

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated May 27, 2022, that determined the appellant was not eligible for a monthly nutritional supplement for vitamin/mineral supplements and nutritional items, as per the Employment and Assistance for Persons with Disabilities Regulation, section 67.

Specifically, the ministry determined the appellant did not meet the following criteria:

- requires vitamins/minerals to alleviate a symptom of a chronic progressive deterioration of health and;
- failure to obtain vitamins/minerals and/or nutritional items will result in imminent danger to the appellant's life.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 67 and Schedule C, section 7

See attached Schedule of Legislation.

Part E – Summary of Facts

Evidence Before the Minister at Reconsideration

Ministry Records show:

- The appellant is a person with disabilities in receipt of disability assistance.
- The appellant’s monthly nutritional supplement (MNS) application was completed on February 10, 2022 by the appellant’s medical practitioner (MP).

Application for Monthly Nutritional Supplement (signed by the MP February 10, 2022)

(questions on the form are noted in quotes with the responses below)

- 1. ‘Diagnosis’: Complications from previous bariatric surgery, chronic abdominal pain, weight loss and food intolerances.

2. “As a direct result of the severe medical conditions(s) noted above, is the applicant being treated for a chronic, progressive deterioration of health?”

- Severe and continued weight loss.

3. “As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms?”

- - Malnutrition – BMI 21.7
- - Underweight status – BMI 21.7
- - Significant weight loss – 51 lbs weight loss in last year.
- - Significant muscle mass loss – BMI 21.7 muscle mass loss evident.

4. height – 64 in , weight – 127 lbs

5. Vitamin or Mineral Supplementation

“Specify the vitamin or mineral supplement(s) required and expected duration of need”

- Multivitamin for age per day.

“Describe how this item will alleviate the specific symptoms identified”

- Prevent nutritional deficiency.

“Describe how this item or items will prevent imminent danger to the applicant’s life.”

- Prevent nutritional deficiency.

6. Nutritional Items

“Specify the additional nutritional items required and expected duration of need”

- Fresh fruit, fresh vegetables, non fatty white meat and fish.

“Does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake?”

- Complications from a previous bariatric surgery.

“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”

- Prevent nutritional deficiency.

“Additional comments”: Further improvements in this patient’s gastrointestinal condition not anticipated.

Request for Reconsideration: dated May 27, 2022 and included the following:

“*Reconsideration Submission*”, 2-page letter from an advocate which indicated that the MP indicated following about the appellant:

- That no improvements to the GI condition are anticipated,
- Significant weight and muscle loss caused by serious problems with the digestive system and its capacity to absorb nutrients.
- Weight loss continuous despite \$40 dietary supplement and short-term supplement of Boost.
- Had to curtail physical activities due to muscle loss, muscle pain and cramping.

“*Letter from MP*”, 2-page letter, dated May 20, 2022, from the MP who completed the MNS application. The MP indicated the following about the appellant:

- Weight loss of more than 51 lbs in one year with visible muscle wasting.
- Weight loss will continue if requested nutritional supplementation is not provided.
- Weight loss continues despite using boost and regular diet.
- Had to change activities due to muscle loss, muscle pain and ongoing muscle cramping.

Evidence at Appeal

Notice of Appeal (NOA) dated June 9, 2022, which stated “The ministry erred in concluding there is no imminent danger to life and on vitamins”.

The panel considers the contents of the NOA to consist of the appellant’s argument and a finding of admissibility is not necessary.

Evidence at the Hearing

At the hearing, the appellant repeated previous information and added that in 2014 she had gastrointestinal surgery - 1 week later her stomach ruptured which led to a leak in her abdomen which became septic. As a result she had 5 more surgeries which led to a build-up of scar-tissue, which in turn prevents her from absorbing enough calories. The appellant reported she can only eat small meals of foods she can digest and only when she can actually eat as nausea keeps her from eating. The inability to eat comes and goes. She also indicated that she lost 11lbs in the month of June 2022 and 5lbs in the past week. She has asked her doctor to reconnect her with the surgeon to find any possible solution as things are getting worse. It is the appellant’s opinion that if she has another critical health related incident she will die.

The appellant and her advocate also reiterated the information and arguments presented in the MNS application, RFR and NOA and, in part, they added the following:

- The ministry provided her with funding for 3 months which allowed her to consume a bottle of Boost 6 times per day. But the ministry did not renew this funding and she could not afford the Boost on her own [the appellant did not indicate if consuming 6 bottles of Boost per day helped alleviate the conditions of weight loss or muscle mass loss].

- The MP's May 20, 2022 letter emphasizes the urgent need for the requested items when it states, "It is my urgent recommendation that this patient receives nutritional supplementation as well as caloric supplementation".
- The structure of the MNS application indicates items are only available if imminent danger exists. Therefore, it is reasonable that the doctor completed this section because there is imminent danger to the appellant's health. The doctor reasonably concludes that he addressed the issue satisfactorily.
- The ministry failed to consider the information as a whole.
- Since the ministry did not challenge the doctor's statement, 'prevent nutritional deficiency' it has accepted that the appellant has the inability to absorb food and should have addressed the absorption issue right from the beginning. The ministry is responsible to outline its decision in its entirety otherwise the appellant cannot reasonably respond to its decision. This is a basic principle of justice.
- If the appellant's condition continues there will be imminent danger to her life.
- She needs more of the foods she can digest.

At the hearing, the ministry relied on its reconsideration decision.

Admissibility of Additional Information

A panel may consider evidence that is not part of the record that the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

In this case, the panel determined that the testimony provided by the appellant at the hearing regarding her past and present medical history is admissible because the information allows for full and fair disclosure of all matters related to the issue on appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, that determined the appellant was not eligible for an MNS for vitamin/mineral supplements and nutritional items as per the EAPWDR, section 67, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, was the ministry's determination that the appellant did not meet the following criteria reasonable?

- requires vitamins/minerals to alleviate a symptom of a chronic progressive deterioration of health and;
- failure to obtain vitamins/mineral and/or nutritional items will result in imminent danger to the appellant's life.

Arguments

The appellant argued that the ministry has accepted that she cannot absorb food and therefore it is reasonable that the inability to absorb would create a nutritional deficit thus requiring a need for multivitamins. The appellant also argued that the MNS application reads that supplement are only provided if an imminent danger to the person's life exists. By completing these sections of the application, (both in the vitamins/minerals section and nutritional items section) the doctor is indicating an imminent danger to the appellant's life if she does not obtain the requested items.

The ministry argued that information provided by the MP in the MNS application does not link the need for vitamins to the symptoms of weight loss and/or muscle mass loss. The ministry argued that at the time of reconsideration the MP did not provide additional information specific to the need of vitamins. The ministry also argued that the MP failed to confirm that failure to obtain the requested items would cause imminent danger to the appellant's life.

Panel's Analysis and Decision

Section 67(1.1) of the EAPWDR states, "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:"

Section 67(1.1)(c), EAPWDR – alleviating a symptom

Section 67(1.1)(c) states, for the purpose of alleviating a symptom of chronic progressive deterioration of health, the person requires one or more of the items set out in section 7 of Schedule C:

7(a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month,

7(b) for vitamins and minerals, up to \$40 each month

The panel notes that ministry is responsible to providing a complete decision to the appellant. However, the panel disagrees with the appellant's conclusion that since the ministry did not challenge the MP's statements regarding nutritional deficit it thereby agreed that the appellant has the inability to absorb food and nutrients. The ministry's decision clearly states that significant weight loss and significant muscle mass loss were the only two symptoms the appellant met, and these symptoms provide the basis of evaluating the MNS application and the ministry's decision.

vitamins/minerals

[Majority decision]

Section 67(1.1)(c) sets out that for the purpose of alleviating one (or more) symptoms referred to in paragraph (b), the person requires 1 or more items set out in section 7 of Schedule C and specified in the request.

- The ministry was satisfied the appellant displayed 2 of the symptoms listed in paragraph (b), specifically “significant weight loss” and “significant muscle mass loss”.
- To the prompt “Describe how this item will alleviate the specific symptoms described:” The MP responds, “Prevent nutritional deficiency”.
- The MP specifies “Multivitamin for age 1/day”.

Based on this evidence the majority of the panel finds that the appellant met all the eligibility requirements of section 67(1.1)(c) respecting vitamins/minerals. Consequently, the majority of the panel finds that the ministry was not reasonable when it determined that the requested multivitamin has not been linked to the accepted symptoms of weight loss and muscle mass loss.

[Minority Reasons]

One panel member, (the minority member) would have found that the MP failed to establish that multivitamins will alleviate either the symptom of significant weight loss and/or significant muscle mass loss. In the May 20, 2022 letter, the MP made no reference to the need of vitamins/minerals or how this need would significant weight loss or significant muscle mass loss. In this letter the MP stated that despite having access to Boost, a protein and vitamin/mineral rich meal replacement drink, the appellant continues to lose weight. The MP did not indicated how multivitamins will get different results for the appellant.

In the MNS application, in addition to significant weight loss and significant muscle mass loss, the MP indicated malnutrition and underweight status as symptoms of a chronic progressive deterioration of health from which the appellant suffers. However, in section 5 of the application, the MP did not indicate which symptom or symptoms multivitamins will alleviate. The MNS application specifically requires the MP to describe how the requested items (multivitamins) will alleviate the identified symptoms. The MP failed to provide any information linking the alleviation of significant weight loss and significant muscle mass loss, the only accepted symptoms, to multivitamins. The minority member would have found that it is reasonable for the ministry to request this information because the legislation states that the requested items are for the purpose of alleviating a symptom described in section (b). Without such information it is difficult to determine if a requested item will alleviate any of the symptoms described in section (b).

Section 67(1.1)(d), EAPWDR – imminent danger to the person’s life

Section 67(1.1)(d) states, failure to obtain the items will result in imminent danger to the person's life.

In the reconsideration decision, the ministry found that the MP did not confirm that a failure to obtain the vitamins/minerals would result in an imminent danger to the appellant’s life. The ministry also found that the MP did not confirm that a failure to obtain the nutritional items would result in an imminent danger to the appellant’s life.

At the hearing, in describing her medical condition, the appellant established a sense of urgency to deal with her symptoms of significant weight loss and significant muscle mass loss. However, the legislation clearly states that the MP, nurse practitioner or dietitian must confirm that the failure to obtain the requested items will result in imminent danger to the person's life.

In the case of the appellant, the panel finds that 'preventing a nutritional deficiency' does not translate into imminent. In the MNS application, the MP did not describe how imminent danger to life will be prevented with vitamins/mineral and/or a caloric supplementation. The MP did not establish that the appellant is currently in danger of losing her life. Again, the panel finds that the ministry was reasonable in requiring this description to establish if the legislative criteria has been met.

While in the May 20, 2022 letter and MNS application, the MP indicated that significant weight loss and muscle mass loss has taken place over the past year the panel finds that this does not establish an imminent danger to the appellant's life. The panel finds there is insufficient evidence to demonstrate that failure to obtain the items will result in imminent danger to the appellant's life. Therefore, the panel finds the ministry reasonably concluded the appellant was not eligible for vitamins/minerals nor nutritional items under section 67(1.1)(d).

Conclusion

In conclusion, the panel finds the ministry's reconsideration decision, which determined that the appellant was not eligible for a monthly nutritional supplement for vitamin/mineral supplements and nutritional items as per the EAPWDR, section 67(1.1) was reasonably supported by the evidence. The appellant is not successful on appeal.

Specifically, the panel finds the ministry reasonably determined that the appellant did not meet the following criterion.

- failure to obtain the nutritional items will result in imminent danger to the appellant's life.

The appellant is not successful on appeal.

Schedule of 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

...

(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.

2022-0121

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

Neena Keram

Signature of Chair

Date: 2022/07/26

Print Name

Kulwant Bal

Signature of Member

Date: 2022/07/26

Print Name

Inge Morrissey

Signature of Member

Date: 2022/07/26