

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (the “Ministry”) decision of January 25, 2022 in which the Ministry determined that the Appellant was not eligible for a monthly nutritional supplement or vitamins/minerals, pursuant to section 67 and Schedule C, section 7 of the *Employment and Assistance for Persons with Disabilities Regulation*.

Part D – Relevant Legislation

EAPWDR – *Employment Assistance for Persons with Disabilities Regulation*, Section 67 and s. 7 of Schedule C

Part E – Summary of Facts

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

- 1) The Appellant is a sole recipient of disability assistance.
- 2) The Appellant is in receipt of a monthly (\$35.00) diet supplement.
- 3) **October 25, 2021** – MNS application completed by the Appellant's physician.
- 4) **November 1, 2021** - The Appellant submitted the Monthly Nutritional Supplement (MNS) application – with the MNS form filled by the Appellant's physician on October 25, 2021. The physician noted the following medical conditions: Chronic obstructive pulmonary disease, diabetes, renal failure, breast cancer, coronary artery disease and peripheral vascular disease, with symptoms of malnutrition, significant muscle mass loss, and significant deterioration of a vital organ. Respecting the need for vitamin/mineral supplements; the physician noted the Appellant required vitamin D 1000 mg daily lifelong. May need B12 1000 mg daily, and described that the Appellant was at risk for deficiency with metformin and at risk for developing osteoporosis and bone fracture. Further, the physician wrote that as the Appellant ages, increased morbidity and mortality with hip fractures are a risk and the vitamin/mineral supplementation will prevent this imminent danger to the Appellant's life. Regarding nutritional items, the Appellant's physician stated that the Appellant requires improved access to fresh vegetable, whole grains, fruit, and lean protein. The physician also stated that the Appellant requires the nutritional items to treat her diabetes, renal failure, vascular cancer disease and that the Appellant is in imminent danger for a stroke or myocardial infarction and dietary changes/supplements will decrease the risk.
- 5) **November 17, 2021** – The Ministry denied the Appellant's request.
- 6) **December 23, 2021** – The Ministry received a Request for Reconsideration with an extension to submit additional documentation.
- 7) **January 25, 2022** – The Ministry completed its review of the Request for Reconsideration. It had determined that the Appellant is displaying one symptom (significant deterioration of a vital organ), which was not established in the initial decision. In the Reconsideration Decision, the Ministry had determined that the Appellant did not establish that a second symptom was displayed, due to limited information provided by the Appellant's physician on the MNS application.

Additional Information

The Appellant submitted an April 13, 2022 dated letter from the “certified diabetes educator” which described the need of the nutritional supplement to better manage the diabetes. The panel considered this information to be new evidence and admitted the information pursuant to section 22(4) of the *Employment and Assistance Act*. Section 22(4) allows the panel to consider evidence that is not part of the record if the panel considers it reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of January 25, 2022. The Ministry determined that the Appellant was not eligible for a monthly nutritional supplement or vitamins, pursuant to section 67 and Schedule C, section 7 of the *Employment and Assistance for Persons with Disabilities Regulation*.

Full text of the relevant sections of the EAPWDR is provided at the end of the decision.

Panel Decision

The Ministry's position is that the Appellant does meet eligibility requirements for the MNS under section 67(1.1) (a) of the EAPWDR. However, they submit that the symptoms the Appellant displays (as described by the physician) are unclear under section 67(1.1) (b). Specifically, the Ministry submits that it does not need to accept a medical practitioner's confirmation that a patient is displaying a symptom without supporting information.

The Ministry, relying on section 67(1.1) of the EAPWDR, sets out that the ministry must receive a request, in the form specified by the minister, that is completed by a medical or nurse practitioner or dietitian. The completed form must confirm that, as a direct result of the chronic, progressive deterioration of health, the applicant displays two or more of the symptoms listed. The Ministry asserts that the Appellant did not meet the two-symptom requirement. The identified symptoms the Ministry submits had not been established were (i) malnutrition and (iv) significant muscle mass loss. The Ministry submits that the MNS information that was provided by the Appellant's physician did not expand or clarify how the reported symptoms manifested (how the symptoms were expressed) as they relate to the Appellant's condition.

Moreover, the Ministry asserts that, because the two symptoms had not been established under 67(1.1)(b), and Section 7 of Schedule C, where supplements are specifically intended to alleviate a symptom listed under (b), it was not possible to satisfy the requirements of 67(1.1)(c). The Ministry submits that the Appellant is not entitled to vitamins and or nutritional supplements under Schedule C, section 7.

The panel considered that on the MNS application, under each symptom, there is space to allow for the expansion of how that symptom manifests itself because of the chronic deterioration of health. The panel finds that the evidence establishes, under both malnutrition and significant muscle mass loss, the physician provided no explanation as to

how the symptoms were linked to the chronic deterioration of health. Further, and as a result of those symptoms not being comprehensively described, the necessary information related to how receiving the MNS nutritional supplements or vitamins would serve to alleviate the said symptoms of the Appellant's conditions could not be established.

The panel finds that the physician did not provide clear information related to how a failure to receive the MNS items and vitamins/minerals would result in an imminent danger to the Appellant's life. While the panel acknowledges the physician does provide some explanation, the information does not comprehensively link the symptoms with the chronic deteriorating condition, nor the resulting (imminently dangerous) outcome should the Appellant be denied.

The panel also considered the April 2022 letter provided by the Appellant's diabetic educator, which outlined a general support for the need of MNS to better manage the Appellant's diabetic condition. However, the panel finds that the letter does little to connect the diabetic need for the supplement to the consequence of not receiving it.

In all cases, the panel considered that the Ministry's reliance on the two symptoms not being met, as well as a lack of clarity as to how (d) the failure to receive it would present as an imminent danger to the Appellant's life, was reasonable under the circumstances.

As such, the panel finds that the decision of the Ministry was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, under section (67) (1.1) & (2) and Section 7 or Schedule C 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)(a) and (2)(a) of the *Employment and Assistance Act*.

Legislation

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).

(3) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 8.]

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
JENNIFER ARMSTRONG

Signature of Chair

Date (Year/Month/Day)
2022/06/10

Print Name
Wes Nelson

Signature of Member

Date (Year/Month/Day)
2022/06/10

Print Name
Connie Simonsen

Signature of Member

Date (Year/Month/Day)
2022/06/10