

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated April 1, 2022 which held that the appellant was not eligible for a Monthly Nutritional Supplement (MNS) for nutritional items and vitamin/mineral supplements.

The appellant had requested a MNS because they were advised to take supplements because of the consequences from medication they were required to take.

The ministry determined that the appellant was not eligible for a MNS because the information on the application did not establish that the applicant displayed two or more symptoms as a direct result of a chronic, progressive deterioration of health and consequently the legislative requirements were not met.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPWD), s. 5;
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), s. 67; and
Schedule C, s. 7.

Part E – Summary of Facts

The information before the ministry at reconsideration included:

1. The appellant was a Person with Disabilities in receipt of disability assistance;
2. The appellant had been diagnosed by a medical professional with a severe medical condition;
3. The appellant was being treated for a chronic, progressive deterioration of health as a consequence of a severe medical condition;
4. The appellant was experiencing moderate to severe immune suppression as a direct result of the chronic, progressive deterioration of health; and
5. The appellant required folic acid, calcium, vitamin D, omega 3, iron and turmeric supplements to reduce ongoing inflammation and prevent osteoporosis and anemia.

At the hearing, the appellant provided additional information which the panel determined was appropriate to admit under section 22(4) of the *Employment and Assistance Act* because the panel considers it reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

That information included:

1. The appellant requires blood treatments approximately every two months;
2. The appellant is frequently told by medical practitioners that he has a low level of iron in his blood; and
3. The appellant has had to attend Emergency Services in the past for abdominal pain.

At the hearing, the ministry confirmed that it recognizes that vitamin and mineral supplements are vital to the appellant and that supplements are essential to permit the appellant to maintain better health in the future. The ministry stated that it had no discretion to provide a MNS because the legislative requirement for the appellant to display two or more symptoms as a direct result of their chronic, progressive deterioration of health was not met.

Part F – Reasons for Panel Decision

Introduction

The issue at appeal is whether the reconsideration decision dated April 1, 2022 which held that the appellant was not eligible for a Monthly Nutritional Supplement (MNS) for nutritional items and vitamin/mineral supplements was reasonably supported by the evidence or a reasonable application of the enactment in the appellant's circumstance.

Summary of The Relevant Legislation

Section 5 of the EAPWD authorizes the minister to provide a supplement to a family unit that is eligible for it.

Section 67 of the EAPWDR authorizes the minister to provide a nutritional supplement if specific criteria are met. Those criteria include:

1. A person is a person with disabilities;
2. The person is not receiving another nutrition-related supplement;
3. The person (or their family unit) does not have any resources available to pay the cost of or to obtain a supplement;
4. The person provides the minister with a form, completed by a specified professional;
5. The form indicates:
 - a. The person is being treated for a chronic, progressive deterioration of health on account of a severe medical condition;
 - b. The person displays **two or more** of the following symptoms: malnutrition, underweight, significant weight loss, significant muscle mass loss, significant deterioration of a vital organ, moderate to severe immune suppression;
 - c. To alleviate one of those symptoms the person requires one or more specified items; and
 - d. If the person fails to obtain one or more of the specified items will result in imminent danger to their life.

The Appellant's Position

At the hearing the appellant asserted that they required supplements because of the medication they are prescribed and that they have been told on several occasions by medical practitioners that the supplements are necessary.

The Ministry's Position

At the hearing the ministry affirmed its decision on reconsideration. The ministry confirmed that the appellant met the following legislative requirements:

1. They were a person with disabilities;
2. They were not receiving another nutrition-related supplement;
3. They provided the ministry with a form, completed by a specified professional;
4. The form indicated that the appellant was being treated for a chronic, progressive deterioration of health on account of a severe medical condition.

The ministry did not investigate or comment on whether the appellant had any resources to pay the cost of or to obtain a supplement.

The ministry's position was that the form provided by the appellant did not establish that they were displaying two or more symptoms. The ministry's position was that the form established only one symptom: the appellant was displaying moderate to severe immune suppression.

The ministry noted that although the form stated the appellant also displayed the symptom of "advanced joint damage" that this symptom was not relevant to the legislative requirements. More specifically, the ministry stated that "joint damage" was not "significant deterioration of a vital organ".

The Panel's Decision

The Authority of the Minister

The panel reviewed the relevant legislative requirements described under the heading 'Summary of the Relevant Legislation'. The panel has determined that EAPWDR section 67(1.1)(b) does require that the minister receive a form, completed by a practitioner or dietitian, confirming that as a direct result of the chronic, progressive deterioration of health a person displays two or more of the listed symptoms. The panel found no reference in the legislation to the minister having the authority to waive or not require a person to satisfy this legislative requirement.

Is Joint Damage The Significant Deterioration Of A Vital Organ

The panel accepts that the plain and ordinary meaning of a joint is the part of the body where two or more bones meet.

The panel accepts that the plain and ordinary meaning of an organ is a collection of tissues that perform a particular function in a body. The panel also accepts that the plain and ordinary meaning of a vital organ is an organ that is essential for life.

Consequently, the panel finds that the ministry's determination that joint damage does not come within the term "vital organ" was reasonably supported by the facts.

Furthermore, the panel finds that the ministry's determination that because a joint is not a vital organ the requirement of section 67(1.1)(b) of the EAPWDR was not satisfied is a reasonable application of the enactment.

Finally, the ministry's determination that because section 67(1.1)(b) of the EAPWDR was not satisfied that the ministry was not able to provide the appellant with a nutritional supplement (either for nutritional items or vitamins/minerals) was a reasonable application of the enactment.

Conclusion

The panel confirms the ministry decision.

Extracts of the Relevant Legislation

EAPWD, s. 5

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

EAPWDR, s. 67

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 2022-0066

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

Trevor Morley

Signature of Chair

Date (Year/Month/Day)

2022/May/16

Print Name

Linda Pierre

Signature of Member

Date (Year/Month/Day)

2022/May/16

Print Name

Kevin Ash

Signature of Member

Date (Year/Month/Day)

2022/May/16