

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision (RD) dated July 20, 2021 which determined that the appellant was not eligible for a monthly nutritional supplement (MNS) for nutritional items.

The Ministry determined that the appellant did not meet the eligibility criteria set out in the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) Section 67 and Schedule C, subsection 7(a). Specifically that:

- the nutritional items are required to alleviate two or more of the listed symptoms which are as a direct result of the chronic, progressive deterioration of health on account of a severe medical condition;
- failure to obtain the items will result in imminent danger to the person's life; and
- the nutritional items are part of a caloric supplementation to a regular dietary intake.

Part D – Relevant Legislation

EAPWDR Section 67 and Section 7 of Schedule C

The relevant legislation is provided in the Appendix

Part E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

The appellant is a person with disabilities (PWD) in receipt of disability assistance (DA).

Information before the Ministry when it made its RD includes the following:

- A copy of an application for MNS, signed by a medical practitioner (MP) on April 22, 2021. Details of the information contained in the application are as follows:
 - In the section of the form where a prescribed professional is asked to list the severe medical conditions, the MP has written “*severe malnutrition*”.
 - In response to the question “As a result of the severe medical condition noted above, is the applicant being treated for a chronic progressive deterioration of health? If so, provide details,” the MP wrote “*needs nutritional supplements to help reduce weight loss*”.
 - In response to the question “As a direct result of the chronic, progressive deterioration of health noted above, does the applicant experience two or more of the following symptoms?” The MP answered “Yes” to Malnutrition; Underweight status; Significant weight loss; and Significant muscle mass loss. No additional comments provided.
 - The appellant’s height is 5’9” and weight 130 pounds.
 - The MP identified that four to five cans of Ensure or Boost is required daily for twelve months.
 - In response to the question “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?” the MP wrote “No”.
 - In response to the question “Describe how the nutritional items required will alleviate one or more the symptoms specified, and provide supplementation to the regular diet” the MP wrote: “*will reduce/reverse malnutrition/underweight muscle loss*”
 - In response to the question “Describe how the nutritional items requested will prevent imminent danger to the applicant” the MP wrote “*the supplements will provide the calories, minerals and vitamins to minimize further weight loss*”
- The Health Assistance Branch (HAB) decision summary of the request for MNS, dated June 2, 2021. The summary indicated:
 - The appellant is in receipt of DA.
 - The appellant is not in receipt of any diet supplement or short-term nutritional supplement.
 - There are no resources available to pay for any of the requested items.
 - The nutritional items requested are prescribed by a medical practitioner.
 - The MP has not described a severe medical condition, with the explanation that although the MP had diagnosed severe malnutrition, no information was given to indicate what severe medical condition is causing the malnutrition.
 - The ministry is not satisfied that the appellant is undergoing treatment for a chronic

progressive deterioration of health because malnutrition is generally reversible with sufficient food intake, and no specific treatment is noted.

- The ministry is not satisfied that the appellant is displaying two or more symptoms as a direct result of chronic, progressive deterioration of health. The comments note that although the MP has indicated “yes” for the symptoms of malnutrition, underweight status, significant weight loss and significant muscle mass loss the following explanations are provided:
 - No explanation as to how malnutrition was determined, and test results confirming malnutrition were not referenced or provided;
 - The appellant has a low body mass index but at this time it is not medically underweight;
 - Significant weight loss is indicated but no explanation provided as to how much weight was lost, or over what time frame, or why it is occurring;
 - Generalized muscle weakness is indicated but no explanation or description was given to confirm this is significant.
- A Request for Reconsideration form dated June 21, 2021 in which the appellant wrote “I need an extension”.
- In the RD, the Reconsideration Officer reiterated the HAB decision summary and determined that:
 - a MP has not confirmed the appellant is displaying at least two of the symptoms set out in EAPWDR subsection 67(1.1)(b) as the direct result of a chronic, progressive deterioration of health.
 - A MP has not confirmed that the appellant requires additional nutritional items that are part of a caloric supplement to a regular dietary intake for the purpose of alleviating one of the accepted symptoms that are the direct result of a chronic, progressive deterioration of health due to a severe medical condition and that failure to obtain the items requested will result in imminent danger to life, pursuant to the eligibility criteria set out in EAPWDR subsection 67(1.1)(a),(b),(c) and (d) and Schedule C subsection 7(a).

Additional Information

On the Notice of Appeal (NOA) form dated November 30, 2021 and December 1, 2021 the appellant wrote, “I have more information from my doctor.”

For the written submission the appellant provided an additional letter from the physician dated January 25, 2022 in which they wrote:

- They support the appellant’s application.
- The appellant continues to experience difficulty with his nutrition and is only able to tolerate bland foods.
- The nutritional supplements are needed for him to maintain adequate health.

For the written submission the ministry wrote that their submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision.

Admissibility of Additional Information

The panel admits the appellant's NOA and the written submission under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision, which found that the appellant is not eligible for a MNS for nutritional items because the appellant did not meet the eligibility criteria set out in the EAPWDR Section 67 and Schedule C, subsection 7(a), was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

Specifically,

- Are the nutritional items requested required to alleviate two or more of the listed symptoms, which are a direct result of the chronic, progressive deterioration of health on account of a severe medical condition?
- Will failure to obtain the items result in imminent danger to the appellant's life?
- Are the nutritional items part of a caloric supplementation to a regular dietary intake?

Panel Decision

Section 67(1)(c) of the EAPWDR sets out that the minister may provide a nutritional supplement in accordance with section 7 of Schedule C for a person with disabilities provided that the requirements set out in subsection 67(1.1)(a) to (d) are met.

Subsection 67(1.1)(a) requires that the person with disabilities to whom the request relates is being treated by a MP for a chronic, progressive deterioration of health on account of a severe medical condition. Although the MP noted on the MNS application form that the appellant's severe medical condition is "severe malnutrition" requiring "nutritional supplements to help reduce weight loss", the MP did not specifically confirm that the appellant has experienced, and was being treated for, a chronic, progressive deterioration of health.

Subsection 67(1.1)(b) requires that as a direct result of the chronic, progressive deterioration of health the person displays two or more of a listed number of symptoms. The MP noted on the MNS form that the appellant has four symptoms: malnutrition; underweight status, significant weight loss and significant muscle loss. Although the MP noted underweight status, the appellant's height and weight listed on the MNS form indicates a body mass index (BMI) which appears to be in the normal range. Although the MP identified that the appellant displayed two or more symptoms, without confirmation that the symptoms are as a direct result of the chronic, progressive deterioration of health, the requirement of subsection 67(1.1)(b) is not met.

Subsection 67(1.1)(c) requires that for the purpose of alleviating a symptom referred to in (b) the person requires one or more of the items set out in section 7 of Schedule C and be specified in the request. The MP has written the appellant requires four to five cans of Ensure or Boost daily for twelve months to help maintain his health and to minimize further weight loss.

Subsection 67(1.1)(d) requires that failure to obtain the items referred to in (c) will result in imminent danger to the person's life. When reviewing the MNS form and supporting letter from the MP, the panel found no evidence that the appellant's life was in imminent danger if the supplements were not provided. The MP noted on the MNS form that the supplements will

provide the calories, minerals and vitamins to “minimize further weight loss”, not prevent imminent danger to the person’s life. Similarly, in the supporting letter the MP stated only that the supplements are needed to “maintain adequate health”.

Because the appellant and his MP have not provided full confirmation that the appellant meets all the requirements of subsection 67(1.1)(a) to (d), the panel finds the ministry was reasonable to determine the appellant not eligible for a Monthly Nutritional Supplement.

Finally, section 7 of Schedule C of the EAPWDR sets out nutritional supplement amounts that may be provided when the requirements of section 67(1)(c) are met. Because the appellant has not met all the requirements of subsection 67(1.1), therefore not meeting the requirements of 67(1)(c), the amount of the nutritional supplement is not at issue.

Conclusion

The Panel finds that the Ministry’s decision that the appellant is not eligible for a Monthly Nutritional Supplement was reasonably supported by the evidence and was a reasonable application of the legislation. Therefore, the Ministry’s decision is confirmed. The appellant is not successful in his appeal.

APPENDIX

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.

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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

Janet Ward

Signature of Chair

Date (Year/Month/Day)

February 11, 2022

Print Name

Carmen Pickering

Signature of Member

Date (Year/Month/Day)

February 11, 2022

Print Name

Rick Bizarro

Signature of Member

Date (Year/Month/Day)

February 11, 2022