

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated June 29, 2022, in which the ministry denied the appellant’s request for a monthly nutritional supplement for additional nutritional items, vitamins and minerals.

The ministry was satisfied that the appellant was being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition, as required under Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) section 67(1.1)(a). However, the ministry decided that the appellant had not met the requirements in EAPWDR section 67(1.1)(b),(c) and (d). The ministry was not satisfied that:

1. as a direct result of the chronic, progressive deterioration of health, the appellant displayed two or more of the symptoms listed in section 67(1.1)(b);
2. the appellant needed the additional nutritional items, vitamins, and minerals for the purpose of alleviating at least one of those symptoms;
3. failure to obtain the items would result in imminent danger to the appellant’s health.

Part D – Relevant Legislation

EAPWDR section 67, and Schedule C, section 7

Full text of the legislation is provided in the Schedule of Legislation after these Reasons.

Part E – Summary of Facts

The hearing was adjourned three times at the appellant's request, with the consent of the ministry. The first request was due to family illness which meant the appellant needed more time to prepare; the second request was to allow the appellant more time to contact an advocate and obtain additional medical evidence; and the third request was because the appellant had found an advocate, who needed more time to prepare for the hearing. The appellant attended the teleconference hearing with the advocate.

Evidence Before the Ministry at Reconsideration:

The appellant is a recipient of disability benefits under the Employment and Assistance for Persons with Disabilities Act.

In the application for the monthly nutritional supplement the appellant's doctor indicated that the appellant had been diagnosed with chronic fatigue, Gastroesophageal Reflux Disease ("GERD") and Irritable Bowel Syndrome ("IBS"). The doctor stated that the appellant was being treated at a chronic pain clinic for a chronic, progressive deterioration of health. The doctor indicated that, as a result of the chronic, progressive deterioration of health, the appellant displayed the symptoms of malnutrition and significant muscle mass loss but provided no further description of the symptoms.

The doctor indicated that the appellant required Vitamins B12 and D and magnesium to improve her muscle mass and neuromuscular function, which would improve her ability to be active and enhance her immune function.

The doctor indicated that the appellant required additional nutritional items of protein shakes, Boost and Ensure because GERD and IBS restricted her diet significantly. The doctor stated "In this case, caloric increase is not the issue. Increased protein intake is." The additional items would improve the appellant's muscle mass and immune function.

At the reconsideration, the appellant provided an undated letter from a second doctor stating:

- the appellant suffers from neurological issues secondary to arachnoiditis and degenerative disc disease which have led to significant neurological symptoms including muscle weakness and wasting/loss of muscle mass that have made her movements difficult;
- the appellant suffers from vitamin deficiencies and digestive issues such as GERD, IBS and Dylipidaemia;
- the appellant is advised to take iron, Vitamins B12 and D, omega 3 and magnesium supplements to address symptoms of fatigue, pain, muscle cramps, neuropathic pain, and sleep disruption;
- she has "issues with decreasing caloric intake and subsequently essential nutrients intake" and therefore has been advised to supplement her diet with Boost or Ensure "to secure the essential protein intake of 70:100 gms a day;"
- maintaining a healthy intake of protein and nutrients "is essential for her well-being."

In her Request for Reconsideration the appellant stated:

- the recommended supplements are expensive, and when she cannot afford them and stops taking them, her symptoms worsen;
- with her digestive issues she is not able to eat as much, her caloric intake has significantly decreased, and she is not getting the nutrients she needs;
- her doctor has told her that the muscle mass in her lower back looks like a paraplegic patient;
- it is clearly visible that her muscles have significantly wasted and there is no cure or expectation of improvement;
- vitamins, minerals, and nutritional supplements help with her symptoms of muscle/nerve chronic pain, muscle cramps/tightness, muscle fatigue, numbness, tingling and mood.

Additional Evidence:

The appellant provided an additional report signed by both doctors, which repeated some of the information in the original application, about diagnoses and recommended nutritional items. In the additional report, the doctors identified symptoms of malnutrition and significant muscle loss, and provided additional details describing those symptoms and the need for the items requested:

- the appellant is unable to eat a variety of foods due to IBS and GERD; IBS causes chronic diarrhea which leads to the inability to absorb sufficient calories and nutrients;
- as a result of significant muscle wasting in both legs, the appellant has severe restrictions in basic mobility and requires a cane for walking;
- the appellant suffers from chronic pain and muscle weakness caused by Arachnoiditis;
- the appellant requires the recommended vitamin and mineral supplements to help alleviate malnutrition and muscle wasting;
- the appellant requires additional nutritional supplementation to provide caloric supplementation to a regular dietary intake, including higher intake of protein, and nutritional drinks such as Ensure or Boost, because of malnutrition due to inability to absorb enough calories;
- nutritional supplementation will also prevent further muscle mass loss;
- without the additional nutritional items recommended, the appellant is “at risk of further deterioration of health” which will result in imminent danger to her life.

Admissibility of Additional Evidence:

The ministry did not object to the admissibility of the additional doctors’ report.

The panel finds the additional evidence to be admissible under section 22(4) of the Employment and Assistance Act. The evidence provides additional information about the appellant’s medical condition, symptoms, and treatment, and therefore is reasonably necessary for the full and fair disclosure of all matters relating to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, in which the ministry determined that the appellant was not eligible for a monthly nutritional supplement for additional nutritional items, vitamins and minerals, was reasonably supported by the evidence, or was a reasonable application of the legislation in the appellant's circumstances. The ministry determined that the appellant had not met the requirements in EAPWDR section 67(1.1)(b), (c) and (d) because the ministry was not satisfied that:

1. as a direct result of the chronic, progressive deterioration of health, the appellant displayed two or more of the symptoms listed in EAPWDR section 67(1.1);
2. the appellant needed the additional nutritional items, vitamins, and minerals for the purpose of alleviating at least one of those symptoms;
3. failure to obtain the items would result in imminent danger to the appellant's health.

Appellant's Position:

The appellant argues that she has met all the criteria for eligibility under section 67(1.1). The medical evidence, including the additional report from the two doctors, confirms that the appellant displays symptoms of malnutrition and muscle wasting as a result of severe medical conditions. The additional report also confirms that she needs the recommended nutritional supplements to prevent imminent danger to life. Therefore, the appellant maintains that she has met all the criteria for eligibility under section 67(1.1).

Ministry's Position:

The ministry accepts that the appellant is being treated for a chronic, progressive deterioration of health due to a severe medical condition, and therefore meets the eligibility requirement in section 67(1.1)(a). However, the ministry maintains that the appellant does not meet the criteria in section 67(1.1)(b), (c) and (d). There was not sufficient information to show that the vitamin and mineral deficiencies and decreased intake of nutrients amounted to malnutrition, and there was not enough description of muscle wasting to show that any muscle mass loss was significant. While the second doctor indicates the appellant has "neurological issues", that statement was not sufficient to establish the symptom of significant neurological degeneration.

As the ministry was not satisfied that the appellant displayed two or more of the symptoms listed in section 67(1.1)(b), it follows that the ministry was not satisfied that the requested supplements would alleviate those symptoms. Further, while the second doctor indicated in their undated letter that the supplements would alleviate some symptoms, they were not symptoms found on the list in sub-section (b).

In the reconsideration decision, the ministry stated that neither doctor had provided any information to support the statement that the failure to obtain the nutritional items would result in imminent danger to the appellant's life. At the hearing, the ministry indicated that, in general, if a person displayed two or more of the listed symptoms, and it was established that the nutritional supplement would alleviate those symptoms, that evidence would support a determination of imminent risk to life.

Panel Decision:

Under EAPWDR section 67, the ministry may provide a monthly nutritional supplement for a person with disabilities who meets the criteria in section 67(1.1)(a) through (d). The criteria are:

1. the person is being treated for a chronic, progressive deterioration of health on account of a severe medical condition;
2. as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the symptoms listed in section 67(1.1)(b);
3. the person requires one or more of the items set out in EAPWDR Schedule C, section 7, to alleviate one of those symptoms;
4. failure to obtain the items will result in imminent danger to the person's life.

Schedule C, section 7, states that the ministry may provide a nutritional supplement for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, and for vitamins and minerals.

The ministry determined that the evidence established that the appellant was being treated for a chronic progressive deterioration of health on account of a severe medical condition, and therefore the appellant had met the requirement in section 67(1.1)(a). However, the ministry was not satisfied that the remaining three criteria were met.

Symptoms:

Based on the medical information available at the reconsideration, the ministry was not satisfied that the appellant displayed two or more of the symptoms listed in section 67(1.1)(b). However, the additional report from the doctors provides additional information. The doctors state that the appellant is unable to absorb sufficient calories and nutrients due to IBS and GERD. The report also identifies significant muscle wasting in both legs, to the extent that the appellant is restricted in her mobility and requires a cane for walking.

The panel finds that the additional medical information confirms that the appellant displays the symptoms of malnutrition and significant muscle mass loss. Therefore, the panel finds that the ministry's determination that the appellant did not display two or more of the symptoms listed in section 67(1.1)(b) is not reasonable in light of the additional evidence.

Vitamin/Mineral Supplements & Caloric Supplementation:

As the ministry was not satisfied that the appellant displayed two or more symptoms listed in section 67(1.1)(b), it follows that the ministry was not satisfied that the requested items were required to alleviate those symptoms. However, having found that the appellant displayed the symptoms of malnutrition and significant muscle mass loss, the panel has considered whether the evidence establishes that the vitamin and mineral supplements and additional nutritional items for caloric supplementation are required to alleviate those symptoms.

The additional medical report indicates that, due to chronic diarrhea from IBS, the appellant is not able to absorb sufficient calories and nutrients. The doctors state that the appellant needs vitamin and mineral supplements to alleviate both malnutrition and muscle wasting.

With respect to caloric supplementation, the panel notes that, in the application, the doctor stated that “in this case caloric increase is not the issue. Increased protein intake is.” That statement might tend to indicate that the additional nutritional items were not needed as caloric supplementation to a regular diet. However, in the additional medical report, the doctors clarified that the appellant requires the additional nutritional items because she is not able to absorb sufficient calories and protein from a regular diet. The doctors indicate that the items will alleviate malnutrition and prevent further muscle mass loss.

Therefore, based on the additional medical report, the panel finds that additional nutritional items requested are part of a caloric supplementation to a regular dietary intake and are required to alleviate symptoms of malnutrition and muscle mass loss. Similarly, the panel finds that the vitamins and minerals requested are required to alleviate symptoms of malnutrition and muscle mass loss. Therefore, the panel finds that the ministry’s determination that the appellant did not require items set out in section 7 of Schedule C to alleviate a symptom listed in section 67(1.1)(b) is not reasonable in light of the additional evidence.

Imminent Danger to Life

Based on the evidence available at the reconsideration, the ministry was not satisfied that a medical practitioner had confirmed that failure to obtain the requested items would result in imminent danger to the appellant’s life. In the application the doctor had indicated that the appellant required nutritional items to improve muscle mass and enhance immune function, which the ministry determined did not confirm imminent danger to life.

However, the additional medical report establishes that, if the appellant does not have the additional nutritional items, vitamins, and minerals, she will suffer from malnutrition and further muscle wasting, and her health will deteriorate further. Therefore, the panel finds that failure to obtain the items will result in imminent danger to the appellant’s life. The panel finds that the ministry’s determination that the appellant had not established that failure to obtain the items would result in imminent danger to her life, is not reasonable in light of the additional evidence.

Conclusion:

The panel finds that the additional medical evidence provided by the appellant establishes that she has met the criteria in EAPWDR section 67. Therefore, the panel finds that the ministry’s reconsideration decision, in which the ministry denied the appellant a monthly nutritional supplement for additional nutritional items for caloric supplementation of a regular diet, and vitamins and minerals, because she did not meet those criteria, is not reasonably supported by the evidence.

The panel rescinds the ministry’s reconsideration decision. The appellant is successful in the appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

Nutritional supplement

Section 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

Section 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
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2022/11/10

Print Name
Elaine Jeffery

Signature of Member

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

Print Name
Jennifer Armstrong

Signature of Member

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