

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated November 22, 2021, that determined the appellant was not eligible for a monthly nutritional supplement for vitamin/mineral supplements and nutritional items, as per the Employment and Assistance for Persons with Disabilities Regulation, sections 61.01 and 67.

Specifically, the ministry stated it did not have enough information from the doctor or dietician to determine that the appellant:

- needed an ongoing monthly nutritional supplement after three months,
- needed specific vitamins or minerals as well as nutritional items, and
- would be in imminent danger if she did not receive the supplement.

Part D – Relevant Legislation

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

See attached Schedule of Legislation.

Part E – Summary of Facts

Relevant Evidence Before the Minister at Reconsideration

Ministry Records show:

In its original decision (September 14, 2021), the ministry denied the appellant's request for a monthly nutritional supplement (MNS) for vitamin/mineral supplementation and nutritional items but approved a short-term nutritional supplement (STNS) for Boost.

The ministry was satisfied the appellant requires nutritional items (Boost) for caloric supplementation to gain weight to alleviate current symptoms and prevent imminent danger to life and that the appellant did not have the resources to pay for the requested items. The appellant's doctor indicated the expected duration/need for Boost was three months, and the ministry approved a STNS for three cans/day of Boost or Ensure, for the period September 14 to December 31, 2021.

In the request for reconsideration, as the appellant did not include any new medical information, the ministry relied on the MNS application (September 7, 2021) and the letter from a Registered Dietician (RD) (August 23, 2021) to make its reconsideration decision. The ministry determined the appellant is a Person with Disabilities (PWD), is in receipt of disability assistance, is not residing in a special-care facility and was receiving a nutrition-related supplement (Boost) from September 14, 2021 to December 31, 2021. The ministry also stated the appellant can reapply for MNS after her STNS of Boost ends, by providing an update from her doctor or RD about her medical condition and nutritional needs at the time.

Letter from Dr. M, To Whom It May Concern (August 23, 2021)

In the letter, the doctor requested a nutritional support grant for the appellant and referred to an attached letter from an RD.

Letter from Registered Dietician (August 23, 2021)

The RD states the appellant lost 80 pounds over two years and is underweight. She is approximately four weeks post-surgery, feels her appetite has greatly improved and is able to eat larger amounts of food. The appellant has been eating four to five meals/snacks per day and is drinking two quantities of Boost per day but will run out and is unable to afford more on her own. She does not cook and relies heavily on canned and prepared food.

In the letter, the RD also outlined the nutrition education that was provided and stated that the appellant would greatly benefit from continuing to receive the monthly nutritional supplement until her weight can increase to a healthy range.

Application for Monthly Nutritional Supplement, signed by Dr. M (August 24, 2021)

(questions on the form are noted in quotes with the responses below)

1. Diagnosis

Nutritional deficient – Post Op and severe COPD

2. “As a direct result of the severe medical conditions(s) noted above, is the applicant being treated for a chronic, progressive deterioration of health?”

Yes – Recent colon surgery

Severe COPD

Chronic kidney disease

3. “As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms?” The following were checked.

- Malnutrition
- Underweight status
- Significant weight loss
- Significant muscle mass loss
- Moderate to severe immune suppression

4. height – 5’2”, weight – 80 lbs

5. Vitamin or Mineral Supplementation

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

- Boost

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

- Weight gain

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

- see dietician’s letter

6. Nutritional Items

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

- Boost, 3 months

“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?”

- ileostomy of bowel

“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”

- see dietician’s letter

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

- See dietician’s letter

Request for Reconsideration (November 3, 2021)

Additional Information

Appellant

Notice of Appeal (December 6, 2021)

The appellant states she needs nutrition for her health.

At the hearing, the appellant stated she receives limited funds on disability, with which she has to pay rent and bills. Her weight dropped from 180 lbs to 80 lbs, she has had numerous operations and has been told to eat properly. However, she is finding it very difficult to eat properly. The food bank only provides meat once a month. With food prices increasing she can barely afford to eat. The appellant considers Boost to be a vitamin supplement, not food.

Ministry

At the hearing, the ministry relied on its record and added that Boost is primarily a caloric supplement and not a vitamin/mineral supplement. The ministry also added that the information provided by the appellant's doctor and the RD, did not contain enough specific information (e.g. "the appellant is taking in a regular diet but can't absorb the required calories" or "high caloric/high protein diet needed due to malabsorption...") As well, the appellant's doctor only prescribed Boost for three months, and the RD indicated that the appellant would greatly benefit from continuing to receive the monthly nutritional supplement until her weight can increase to a healthy range. The ministry stated that neither the information from the doctor nor the RD demonstrate the need for a nutritional supplement on an on-going basis.

The ministry reiterated that the appellant could re-apply for the monthly nutritional supplement.

The panel determined the additional information to be argument.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, that determined the appellant was not eligible for a monthly nutritional supplement for vitamin/mineral supplements and nutritional items as per the EAPWDR, sections 61.01 and 67, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, the ministry stated it did not have enough information from the doctor or dietician to determine that the appellant:

- needed an ongoing monthly nutritional supplement after three months,
- needed specific vitamins or minerals as well as nutritional items, and
- would be in imminent danger if she did not receive the supplement.

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

Appellant Argument

The appellant states she needs nutrition for her health. Her weight dropped from 180 lbs to 80 lbs, she has had numerous operations and has been told to eat properly but is finding it very difficult to eat properly due to limited funds. The food bank only provides meat once per month and with food prices increasing she can barely afford to eat.

Ministry Argument

Vitamin/Mineral Supplements

The ministry argues that as Boost has been prescribed, by both the doctor and RD, temporarily for weight gain and no specific vitamin/mineral supplements have been listed or prescribed by the doctor or RD, the ministry is unable to establish that the appellant requires Boost for vitamin/mineral supplementation to alleviate a symptom as set out in subsection 67(1.1)(b) (EAPWDR).

The ministry argues further that someone displaying underweight and significant weight loss symptoms would generally indicate a need for MNS for nutritional items for caloric supplementation, not for vitamin/mineral supplements.

In addition, the ministry argues that as vitamin/mineral supplements were not prescribed on an ongoing basis, the ministry is unable to confirm that failure to obtain vitamin/mineral supplements will result in imminent danger to the appellant's life.

Nutritional Items

The ministry argues that as the appellant was approved for a supply of Boost as a STNS until December 31, 2021, and the expected duration was only three months, it has not been established that an MNS of nutritional items is necessary to alleviate the symptoms nor to prevent imminent danger to life.

The ministry also argues that the information provided by the appellant's doctor and the RD did not contain enough specific information and that the information from the doctor and the RD does not demonstrate the need for a nutritional supplement on an on-going basis.

Analysis

Section 61.01, EAPWDR – definitions of nutritional supplements

Section 61.01 describes MNS and STNS as follows:

- MNS - a supplement under section 67, other than a supplement for vitamins and minerals
- STNS - a supplement under section 67.001

Section 67(1), EAPWDR – monthly nutritional supplement

Section 67(1) states the minister may provide a nutritional supplement in accordance with section 7 [monthly nutritional supplement] of Schedule C for a PWD in receipt of disability assistance who is not receiving care in a special care facility, not receiving another nutrition-related supplement and does not have any resources to pay for items.

The panel notes ministry records show the appellant is a PWD, in receipt of disability assistance, does not reside in a special-care facility, is not receiving a nutrition-related supplement after December 31, 2021 and does not have the resources to pay for the items.

Section 67(1.1)(a)(b) – medical practitioner confirms deterioration of health

Section 67(1.1)(a)(b) states a medical practitioner must confirm the PWD is being treated by a medical practitioner for a chronic, progressive deterioration of health due to a severe medical condition, and as a direct result of the chronic, progressive deterioration of health, is displaying two or more of the symptoms listed.

The panel notes a letter dated August 23, 2021 and the application for MNS (August 24, 2021) were both signed by the appellant's doctor who confirmed the appellant is being treated for a chronic, progressive deterioration of health as a direct result of recent colon surgery. The panel also notes on the application for MNS, the appellant's doctor confirmed the appellant displays five symptoms, as a direct result of the chronic, progressive deterioration of health.

The ministry was satisfied the criteria under section 67(1.1)(a) and (b) were met.

Section 67(1.1)(c)(d), EAPWDR – 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:

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

Section 67(1.1)(d) states, failure to obtain the items will result in imminent danger to the person's life.

Vitamins and Minerals

The ministry argues that as Boost has been prescribed temporarily and no specific vitamin/mineral supplements have been prescribed, the ministry is unable to establish that the appellant requires Boost for vitamin/mineral supplementation to alleviate a symptom as set out in subsection 67(1.1)(b) and is unable to confirm that failure to obtain vitamin/mineral supplements will result in imminent danger to the appellant's life.

The panel notes in the application for MNS (August 24, 2021), in the Vitamin and Mineral section, Dr. M stated the supplement required is Boost, which will alleviate the symptoms with weight gain. And, in response to how this item will prevent imminent danger to the appellant's life, the doctor refers to the RD's letter. The RD's letter (August 23, 2021) indicates the appellant would greatly benefit from continuing to receive the monthly nutritional supplement until her weight can increase to a healthy range but does not indicate how vitamins and minerals will prevent imminent danger to her life. At the hearing, the ministry confirmed that Boost is primarily a caloric supplement and not a vitamin/mineral supplement.

The panel finds Boost is considered a nutritional item and not a vitamin or mineral supplement. In addition, there is insufficient evidence from Dr. M or the RD to support a finding that vitamins or minerals are required to alleviate the appellant's symptoms, and failure to obtain the items will result in imminent danger to her life. Therefore, the panel finds the ministry reasonably concluded the appellant is not eligible for a vitamin/mineral supplement under section 67(c) and (d) of the EAPWDR.

Additional Nutritional Items

The ministry also argues that as the appellant was approved for a supply of Boost as a STNS for three months, it has not been established that an MNS of nutritional items is necessary to alleviate the symptoms or to prevent imminent danger to life.

The panel notes in the MNS application in the Nutritional Items section, Dr. M states the additional nutritional item required is Boost for three months. And, in response to how the nutritional items required will alleviate the symptoms specified in Question 3 and provide caloric supplementation to the regular diet, Dr. M refers to the RD's letter (August 23, 2021) which indicates the appellant was provided with educational support on how to slowly return to a regular diet after six-eight weeks post-surgery. The RD also states the appellant would greatly benefit from continuing to receive the monthly nutritional supplement until her weight can increase to a healthy range but does not indicate how it will prevent imminent danger to her life.

As Dr. M prescribed Boost for only three months to alleviate the appellant's symptoms, the panel finds there is insufficient evidence to demonstrate that the appellant requires an on-going nutritional item to alleviate the appellant's symptoms and that failure to obtain this item will result in imminent danger to the appellant's life. Therefore, the panel finds the ministry reasonably concluded the appellant is not eligible for a monthly nutritional supplement for a nutritional item under section 67(c) and (d) of the EAPWDR.

As per the ministry's suggestion, the panel encourages the appellant to re-apply for a monthly nutritional supplement, by providing an update from her doctor and/or dietitian with specific information about her current medical condition and nutritional needs.

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 vitamin/mineral supplements and nutritional items as per the EAPWDR, sections 61.01 and 67(c) and (d) was reasonably supported by the evidence. The appellant is not successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

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).

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 2021-0235

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)

2022/01/10

Print Name

Trevor Morley

Signature of Member

Date (Year/Month/Day)

2022/01/10

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2022/01/10