

Part C – Decision Under Appeal

In its reconsideration decision dated May 10, 2022, the Ministry of Social Development and Poverty Reduction (the ministry) determined that the appellant was not eligible for a monthly nutritional supplement (MNS) for additional nutritional items or vitamins/minerals. The ministry was not satisfied that the appellant met the eligibility criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67(1.1)(a),(b),(c) and (d) and Schedule C section 7. That is, the ministry was not satisfied that

- (a) the appellant's medical practitioner has confirmed that the appellant is being treated 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 appellant displays 2 of the listed symptoms;
- (c) for the purpose of alleviating a symptom referred to in paragraph (b), the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake as set out in Schedule C section 7(a), or vitamins/minerals as set out in section 7(c); and
- (d) failure to obtain the items will result in imminent danger to the appellant's life.

Part D – Relevant Legislation

EAPWDR Section 67 and Schedule C section 7

Part E – Summary of Facts

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

In an Application for Monthly Nutritional Supplement dated March 11, 2022 the appellant's medical practitioner (MP) indicates the following:

- The diagnosis is constipation, weight loss and depression.
- Section 2 of the form is titled: "As a direct result of the severe medical condition(s) noted above, is the applicant being treated for a chronic, progressive deterioration of health?"
 - The MP does not provide any information.
- Section 3 is titled "As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms? If so, please describe in detail". There is a list of 7 symptoms.
 - The MP indicates "Significant weight loss".
- The appellant's height is specified as 5'1", the weight as 104 lbs.
- Vitamin and Mineral Supplementation
 - "Specify the vitamin or mineral supplement(s) required and expected duration of need:"
 - Ensure High Protein Nutrition Drink (\$105 per month);
 - Lax-a-Day (\$35 per month)
 - No vitamin or mineral supplement is specified and there is no information on the expected duration of the need.
 - "Describe how this item will alleviate the specific symptoms identified:"
 - The MP writes: "Severe gastro-intestinal problem - with significant weight loss"
 - "Describe how this item or items will prevent imminent danger to the applicant's life."
 - No information is provided.
- Nutritional Items
 - "Specify the additional nutritional item(s) required and expected duration of need:"
 - No information is provided.
 - "Does the applicant have a condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake?"
 - No information is provided.
 - "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:"
 - The MP writes: "She is losing weight and this was done."
 - "Describe how the nutritional items requested will prevent imminent danger to the applicant's life:"
 - The MP writes "add to current caloric deficit"
 - "Additional Comments:"
 - The MP provides no additional comments.

In her letter provided at reconsideration the appellant writes:

- "[My doctor] asked me to put all the information down and she would take a look at it and sign it off. She mentioned that she is very busy with patients and this would help her speed up with the process..."
- The reason why I need laxatives is that my bowel does not empty on a regular basis.
- I have been to several hospitals in the last 2 months ...
- I need a nutrition drink for a full year to give me a boost and a lax-a-day to help me with my bowel.
- I had a gastrologist but unfortunately, she is on maternity leave and I am on a wait list to see her replacement ...

- [My doctor] wants me to see a specialist to figure out what is happening with this ongoing problem...
- I ... am on a fixed income, so I would not be able to purchase these items..."

In her Notice of Appeal dated May 19, 2022 the appellant writes: "Because I need the supplement daily and unfortunately I cannot afford it as I am on disability."

At the hearing the appellant repeated previous information and added the following:

- She lost 12 lbs in the last 2/3 weeks and weights now 95 lbs. She looks like a skeleton.
- She feels sleepy and dozy all day.
- She recently had a colonoscopy and is scheduled to have another one.
- Her current diet is bananas, grapes, bread, lasagne etc.
- She has been a patient with her doctor for 9 years.
- Sometimes she receives free laxatives from her doctor.
- She has not approached the ministry to help her cover the cost of medication.

The ministry summarized the reconsideration decision and explained that

- While the ministry accepted the appellant had a severe medical condition she did not meet the legislative criteria set out in the decision.
- The ministry did not accept the symptom of significant weight loss because the doctor did not specify the amount of lost weight and over what period of time it was lost.
- The doctor did not prescribe Ensure - the appellant had filled in this information.
- Overall, the doctor did not give enough information for the application to be successful.
- If phone contacts are made with medical professionals these calls are recorded and made available to the ministry client. Sometimes the ministry may call the medical professional for clarification, not to procure new information. In the appellant's case the ministry did not call the appellant's doctor because too much information was missing already.
- Had the appellant had the following information earlier she may have received the required items earlier.

The ministry added that there are programs where the ministry covers the costs for laxatives and bowel care.

- A prescription, medical reasons and the required amount per day may be faxed from the MP (or nurse practitioner or dietician) to the ministry. It is recommended to mark it "urgent". The fax # is 1855 771 8785.
- The medication will be sent directly to the appellant.

Another program may supply the appellant with a Short Term Nutritional Supplement.

- A prescription and detailed medical reasons why the appellant needs extra calories are required.
- The fax # is the same.

The ministry provided their private phone line to be passed on to the doctor.

The ministry stated that prescription medications are covered by Pharmacare.

After the ministry gave their new information the appellant confirmed that she had written it all down.

Admissibility of New Evidence:

The panel finds that the information provided by the appellant and the ministry at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances surrounding the appellant's request for a Monthly Nutritional Supplement. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue of this appeal is whether the ministry decision that denied the appellant's request for a Monthly Nutritional Supplement (MNS) of nutritional items and vitamin/mineral supplements was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. That is, has the ministry reasonably determined that the MP has not confirmed that

- (a) the appellant's medical practitioner has confirmed that the appellant is being treated 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 appellant displays 2 of the listed symptoms;
- (c) for the purpose of alleviating a symptom referred to in paragraph (b), the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake as set out in Schedule C section 7(a), or vitamins/minerals as set out in section 7(c); and
- (d) failure to obtain the items will result in imminent danger to the appellant's life.

Panel Decision

Legislative Requirements

Section 67(1.1) allows for the provision of two types of MNS set out in section 7 of Schedule C – “additional nutritional items” and “vitamins and minerals” - if a medical practitioner, nurse practitioner, or dietician confirms that the requirements described in paragraphs (a) through (d) are met:

- (a) the person is being treated by a medical or nurse practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;
- (b) the person displays at least two of the symptoms listed in this paragraph (malnutrition, underweight status, significant weight loss, significant muscle mass loss, significant neurological degeneration, moderate to severe immune suppression, and significant deterioration of a vital organ);
- (c) one or more of the items set out in section 7 of Schedule C is required for the purpose of alleviating a symptom listed in paragraph (b); and
- (d) failure to obtain the items will result in imminent danger to the person's life.

(a) Chronic progressive deterioration of health on an account of a severe medical condition

- The appellant reports that she has had a colonoscopy and is awaiting another one, and that she is also waiting to see a gastrologist. The panel notes that section 67(1.1) requires a medical or nurse practitioner or dietician to confirm the required information. There is no such confirmation.
- The MP indicates that the appellant suffers from a severe gastro-intestinal problem with a caloric deficit. No information from a MP, nurse practitioner, or dietician was submitted to confirm treatment of a chronic, progressive deterioration of her health as a direct result of her medical condition.

Based on this evidence the panel finds the ministry was reasonable when it determined that the information provided by the appellant's MP does not establish that she is being treated for a chronic, progressive deterioration of health due to a severe medical condition as required in section 67(1.1)(a).

(b) 2 or more symptoms

Significant Weight Loss

- At the hearing the appellant reported that she he lost 12 lbs in the last 2/3 weeks. The panel notes that section 67(1.1) requires that a medical practitioner or dietician confirm the required information.
- The MP indicates that the appellant displays “Significant weight loss”.

Based on this evidence the panel finds the ministry was not reasonable in its determination that it has not been established that the appellant is currently experiencing the symptom of significant weight loss. However, as this was the only symptom listed, the panel finds the ministry was reasonable when it determined that a medical/nurse practitioner or dietician has not confirmed that the appellant is displaying at least 2 of the 7 symptoms set out in the EAPWD Regulation section 67(1.1)(b).

(c) and (d) Additional Nutritional Items as part of Caloric Supplementation

- The appellant argues she needs a nutritional supplement daily for a full year to give her “a boost”, and a laxative to help her with bowel movements. She cannot afford to buy these items because she is on a fixed income of disability assistance. In the panel’s view laxatives are not a “nutritional item” or a “vitamin or mineral” as out in section 67 of the EAPWDR.
- The MP confirms that the appellant requires Ensure High Protein Nutrition Drink.
- The MP does not specify the expected duration of the need.
- The MP indicates that Ensure High Protein Nutrition Drink will provide additional calories to her regular diet for the purpose of alleviating her weight loss.
- When asked to describe how the nutritional items requested will prevent imminent danger to the applicant’s life the MP writes “add to current caloric deficit”.

As the MP confirms the appellant requires Ensure to alleviate her significant weight loss by supplementing additional calories to her regular diet the panel finds that the ministry was not reasonable when it determined that the PM’s recommendation does not establish that the appellant requires caloric supplementation to a regular dietary intake.

While the MP indicates that Ensure will prevent imminent danger to life by adding to the current caloric deficit the panel finds that the ministry reasonably determined that this information does not establish that failure to obtain Ensure will result in *imminent* danger to the appellant’s life as set out in section 67(1.1)(d).

(c) and (d) Vitamin/Mineral Supplementation

No mineral or vitamin supplement is specified by the appellant or her MP.

The panel notes that under Vitamin or Mineral Supplementation the appellant and the MP filled in Ensure and laxatives which the panel views to be Nutritional Items and medication.

As previously discussed, the panel finds the ministry has reasonably determined that the information provided does not establish that a medical/nurse practitioner or dietitian has confirmed the appellant is currently displaying at least 2 of the 7 listed symptoms as a direct result of a chronic, progressive deterioration of health set out in section 67(1.1)(c). The panel finds further the ministry reasonably determined that the lack of information demonstrates that the appellant does not meet the legislative requirements for the provision of vitamin/mineral supplements as set out in section 67(1.1)(c) and (d).

Conclusion

The panel concludes that the ministry's decision that the requirements of section 67(1.1)(a),(b),(c) and (d) for the MNS of additional nutritional supplements and vitamins/minerals were not met is supported by the evidence. Accordingly, the reconsideration decision is confirmed and the appellant is not successful on appeal.

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

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 2022-0109

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) and Section 24(1)(b)
Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name
Inge Morrissey

Signature of Chair

Date (Year/Month/Day)
2022/07/15

Print Name
John Pickford

Signature of Member

Date (Year/Month/Day)
2022/07/21

Print Name
Kenneth Smith

Signature of Member

Date (Year/Month/Day)
2022/07/18