

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated June 6, 2022, that denied the appellant’s request for monthly nutritional supplements (MNS) for nutritional items and vitamin/mineral supplements.

Specifically, the ministry was not satisfied the eligibility requirements set out in the EAPWD Regulation, subsections 67(1.1) (a), (b), (c) and (d) had been met and the appellant’s request for the MNS of vitamin/mineral supplementation was denied.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation section 67

Employment and Assistance for Persons with Disabilities Regulation Schedule C section 7

Part E – Summary of Facts

The appellant is a Person with Disabilities in receipt of disability assistance.

Key Dates

- March 21, 2022, the appellant applied for the Monthly Nutritional Supplement for nutritional items as well as vitamins/minerals.
- April 27, 2022, the ministry denied the appellant's request.
- May 27, 2022, the appellant submitted a Request for Reconsideration to the ministry.
- June 6, 2022, the ministry completed its review of the Request for Reconsideration.

Additional Information

- In Section 3, **Reason for Request for Reconsideration** the appellant's doctor states the appellant:
 - has had several surgeries to their hand and as a result has started to develop deformity of the hand and osteoarthritis.
 - should have supplements like calcium, vitamin D3 and glucosamine.
 - has gastroenterological issues that may lead to malabsorption and low iron and that it is important to have vitamin B12 and iron.
- In the **Application for Monthly Nutritional Supplement** the appellant's doctor stated:
 - **Part 1 Diagnosis-** Chronic pain, Anxiety and ADHD: hand injury, many operations, deformity, chronic pain, severe and not better with medication.
 - **Part 2 Treatment-** Chronic pain, post trauma, many operations, deformity, loss of function
 - **Part 3 Symptoms-** Moderate to severe immune suppression- many skin infections
 - **Part 4** height 177cm, weight 70 kg
 - **Part 5 Vitamin or Mineral Supplementation**
 - Required vitamin or mineral supplement- multivitamin, probiotic, omega, Ca and vitamin D3. No expected duration was noted.
 - How this item will alleviate the specific symptoms- prevent osteoarthritis, improve immunity.
 - How this item or items will prevent imminent danger to the appellant's life- osteoarthritis-osteoporosis, relieve chronic pain, better immunity.
 - **Part 6 Nutritional Items**
 - Nutritional items required- glucosamine-osteoarthritis. No expected duration was noted.
 - Inability to absorb sufficient calories- none
 - How the nutritional items required will alleviate symptoms and provide caloric supplementation to the regular diet- better immune system, prevent osteoarthritis, better pain management.
 - Describe how nutritional items requested will prevent imminent danger to the applicant's life- osteoarthritis of hand will occur due to the injury, malnutrition due to poverty can't afford healthy diet.

- **Monthly Nutritional Supplement Decision Summary**

- Appellant receives disability assistance- Yes
- Applicant receiving a supplement- no
- Are resources available to the appellant- no
- Are nutritional item(s) requested by a medical practitioner- yes
- Has medical practitioner described a severe medical condition(s)- yes- chronic pain to right hand, anxiety/ADHD which is severe and has not improved with medications.
- Minister satisfied that as a direct result of the severe medical condition, the applicant is being treated for a chronic, progressive deterioration of health- yes- applicant is scheduled for surgery for hand injury and is on prescribed medications for ADHD/Anxiety.
- Minister satisfied the applicant is displaying two or more symptoms as a direct result of a chronic, progressive deterioration of health- no- the symptom of moderate to severe immune suppression is reported as the applicant has had many skin infections. No explanation is given how the skin infections are related to the applicant's chronic progressive health deterioration due to their hand injury or their ADHD/Anxiety. The physician does not indicate that the applicant is displaying any of the other symptoms therefore it has not been established the applicant is displaying two or more symptoms as a direct result of a chronic, progressive deterioration of health.
- **Vitamins and Minerals**
- Minister satisfied that for the purpose of alleviating a symptom referred to above the applicant requires one or more of the items set out in section 7 of Schedule C and that failure to obtain the requested items will result in imminent danger to the applicant's life- no- Two symptoms have not been clearly established. Reasons for recommended vitamins and minerals have not been linked to established symptoms.
- **Nutritional Items**
- Minister satisfied that for the purpose of alleviating a symptom referred to above requires one or more of the items set out in Section 7 of Schedule C and that failure to obtain the requested items will result in imminent danger to the applicant's life- no- Two symptoms have not been clearly established. Reasons for recommended nutritional items have not been linked to established symptoms.

Documents Attached

- Operative and Procedural Documentation reports- dated September 17, 2015, January 6, 2020, May 26, 2020. Operative reports reference the appellant's hand surgery.
- Medical imaging report dated July 14, 2020, reference to the appellant's hand surgery.
- Plastic Surgery Consult- dated September 17, 2020, reference to hand surgery.
- Specialist Referral Clinic report for an Independent Medical Assessment dated September 8, 2020, reference to the appellant's hand surgery.
- Doctor's note dated April 19, 2011, references the appellant's concern of gas bloat and

diarrhea.

- Operative Documentation dated March 24, 2011, referencing the appellant's severe reflux and resulting surgery.
- Doctor's note dated March 14, 2011, referencing the appellant's laparoscopic Nissen fundoplication procedure referral.

Hearing Information

- At the hearing the appellant stated they:
 - Have had many surgeries due to a hand injury and gastro issues.
 - There has been a large amount of paperwork to complete and they believe there is a language barrier issue with their doctor as the required forms for the supplement were not filled out correctly.
 - Believe their hand bone breaking down is leading to imminent danger to their health.
 - Felt the doctor did not put what they wanted in Section 67, "Symptoms".
 - Believe they have neurological damage due to hand deterioration.
 - Have a weakened immune system so can't fight off infections.
- At the hearing the appellant shared a document from their dietitian dated April 6, 2022, wherein the dietitian states:
 - Inflammation of the hand is a risk to the appellant's health which requires vitamin supplements beyond normal food intake.
 - Testing is required by the appellant's doctor.
- At the hearing the ministry representative stated:
 - The ministry does not search out new evidence but may seek clarification.
 - The ministry makes their decision based on the evidence supplied. As well the ministry representative acknowledged the MNS forms are not easy to complete.
 - The doctor's submission in terms of skin infections state "may lead to malabsorption and low iron.
 - There was not clear evidence the appellant had two symptoms.
 - Reports shared by the appellant for their hand issues were current (2020, 2021) but that the gastral documentation was not current (2011, 2012).
 - There was no evidence from the doctor linking infections to any symptoms.
 - No evidence was given to clearly demonstrate the appellant had two or more symptoms as required in Section 67.
 - As two or more symptoms were not identified, a supplement for vitamins and/or caloric intake can not be granted.
 - The doctor has not supplied the required evidence, a Dietitian may be a better source to complete the required forms for a vitamin/caloric supplement.

Admissibility of new information

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

In this case the appellant had submitted orally a letter from their Dietitian providing medical suggestions to the appellant in terms of vitamin supplements and possible tests the doctor should conduct. The ministry did not accept the evidence as they would require a copy of the document to assess the statements made by the Dietitian.

The panel admits the new information under section 22(4) of the Employment and Assistance Act as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. As the information shared orally by the appellant at the time of the hearing supported the appellant's appeal, the panel decided to accept the evidence provided.

Part F – Reasons for Panel Decision

Appeal issue

The issue in this appeal is the reasonableness of the ministry's decision that the appellant did not meet the eligibility requirements set out in the EAPWD Regulation, subsections 67(1.1) (a), (b), (c) and (d) and Schedule C, subsection 7 (a).

Appellant's Position

The appellant argued that they do meet the eligibility requirements of Section 67 (1.1) and that because of a language barrier, the doctor completing the forms was not able to do so in a complete and comprehensive manner.

Ministry Position

The ministry states the appellant has been designated as a Person with Disabilities and is in receipt of disability assistance. As such, the appellant is eligible to receive health supplements under section 67 and Section 7 of Schedule C of the EAPWD Regulation provided all other eligibility requirements are met.

In their decision, the ministry argued that the appellant:

- Has had trauma to their right hand and is currently experiencing gastrointestinal problems but that the information provided does not confirm that the appellant is being treated for a chronic, progressive deterioration of health due to a severe medical condition as is required by the EAPWD Regulation, subsection 67 (1.1) (a).
- In terms of symptoms, the appellant's doctor only identifies one symptom, moderate to severe immune suppression with many skin infections, but does not offer detail how the skin infections are related to the appellant's chronic progressive health deterioration due to their hand injury or their ADHD/anxiety. As well, the appellant's doctor notes due to gastrointestinal issues, the appellant may experience malabsorption and possible low iron; the doctor does not confirm the appellant is experiencing the symptom of malnutrition. No evidence is given to demonstrate the appellant has symptoms of being under weight, has experienced significant weight loss, muscle loss, neurological degeneration, deterioration of a vital organ, or moderate to severe immune suppression.
- As the appellant does not meet the requirement of two or more symptoms being identified as is required in Section 67 (1.1) (b) the appellant does not meet the eligibility requirements of Section 67 (1.1) (c) items set out in section 7 of Schedule C.
- The appellant did not meet the requirement of two or more symptoms nor did the appellant's doctor directly link the need for supplementation to alleviate an accepted symptom. There is no evidence supplementation will prevent imminent danger to the appellant's life.

Panel Finding

A monthly nutritional supplement is provided to recipients eligible for the Persons with Disabilities (PWD) designation who are in receipt of disability assistance and who have a severe medical condition causing a chronic, progressive deterioration of health with symptoms of wasting. This supplement is intended to prevent imminent danger to the person's life by providing essential, specified items to supplement regular nutritional needs.

Section 67(1.1) of the EAPWD Regulation lists the criteria the appellant must meet to be approved for MNS. Section 7 of Schedule C outlines the additional eligibility criteria for nutritional items and limits to the amount the ministry may provide for MNS items.

Panel findings will be noted for each section of the applicable legislation.

Section 67 (1.1) (a)- appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition.

- Although the appellant is being treated for a hand injury, is on medication for ADHD and is experiencing gastrointestinal problems, the evidence given indicates future surgery for the appellant's hand may occur and possible malabsorption issues in terms of gastrointestinal problems may benefit by taking supplements. There is no evidence the appellant's doctor has confirmed they are being treated for a chronic, progressive deterioration of health that has worsened over time. Consequently, the panel finds the ministry reasonably determined that the appellant does not meet the eligibility requirement set out in the EAPWD Regulation, subsection 67 (1.1) (a).

Section 67 (1.1) (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.

- The appellant's doctor has only identified one possible symptom, moderate to severe immune suppression and cites multiple skin infections. As Section 67 (1.1) (b) requires the applicant to display two or more symptoms listed, the panel finds the ministry reasonably determined that the appellant does not meet the eligibility requirement set out in the EAPWD Regulation, subsection 67 (1.1) (b).

Section 67 (1.1) (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.

- The appellant's doctor notes a potential for the appellant to develop malabsorption and low iron levels which would be indicative of a malnutrition symptom, which would require vitamin/mineral supplementation, but does not confirm the appellant is experiencing the symptom of malnutrition.
- The appellant's doctor also notes vitamins will improve immunity and relief of pain, in addition to preventing osteoarthritis, but he does not specify how the items requested will alleviate a symptom set out in legislation or the application.
- The appellant's doctor as well notes, vitamins/minerals will provide relief of chronic pain

and better immunity.

- As the appellant's doctor indicates that vitamins and minerals provided will alleviate the symptom of moderate to severe immune suppression, a symptom set out in subsection 67 (1.1) (b), the panel finds the ministry was unreasonable when it determined that the appellant does not meet the eligibility requirement set out in the EAPWD Regulation, subsection 67 (1.1) (c).

Section 67 (1.1) (d)- failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

- No information is offered by the appellant's doctor that supplementation will prevent imminent danger to life, therefore the panel finds the ministry reasonably determined that the appellant does not meet the eligibility requirement set out in the EAPWD Regulation, subsection 67 (1.1) (d).

Subsection 67 (1.1) and Schedule C, subsection 7 (a)- dictates that nutritional items that are a part of a caloric supplement to a regular dietary intake may be provided to alleviate a symptom set out in subsection 67 (1.1) (b) and prevent imminent danger to life as set out in the legislation.

- The information provided by the appellant's doctor does not confirm the appellant is displaying the symptoms of underweight status, significant weight loss, or significant muscle mass loss which would indicate a need for caloric supplementation. Height and weight recorded in the appellant's application indicates that their BMI (body mass index), is 22.3 which is in the normal range.
- As the appellant's doctor does not establish the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating symptoms that are the direct result of a chronic, progressive deterioration of health due to a severe medical condition, and failure to obtain the items requested will result in imminent danger to the appellant's life, the panel finds the ministry reasonably determined that the appellant does not meet the eligibility requirement set out in the EAPWD Schedule C, subsection 7 (a).

Conclusion

The panel finds that the ministry's reconsideration decision wherein the ministry denied the request for funding for the MNS of vitamin/mineral supplementation and nutritional items to be a reasonable application of the legislation in the circumstances of the appellant.

The ministry's reconsideration decision is confirmed, and the appellant is not successful on appeal.

Applicable Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

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 Health Supplements

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
- (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

Charles Schellinck

Signature of Chair

Date (Year/Month/Day)

2022/06/11

Print Name

Linda Pierre

Signature of Member

Date (Year/Month/Day)

2022/06/11

Print Name

Wes Nelson

Signature of Member

Date (Year/Month/Day)

2022/06/11