2021/11/01

Print Name
Wendy Marten

Signature of Member

Date (Year/Month/Day)
2021/11/01

Print Name
Anil Aggarwal

Signature of Member

Date (Year/Month/Day)
2021/11/01