

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision, dated October 4, 2022 (the “Reconsideration Decision”), which concluded that the Appellant was not eligible for a monthly nutritional supplement (“MNS”) for vitamin or mineral supplementation and nutritional items because the Appellant had not provided confirmation from a prescribed practitioner that:

- he was displaying two or more of the symptoms described in section 67(1.1)(b) of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”), due to a chronic progressive deterioration of health;
- the mineral and vitamin supplementation and nutritional items being requested would alleviate one or more of the symptoms set out in section 67(1.1)(b); and
- failure to obtain the mineral and vitamin supplementation and nutritional items being requested would result in imminent danger to the Appellant’s life.

Part D – Relevant Legislation

EAPWDR, sections 61.01, 67

Part E – Summary of Facts

The Appellant is a recipient of disability assistance.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- Application for Monthly Nutritional Supplement, dated June 13, 2022 (the “June Application”), in which the Appellant’s doctor noted the following:
 - the Appellant was diagnosed with Type 2 Diabetes;
 - the Appellant’s height and weight were 166.5 centimetres and 61.6 kilograms, respectively, indicating a body mass index (“BMI”) of 22.2;
 - the Appellant had lost 17 kilograms in 2 years and was not eating meat and vegetables
 - the Appellant required:
 - Vitamin D;
 - a daily multivitamin
 in order to prevent malnutrition
 - the Appellant also required a high protein diet, including 5-12 vegetables per day and meat 1-2 times per day;
- Letter from the Ministry, dated July 27, 2022 (the “Ministry Letter”), with the Ministry’s Monthly Nutritional Supplement Decision Summary, dated July 27, 2022 (the “MNS Decision Summary”), in which the Ministry determined that the Appellant was not eligible for the MNS on the basis of the information in the June Application;
- The Appellant’s Request for Reconsideration (“RFR”), dated September 2, 2022, to which the Appellant attached:
 - the Ministry Letter;
 - the MNS Summary;
 - the June Application; and
 - photocopies of various receipts for Zinc, complete Omega, and Garlic Concentrate; and
- A handwritten note, requesting an extension of time to file the RFR.

In the Appellant’s Notice of Appeal, dated October 13, 2022, the Appellant stated that he lost 18 kilograms in the last two years, was diabetic, and had new documents that would be submitted.

Among the new documents submitted by the appellant was a revised Application for Monthly Nutritional Supplement, dated October 12, 2022 (the “October Application”), in which the Appellant’s doctor noted the following:

- the Appellant was diagnosed with “Significant weight loss” and Type 2 Diabetes;
- the Appellant had lost 10 kilograms in the last year (although the doctor notes later that it was 10 kilograms in the “last 2 years”);
- the Appellant’s height and weight were 166 centimetres and 59.8 kilograms, respectively;
- the Appellant required:
 - Centrum multigummies;

- Omega 3; and
- Calcium, Magnesium, and Vitamin D3 twice daily, 100 milligrams of B complex daily, 1000 milligrams of Vitamin D3 twice daily, 500 milligrams of Vitamin C twice daily, and 50 milligrams of Ultra Zinc twice daily;
in order to prevent further weight loss; and
- the Appellant required a probiotic concentrate daily on a permanent basis to prevent extreme changes to weight that could be dangerous due to the Appellant's Diabetes;
- the Appellant required a high protein diet, including 2 servings of fish or meat per day and a high vegetable diet

The Appellant subsequently submitted, respectively:

- a set of photographs of receipts for unnamed vitamins (dated October 27, 2022), Centrum gummies (dated October 27, 2022), and Complete Omega (dated October 27, 2022), and
- a set of photographs of receipts for Complete Omega (dated September 10, 2022), Ultra Zinc and Vitamin C (dated July 26, 2022), Garlic Concentrate and Vitamin D3 (dated June 25, 2022), and Nestle Pure Life and Palafer (dated June 25, 2022) and of various vitamins that the Appellant had taken at times (although the Appellant confirmed that this photograph had not been taken recently).

The Ministry did not object to the admissibility of the photographs or of the October Application, both of which were not before the Ministry at the time of the Reconsideration Decision.

At the hearing of the Appeal, the Appellant confirmed the information set out in the June Application and the October Application regarding his medical conditions and stated that he did not have the funds to pay for the items being recommended by his Doctor which also were helpful for reasons other than those set out in the two applications. The Appellant noted that the doctor had erroneously set out in the October Application that the Appellant had lost 10 kilograms within the last year on one page and within the last two years on another page. The Appellant confirmed that he has continued to lose weight even since the October Application was prepared by the doctor, estimating the loss to be approximately 1.5 kilograms.

The Ministry stated that the decisions about eligibility for nutritional supplements are evidence-based and require confirmation from one of the prescribed practitioners described in section 67(1.1) that all of the criteria set out in subsections (a) through (d) are met. The Ministry noted that that where the application was lacking was in respect of subsection (c), which required confirmation that "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 panel admits:

- the oral evidence given at the hearing;
- the photographs provided by the Appellant in his additional submissions; and
- the October Application

as information that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant was not eligible for a monthly nutritional supplement (“MNS”) for vitamin or mineral supplementation and nutritional items because the Appellant had not established that he was displaying two or more of the symptoms described in section 67(1.1)(b) of the EAPWDR, due to a chronic progressive deterioration of health.

Panel Decision

In order to be eligible for the supplements set out in section 7 of Schedule c to the EAPWDR, a recipient of disability assistance must meet all of the criteria in section 67.

The Ministry found that the Appellant had met all of the criteria in section 67(1) and subsection (a) of section 67(1.1) of the EAPWDR. In particular, the Ministry was satisfied that the Appellant had Type II Diabetes and, as such, met the requirement of being “treated by a medical practitioner or nurse practitioner for a chronic, progressive deterioration of health on account of a severe medical condition.”

Subsection (b) of section 67(1.1) of the EAPWDR requires that a medical practitioner, nurse practitioner or dietitian, confirm that as a direct result of a chronic, progressive deterioration of health on account of a severe medical condition, a recipient was displaying two or more of the following symptoms:

- malnutrition;
- underweight status;
- significant weight loss;
- significant muscle mass loss;
- significant neurological degeneration;
- significant deterioration of a vital organ; or
- moderate to severe immune suppression.

In the case of the Appellant, the doctor who completed both the June Application and the October Application indicated that the Appellant was suffering from malnutrition and moderate to severe immune suppression (in the June Application) and significant weight loss (in the October Application). However, in both the June Application and the October Application, the doctor did not provide details on how the symptoms were a direct result of the Appellant’s Type II Diabetes, which was the severe medical condition identified by the doctor in both applications (in addition to “significant weight loss”, which was identified as a severe medical condition in the October application).

In the June Application, the doctor simply noted that the Appellant had lost 17 kg in 2 years and was not eating meat and vegetables, when describing the Appellant’s malnutrition, and noted that the Appellant had a history of asthma when describing the Appellant’s Moderate to Severe Immune Suppression. It is not clear from the doctor’s notes how a failure to eat meat and vegetables amounts to Malnutrition on its own or how malnutrition is a direct result of a chronic,

progressive deterioration of health. The doctor also provided no description of how the symptoms of significant weight loss and significant muscle mass loss were the result of a chronic, progressive deterioration of health, simply checking off the boxes to indicate the presence of those symptoms with no further explanation. Finally, the doctor noted only “history of asthma” in reference to the symptom of “moderate to severe immune suppression” which was checked off in the June Application.

In the October Application, the doctor wrote simply “10 kg wt loss in last 2 yrs” in the section in which the doctor was asked to confirm the symptoms being displayed by the Appellant. The doctor did not indicate the presence of any of the other symptoms described in section 67(1.1)(b) of the EAPWDR on the October Application

The October Application appears to identify only *one* of the symptoms described in section 67(1.1)(b) of the EAPWDR. Although two or more symptoms are identified by the doctor in the June Application, neither the June Application nor the October Application provide confirmation of how the identified symptoms are a direct result of the Appellant’s chronic, progressive deterioration of health and, in the result, the panel finds that the Ministry reasonably determined that the Appellant did not satisfy the requirements of section 67(1.1)(b) of the EAPWDR.

In addition to the criteria set out in subsection (b) of section 67(1.1) of the EAPWDR, subsections (c) and (d) of section 67(1.1) of the EAPWDR must also be satisfied and require, respectively, confirmation that:

- the items being recommended are required for the purpose of alleviating a symptom identified in subsection (b) of section 67(1.1)(b); and
- failure to obtain the items will result in imminent danger to the requesting person’s life.

Because subsection (c) of section 67(1.1) of the EAPWDR requires that items being requested are required to alleviate a symptom of a chronic, progressive deterioration of health, the requirements of subsection (c) of section 67(1.1) are not be met where the requirements of subsection (b) of section 67(1.1) have not been met. In effect, for subsection (c) of section 67(1.1) of the EAPWDR to be satisfied, it is not enough that the item being requested alleviates a symptom identified in subsection (b) of section 67(1.1) but that the symptom is also the direct result of a chronic, progressive deterioration of health due to a severe medical condition. In the result, the panel determines that the Ministry reasonably determined that the Appellant had not satisfied the criteria of section 67(1.1)(c) of the EAPWDR in respect of either vitamin or mineral supplementation or nutritional items.

Likewise, it appears to the panel that the doctor did not confirm that failure to obtain the vitamin or mineral supplementation or the nutritional items being requested by the Appellant would prevent imminent danger to the Appellant’s life. The doctor noted that the Appellants’ diabetic condition made extreme changes in weight intolerable in the section of the applications related to nutritional items but offered no explanation as to how the nutritional items would prevent imminent danger other than to say that they would prevent further dangerous weigh loss. The doctor’s explanation of how vitamin or mineral supplementation would prevent imminent danger to the Appellant’s life was even more vague, noting only that vitamin and mineral

supplementation would “prevent further weight loss”. In view of this, the panel finds that the Ministry reasonably determined that the Appellant had not satisfied the criteria of section 67(1.1)(d) of the EAPWDR.

In view of all of the foregoing, the Appellant is not successful in this appeal.

Applicable Legislation

Section 61.01 of the EAPWDR

Section 67 of the EAPWDR sets out the criteria for monthly nutritional supplements provided for in section 7 of Schedule C to the EAPWDR:

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.]

2022-0241

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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2022/November/2

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2022/November/5

Print Name

Katherine Wellburn

Signature of Member

Date (Year/Month/Day)

2022/November/4