

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated September 13, 2022 which held that the appellant was not entitled to Monthly Nutritional Supplement (MNS) for nutritional items and vitamin/mineral supplements.

The ministry determined that the appellant did not display two or more of the symptoms as required by section 67(1.1) of the Employment and Assistance for Persons with Disabilities Regulation.

Part D – Relevant Legislation

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

Part E – Summary of Facts

The information before the ministry at reconsideration included that:

1. The appellant was a person with disabilities in receipt of disability assistance;
2. The appellant was being treated by a medical practitioner or a nurse practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;
3. The appellant had the significant deterioration of a vital organ;
4. A nurse practitioner identified that the appellant required “probiotics, Exlax and Senna, Pedialyte” to alleviate one or more symptoms that were a direct result of a chronic, progressive deterioration of health and to prevent imminent danger to the appellant’s life;
5. A nurse practitioner identified that the appellant required “Boost/Ensure meal replacements” to alleviate one or more symptoms that were a direct result of a chronic, progressive deterioration of health and to prevent imminent danger to the appellant’s life;
6. A nurse practitioner identified that the appellant had a medical condition that resulted in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake;
7. The appellant stated that they needed a high protein, low sodium diet and that because their liquid intake was limited it needed to be nutritious; and
8. Significant information from the appellant regarding the effect their health condition had on their standard of living.

The hearing was conducted in writing.

The appellant provided written submissions that the panel determined contained information that 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 that the appellant is restricted to consuming not more than 1,500ml of liquid a day as a consequence of the significant deterioration of a major organ.

The ministry did not provide additional material at the hearing and relied on the reconsideration summary.

Part F – Reasons for Panel Decision***Introduction***

The issue at appeal is whether the reconsideration decision dated September 13, 2022 which held that the appellant was not entitled to Monthly Nutritional Supplement (MNS) for nutritional items and vitamin/mineral supplements was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstance.

Summary of The Relevant Legislation

Section 67 of the Employment and Assistance for Persons With Disabilities Regulation ("EAPWDR") permits the ministry to provide nutritional supplements. Section 7 of Schedule C of the EAPWDR identifies that there are two 'categories' of nutritional supplement. One category (identified in section 7(a)) is for additional nutritional items that are part of a caloric supplementation to a regular dietary intake. The other category (identified in section 7(c)) is for vitamins and minerals.

In order to be provided with either category of nutritional supplement, an applicant must meet all of the following requirements:

1. The applicant is a person with disabilities and is in receipt of disability assistance;
2. A medical practitioner, nurse practitioner or dietitian confirms the applicant is being treated by a medical practitioner or nurse practitioner for a chronic, progressive deterioration of health because of a severe medical condition;
3. A medical practitioner, nurse practitioner or dietitian confirms that as a direct result of the chronic, progressive deterioration of health the applicant displays at least two of the following symptoms:
 - a. Malnutrition;
 - b. Underweight status;
 - c. Significant weight loss;
 - d. Significant muscle mass loss;
 - e. Significant neurological degeneration;
 - f. Significant deterioration of a vital organ;
 - g. Moderate to severe immune suppression;
4. A medical practitioner, nurse practitioner or dietitian confirms that the applicant requires items for the purpose of alleviating one of those symptoms;
5. A medical practitioner, nurse practitioner or dietitian confirms that the applicant requires those items to prevent imminent danger to the applicant's life.

Requirement 1 Is Not In Dispute

The ministry agrees that the appellant is a person with disabilities in receipt of disability assistance.

Requirement 2 Is Not In Dispute

The ministry agrees that the appellant is being treated for a chronic, progressive deterioration of health because of a severe medical condition.

Requirement 3 Is Disputed

There is no dispute that a nurse practitioner confirmed that the appellant displayed the significant deterioration of a vital organ when completing the Application for Monthly Nutritional Supplement Form.

However, there is dispute whether the nurse practitioner confirmed a second symptom. On the Application for Monthly Nutritional Supplement Form next to the word “Malnutrition” the nurse practitioner wrote: “High risk of malnutrition due to fluid restrictions.”

The appellant provided substantive information about the limits on fluid that they could consume each day and that they “drink a high protein boost” and that they need to make sure the fluid they consume “are quality”.

The ministry’s position was that the nurse practitioner stated that the appellant was “at risk” and that “there is no specific information (such as lab reports or values) to confirm that the appellant is currently experiencing this symptom. The ministry also states that the Application for Monthly Nutritional Supplement Form requests that the person completing it “describe in detail” the symptoms and that the nurse practitioner did not describe any symptoms related to malnutrition.

The panel reviewed the Application for Monthly Nutritional Supplement Form and notes that the plain and ordinary understanding of the comment “high risk of malnutrition” is that the appellant does not currently display the symptom of malnutrition. The panel finds that if the nurse practitioner believed that the appellant was currently suffering the symptoms of malnutrition they would have described those symptoms, such as weakness of muscle, fatigue, delayed healing.

Consequently, the panel finds that the ministry’s decision that no medical practitioner, nurse practitioner or dietitian confirmed that as a direct result of the chronic, progressive deterioration of health the applicant displayed at least two symptoms was reasonably supported by the information before the ministry.

The panel notes that the ministry stated that “Laxatives, herbal supplements, probiotics and other naturopathic remedies are not eligible for consideration” as a vitamin/mineral supplement. As this was not material to the reasonableness of the ministry’s decision the panel has not determined whether this is a reasonable interpretation of the term “vitamins and minerals” and a reasonable application of the legislation in the appellant’s circumstances.

The panel also notes that the ministry stated that a nutritional supplement is only available “where an applicant is consuming a regular diet, and that in spite of this is experiencing weight loss, wasting or a nutrient deficiency.” As this was not material to the reasonableness of the ministry’s decision the panel has not determined whether this is a reasonable interpretation of the section 7(a) of Schedule C and a reasonable application of the legislation in the appellant’s circumstances.

The Panel's Decision

The structure of the legislation is that an applicant must meet 5 requirements in order for the ministry to provide a nutritional supplement. If an applicant does not meet all 5 requirements the ministry cannot provide a nutritional supplement.

The panel has found that the ministry's determination that no medical practitioner, nurse practitioner or dietitian confirmed that as a direct result of the chronic, progressive deterioration of health the applicant displayed at least two symptoms was reasonably supported by the information before the ministry.

The panel also finds that the ministry's determination that because the applicant did not meet all of the requirements for a nutritional supplement, the ministry's decision not to provide a supplement for additional nutritional items and not to provide a supplement for vitamins and minerals was a reasonable application of the legislation in the appellant's circumstance.

The panel confirms the ministry decision to deny the appellant's "request for the Monthly Nutritional Supplement of nutritional items and vitamin/mineral supplements."

Extracts of the Relevant 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).

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

[am. B.C. Regs. 317/2008, s. 8; 68/2010, ss. 1 and 2;
145/2015, Sch. 2, ss. 7 and 8; 123/2019, App. 2, s. 3.]

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.

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/Oct/23

Print Name

Kevin Ash

Signature of Member

Date (Year/Month/Day)

2022/10/24

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2022/10/24