

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD), dated October 28, 2022, which found that the Appellant was not entitled to a Monthly Nutritional Supplement (MNS) for vitamin/mineral supplementation (Vitamins/Minerals) and nutritional items (Nutritional Items, collectively, the Vitamins/Minerals and Nutritional Items are referred to as the Requested Items).

Specifically, the Ministry determined that the Appellant’s request does not meet the eligibility criteria in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 67(1.1(a),(b),(c) and (d).

Part D – Relevant Legislation

EAPWDR Section 67 and Schedule C, Section 7

Employment and Assistance Act (EAA) Sections 22(4) and 24(1)

Part E – Summary of Facts

On October 17, 2022, the Appellant submitted a Request for Reconsideration (RFR). In the section of the RFR where the requester is asked why they are requesting reconsideration of the Ministry's original decision, the Appellant has provided a summary of past surgeries to his hands to address "*years of ongoing hand issues*", his need to use a walker for seven weeks following a stay in hospital, and his other impairments, which include ongoing "*issues*" with his hearing, back, muscles and joints, and feet.

According to the evidence contained in the Ministry's Reconsideration Decision (RD), dated October 28, 2022, the Ministry determined that the Appellant meets the following criteria for an MNS:

- He is a Person with Disabilities (PWD) who is in receipt of Disability Assistance (DA);
- He is not receiving another nutrition-related supplement;
- He does not have resources available to pay for the Requested Items; and,
- The Requested Items have been requested by a medical practitioner.

However, the Ministry also determined that the Appellant's application did not meet the requirements of EAPWDR Section 67. Specifically, the Ministry determined that the Appellant:

- Was not being treated for a chronic, progressive deterioration of health as a result of a severe medical condition;
- Does not display two or more of the symptoms in EAPWDR Section 67(1.1) (b) as a direct result of a chronic progressive deterioration of his health;
- Does not require vitamin/mineral supplementation to alleviate a symptom in EAPWDR Section 67(1.1) (b) and to prevent imminent danger to his life; and,
- Does not require nutritional items for caloric supplementation to a regular dietary intake, to alleviate a symptom in EAPWDR Section 67(1.1) (b), and to prevent imminent danger to his life.

The hearing for this appeal was conducted in writing.

Additional Information

On November 23, 2022, the Appellant submitted thirteen pages of additional evidence (the Appellant Submission). The Appellant Submission comprised:

- A four-page letter to the Appellant's doctor (the GP) from a community services agency, dated November 17, 2022 (the Questionnaire). The Questionnaire asks the GP to "*indicate your agreement or disagreement with the following*", and poses ten

questions regarding the nature of the Appellant's diagnoses, and asks the GP to provide specific information to help determine if the Requested Items would meet the eligibility criteria as set out in the EAPWDR. The GP provided answers to the ten questions and signed and dated their response on November 23, 2022. Specific details of the questions and answers are summarized in "*Part F – Reasons for the Panel Decision*" below; and

- A nine-page document titled "*Wernicke-Korsakoff Syndrome: Causes, Symptoms and Treatment*".

On November 29, 2022, the Ministry provided a submission in the form of a two-page letter (the Ministry Submission) addressed to the Employment and Assistance Appeal Tribunal (the EAAT) in which the Ministry responds to the Appellant Submission. The Ministry Submission says, in part, "*The information provided would have impacted the ministry's decision and may have result in an approval of the MNS of vitamins and minerals.*" Specific details of the Ministry's response and its impact on the Appellant's eligibility for the Requested Items are summarized in "*Part F – Reasons for the Panel Decision*" below.

Part F – Reasons for Panel Decision

The issue under appeal is whether the RD dated October 28, 2022, which determined that the Appellant was not entitled to an MNS for the Requested Items was reasonably supported by the evidence or a reasonable application of the legislation in the Appellant's circumstances. In other words, was it reasonable for the Ministry to determine that the Requested Items do not satisfy the MNS eligibility criteria set out in the EAPWDR?

Position of the Parties

The Appellant's position is that he requires specified Requested Items to alleviate symptoms of malnutrition, underweight status, significant muscle mass loss and significant neurological degeneration, and failure to obtain the Requested Items will result in imminent danger to his life.

The Ministry's position as expressed in the RD is that the Appellant is not eligible for an MNS because the eligibility criteria set out in the EAPWDR, Sections 67(1.1)(c) and (d) have not been met.

Panel Decision**As to whether the Panel admits the additional information submitted after reconsideration**

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based the requirements set out in the legislation and on all admissible evidence.

The Panel admits all of the new evidence contained in the Appellant Submission as it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The Panel assigns full weight to this new evidence because it is provided by a medical practitioner, who is one of the prescribed professionals specified in EAPWDR Section 67(1.1).

As to whether the Appellant was being treated for a chronic, progressive deterioration of health as a result of a severe medical condition

In the RD, the Ministry found that there was not sufficient evidence to show that the Appellant was being treated for a chronic, progressive deterioration of health as a result of a severe medical condition. The Questionnaire asked whether the Appellant is currently being treated for specified disorders. The GP responded "*(The Appellant) has post alcohol*

abuse disorders that are now chronic and deteriorating disorders including Wernicke-Korsakoff Syndrome (now chronic) and alcoholic gastritis and likely ulcer disease. Although pre existing (and likely a major contributor to alcoholism) agoraphobia/anxiety and depression are also chronic and the effects of these will lead to ongoing deterioration in (the Appellant's) health."

In the Ministry Submission, the Ministry wrote *"the medical practitioner has confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, as required by subsection 67(1.1)(a) of the EAPWD Regulation"*.

The Panel finds that the admissible evidence confirms that a medical practitioner has indicated that the Appellant is being treated for a chronic, progressive deterioration of health as a result of a severe medical condition.

As to whether the Appellant displays two or more of the specified symptoms as a direct result of a chronic progressive deterioration of his health

In the RD, the Ministry found that there was not sufficient evidence to show that the Appellant displays two or more of the specified symptoms as a direct result of a chronic progressive deterioration of his health. The Questionnaire asked whether the Appellant displayed specific symptoms due to his chronic, progressive deterioration of health. The GP responded that he did, and provided the following explanations for each symptom:

"Malnutrition – *The damage to (the Appellant's) digestive system can be blamed for his reduced absorption of key vitamins that we have seen since his abstinence, namely iron and b12*

Underweight status – *He has a body mass index (BMI) under 18.*

Significant weight loss – *BMI under 18*

Significant muscle mass – *On exam (he) has low muscle mass*

Significant neurological degeneration - *Wernicke-Korsakoff Syndrome is the result of thiamine deficiency that leads to acute symptoms (Wernicke syndrome) that if left untreated lead to the chronic irreversible Korsakoff syndrome. In (the Appellant's) case he has passed the point of reversibility and suffers from memory loss/poor concentration/confusion in addition to ... difficulty controlling voluntary movements. He has tremors also ..."*

In the Ministry Submission, the Ministry wrote *"The information provided indicates the appellant is experiencing the symptoms of underweight status and significant neurological degeneration on account of the chronic, progressive deterioration of health, as required by subsection 67(1.1)(b)"*.

The Panel finds that the admissible evidence confirms that a medical practitioner has indicated that the Appellant displays two or more of the specified symptoms as a direct result of a chronic progressive deterioration of his health.

As to whether the Appellant requires vitamin or mineral supplementation to alleviate a specified symptom and to prevent imminent danger to his life

In the RD, the Ministry found that there was not sufficient evidence to show that the Appellant requires vitamin or mineral supplementation to alleviate a specified symptom and to prevent imminent danger to his life. The Questionnaire asked what vitamin or mineral supplementation the Appellant requires. The GP listed Vitamin B1, Iron, Vitamin B2, Magnesium, Vitamin B12 (monthly shots), and Coenzyme C10, and added the comment *"I support his ongoing use of the above vitamins as they have reasonable evidence that supports their benefit to limit progression of (the Appellant's) underlying chronic conditions."* The GP also explained how each vitamin will help alleviate the Appellant's chronic symptoms. In response to the question *"Please describe how the vitamins will prevent imminent danger to (the Appellant's) life"* the GP wrote *"By attempting to address the discomfort and functional decline of (the Appellant's) illness we may be able to prevent relapse into alcoholism. This is the greatest danger to his life."*

In the Ministry Submission, the Ministry wrote *"The medical practitioner has provided information to confirm the appellant requires specific vitamin and mineral supplementation to alleviate symptoms set out in subsection 67(1.1)(b). Failure to obtain this supplementation will result in imminent danger to the appellant's life. Therefore, this information meets the requirements set forth in subsections 67(1.1)(c) and (d)".*

The Panel finds that the admissible evidence confirms that a medical practitioner has indicated that the Appellant requires vitamin or mineral supplementation to alleviate specified symptoms and to prevent imminent danger to his life.

As to whether failure to obtain nutritional items for caloric supplementation will result in imminent danger to the Appellant's life

In the RD, the Ministry found that there was not sufficient evidence to show that the Appellant requires nutritional items for caloric supplementation to a regular dietary intake to alleviate a specified symptom and to prevent imminent danger to his life. The Questionnaire asked if there are any nutritional items, in addition to "Boost", that the Appellant requires to alleviate any of his symptoms. The GP said that there are likely others, but a dietician would be better able to answer the question. The GP also said that the Appellant's ability to absorb sufficient calories is impaired, as evidenced by his slow weight gain to date. Where asked to describe how nutritional items will prevent imminent danger to the Appellant's life, the GP wrote "N/A".

In the Ministry Submission, the Ministry wrote *“The ministry finds insufficient information has been provided to confirm that the request meets the requirements for the monthly nutritional supplement of nutritional supplementation. Information has not confirmed that the appellant requires additional nutritional items as caloric supplementation to a regular dietary intake as required under section 7(a) of Schedule C. Further, information has not been provided that nutritional items are required to avoid imminent danger to the appellant’s life, as required under subsection 67(1.1)(d)”*.

The Panel notes that “N/A”, or “Not applicable”, means that something does not apply. Therefore, by indicating “N/A” in response the question about how nutritional items will prevent imminent danger to the Appellant’s life, the GP is effectively saying that nutritional items will not prevent imminent danger to his life. Therefore, the Panel finds that, while the admissible evidence confirms that a medical practitioner has indicated that the Appellant requires nutritional supplementation to alleviate a specified symptom, the admissible evidence also confirms that the Appellant does not require nutritional supplementation to prevent imminent danger to his life.

Conclusion

Having reviewed all the evidence and relevant legislation, the Panel finds that the Ministry’s RD, which determined that Appellant was not entitled to an MNS for the Vitamins/Minerals, was not reasonably supported by the evidence, and therefore rescinds the Ministry’s decision. However, the Panel finds that the Ministry’s RD, which determined that the Appellant was not entitled to an MNS for Nutritional Items was reasonably supported by the evidence. The Appellant’s appeal, therefore, is partially successful.

Appendix – 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, ...

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, ...

(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 Health Supplements

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; ...

(c) for vitamins and minerals, up to \$40 each month.

EMPLOYMENT AND ASSISTANCE ACT

Panels of the tribunal to conduct appeals

22(4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Decision of panel

24(1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

(a) reasonably supported by the evidence, or

(b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

APPEAL NUMBER 2022-0268

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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2022/12/08

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2022/12/09

Print Name

Gordon Thompson

Signature of Member

Date (Year/Month/Day)

2022/12/08