

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision (RD) dated January 16, 2023, which determined that the appellant was not eligible for a monthly nutritional supplement (MNS) for vitamins/mineral supplements or nutritional items.

The Ministry determined that the appellant did not meet the eligibility criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67(1.1) and Schedule C, subsection 7. Specifically, that:

- the nutritional items are required to alleviate two or more of the listed symptoms which are as a direct result of the chronic, progressive deterioration of health on account of a severe medical condition;
- failure to obtain the items will result in imminent danger to the person's life; and
- the nutritional items are part of a caloric supplementation to a regular dietary intake.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation section 67(1.1) and Schedule C section 7.

The relevant legislation is provided in the Appendix.

Part E – Summary of Facts

The appellant is a person with disabilities (PWD) and in receipt of disability assistance (DA).

Information received before the ministry when it made its decision:

- An application for MNS dated November 4, 2022 contained the following information (summarized):
 - The appellant has a severe pulmonary fibrosis diagnosis.
 - The appellant is being treated for a progressive deterioration of health (irreversible respiratory distress).
 - As a direct result of the chronic, progressive deterioration of health, the appellant has a symptom of significant deterioration of a vital organ (pulmonary fibrosis).
 - The appellant's height is 178cm and weight 80kg.
 - A high protein diet is indicated as the vitamin or mineral supplement required.
 - The item will alleviate the specific symptom identified by keeping nutritional status up to reduce infections.
 - The item will prevent imminent danger to the appellant's life by preventing infections that can further rapidly cause deterioration of lung function.
 - A high protein diet x 12 months is indicated as the additional nutritional item required.
 - The appellant does not have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.
 - The nutritional items will alleviate one or more of the symptoms specified and provide caloric supplementation to the regular diet by maintaining lung function.
 - "As previously described" is noted in response to how the nutritional items requested will prevent imminent danger to the appellant's life.
- A Health Assistance Branch Decision Summary dated December 6, 2022, which denies the appellant request for MNS. The decision noted they consider a request for a high protein diet to be a Nutritional Item rather than a request for Vitamin/Mineral Supplements. The reasons for denying the request were (summarized):
 - the medical practitioner did not confirm the appellant has two symptoms as required by legislation, only one.
 - The medical practitioner answered "no" when asked if the nutritional item is required as caloric supplementation to regular dietary intake.

- A Request for Reconsideration (RFR) form signed by the appellant on December 28, 2022 cited the following reasons as to why they are requesting a reconsideration (summarized):
 - The review was conducted without the full understanding of what his medical condition is, or its treatment.
 - His treatment is three-fold: medication; respiratory treatment; and a special diet. The diet requires that calories come from lean meats, fish, fruits and vegetables and low fat dairy products. This diet promotes a healthy immune system, which is vital to slow the effects of his condition.
 - After paying bills he is left with approximately \$3.50 per meal, which does not allow him to buy the foods recommended for the diet he requires.
 - He believes the decision was made for bureaucratic rather than medical reasons and questions the accreditation of the adjudicator or auditor who made the decision.
 - Although he didn't meet the two or more of the symptoms, he points out that his condition is very complex and needs extra scrutiny.
 - Maintaining his immune system will help defend from infections which lead to quicker deterioration and will lessen the burden on the health system.
 - He is progressing through an assessment for a lung transplant and maintaining optimal health is a requirement to proceed. A lowered immune response would bar him from the surgery.
- A letter from the pre-lung transplant coordinator to the appellant, dated October 24, 2022, confirms they are planning to start a lung transplant assessment and directs him to obtain blood work, obtain an x-ray, and a letter from his dentist.

Information Received After Reconsideration

On the Notice of Appeal (NOA) form dated January 16, 2023, the appellant wrote (summarized):

- The decision was made at bureaucratic level rather than a medical basis.
- Although he only has one of the two required symptoms, the symptom he has is very serious.
- As he is in later stages of a progressive disease, he will eventually have more symptoms and will then qualify, however, by that time his overall health will have deteriorated.
- The doctor has clearly stated the high protein diet will slow this.
- Poor health could prevent him from getting a transplant.
- He requests this decision be reviewed by an accredited medical professional.

At the hearing, the appellant voiced the points he raised in his RFR and NOA submissions. He emphasized that he believes the decision was based on bureaucratic rather than medical considerations. The appellant acknowledges that the medical information submitted does only show he has one of the symptoms listed, and that legislation requires two symptoms be identified by a medical practitioner. However, he would like this appeal to go forward because he would like the legislation changed to accommodate people who have a diagnosis of Idiopathic Pulmonary Fibrosis (IPF), to allow people to have the required high protein diet recommended by the Lung Transplant Program and their doctors.

The appellant stated that he is at high risk of infection and immune support is critical. The high protein diet would help with this. By the time he pays for his bills, he only has enough money left to pay \$3.50 per meal, and he cannot afford the high protein food necessary. He is having to purchase canned or packaged food, which has caused unhealthy weight gain.

The appellant added that he has recently been diagnosed as having severe muscle loss, which would be a second symptom, and that he and his doctor will be submitting this information to the ministry.

At the hearing, the ministry explained they are the person who audited, but did not make the decision, on the appellant's request for MNS. She stated that the ministry role is to review the information provided by a medical practitioner and then determine whether the information provided meets the legislated requirements of whatever item is being requested.

The ministry reviewed the MNS application form and explained the appellant does meet some of the requirements of legislation. He does have PWD designation, he does have a severe medical condition and there is deterioration of health identified. However, there must be medical evidence that, as a direct result of a chronic, progressive deterioration of health, the appellant must have at least two of the symptoms listed in legislation. The appellant's doctor only indicated one symptom, a significant deterioration of a vital organ.

The ministry explained that the doctor indicated a need for a high protein diet, in both the Vitamins/Minerals and Nutritional Needs section of the MNS form, however did not indicate that specific vitamins or minerals are required, only a need for a high protein diet.

There was no information provided to demonstrate that the nutritional items will provide caloric supplementation over and above a regular diet, as is legislatively required. The

ministry also pointed out that the doctor wrote that the high protein diet is required for a 12-month period rather than it being required for a chronic, lifetime period. The appellant responded that his life expectancy is less than 12 months, and this is why the doctor prescribed that time period.

The ministry explained that there was no evidence of a “wasting” condition to demonstrate the need for increased caloric supplementation. When asked whether the term “wasting” is a legislated requirement, the ministry explained it is not. It is used in reference to the requirement that there be at least two of the symptoms identified in legislation.

When asked if the ministry provided a diet allowance under any other section of legislation, the ministry explained they also considered the appellant’s request for the \$40 diet allowance, which is separate from MNS. However, to be eligible for the diet allowance it must be because of a medical condition that is set out in legislation, and the appellant’s lung condition is not one of the listed conditions.

Admissibility of Additional Information

At the hearing, the appellant provided new information with regards to a new and additional symptom recently identified and stated that he and his doctor would be submitting this information to the ministry. The panel admits the appellant’s NOA and oral evidence under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The panel will give weight to the new information in the panel decision.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision, which found that the appellant is not eligible for a MNS for vitamin/mineral supplements or nutritional items because he did not meet the eligibility criteria set out in the EAPWDR Section 67 and Schedule C, subsection 7, was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

Specifically,

- Are the nutritional items requested required to alleviate two or more of the listed symptoms, which are a direct result of the chronic, progressive deterioration of health on account of a severe medical condition?
- Will failure to obtain the items result in imminent danger to the appellant's life?
- Are the nutritional items part of a caloric supplementation to a regular dietary intake?

Appellant Position

The appellant's position is that although he recognizes that the information previously submitted only included one symptom, when two symptoms are required to be eligible, he would like the legislation to change. He argues that a person with IPF, and who is awaiting a lung transplant, requires a special high protein diet to be healthy enough to meet the requirements of the Lung Transplant Program and to avoid infections.

Ministry Position

The ministry's position is that the doctor indicated the appellant has only one symptom because of a chronic, progressive deterioration of health, and legislation requires there be at least two or more symptoms confirmed. The information provided does not establish that the appellant requires vitamin/mineral supplementation or Nutritional products to alleviate the symptom, or that failure to obtain them will result in imminent danger to his life. The ministry argues that the appellant does not display symptoms of underweight status, significant weight loss or significant muscle mass loss, which would indicate a need for caloric supplementation.

Panel Decision

Section 67(1)(c) of the EAPWDR sets out that the minister may provide a nutritional supplement in accordance with section 7 of Schedule C for a person with disabilities provided that the requirements set out in subsection 67(1.1)(a) to (d) are met. The appellant is a recipient of disability assistance.

Subsection 67(1.1)(a) requires that the person with disabilities to whom the request relates is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition. This has been confirmed by the appellant's doctor. Therefore, the panel finds the ministry was reasonable to determine this requirement has been met.

Subsection 67(1.1)(b) requires that as a direct result of the chronic, progressive deterioration of health the person displays two or more of a listed number of symptoms. The symptoms listed are: malnutrition; underweight status; significant weight loss; significant muscle mass loss; significant neurological degeneration; significant deterioration of a vital organ; and moderate to severe immune suppression.

In the appellant's circumstance, the doctor noted on the MNS form that the appellant has a symptom of significant deterioration of a vital organ. The doctor further explained the appellant has severe pulmonary fibrosis, which is a lung disease, and he is being assessed for a lung transplant. The doctor did not indicate the appellant had any of the other symptoms listed.

At the hearing, the appellant stated he had recently been determined to have significant muscle loss, which is another of the listed symptoms in legislation. He added that his doctor would be submitting this new information to the ministry. Because the legislation requires that a practitioner or dietician confirm the symptoms, and this confirmation from the doctor is not before the panel, the panel cannot give weight to this new information. The panel finds because there is evidence of only one symptom, when two or more are required, that the ministry was reasonable to determine the requirements of subsection 67(1.1)(b) have not been met.

Subsection 67(1.1)(c) requires that for the purpose of alleviating a symptom referred to in (b) the person requires one or more of the items set out in section 7 of Schedule C and be specified in the request. The doctor has confirmed that a high protein diet will alleviate the appellant's lung deterioration. The next part of this subsection is that the requirements of section 7 of Schedule C must be met.

Section 7 of Schedule C sets out that a nutritional supplement may be provided for (a) additional nutritional items that are part of caloric supplementation to a regular dietary intake, up to \$165 per month, or (b) for vitamins and minerals up to \$40 each month.

In the appellant's circumstance, no specific vitamins or minerals were identified as being required to alleviate symptoms, only that the doctor has prescribed a high protein diet. The doctor completed the same need for the diet under the request for Nutritional Items section. The appellant states he requires lean meats, fish, fruits and vegetables, and foods which are low in sodium, sugars, saturated/trans fats, and he does not have the financial resources to pay for the recommended diet. The panel finds that because a high protein diet can be considered part of one's nutritional needs, that it would be appropriate to determine whether it meets the criteria as a nutritional item rather than as a request for vitamins or minerals.

At issue is whether a high protein diet is considered to provide **additional caloric supplementation** to regular dietary intake. The ministry determined that the doctor reports the nutritional item requested will maintain lung function and prevent infection, however, does not describe how this diet provides caloric supplementation. The panel found no evidence in the appeal record to determine that a high protein diet provides additional caloric supplements to regular dietary intake. The panel finds the ministry was reasonable to determine that the requirement of section 7(a) of Schedule C has not been met.

Subsection 67(1.1)(d) requires that failure to obtain the items referred to in (c) will result in imminent danger to the person's life. Although the definition of "imminent" danger is not a legislated description, the panel considers it is commonly described as "something that is ready to take place" or "happening soon".

The appellant states he has been given less than 12 months to live and is being considered for a lung transplant. Although the high protein diet will allow him to meet the conditions of the Lung Transplant Program, this does not indicate that without the diet he is in imminent danger. The doctor notes on the MNS form that the high protein diet can prevent infection that can further rapidly cause deterioration of lung function and prescribed the diet for 12 months. The panel finds this does not indicate that the appellant's life is in imminent danger if the MNS is not provided, only that it may prevent infection. The panel finds the ministry was reasonable to determine that the requirement of subsection 67(1.1)(d) has not been met.

Conclusion

The Panel finds that the Ministry's decision that the appellant is not eligible for a Monthly Nutritional Supplement was reasonably supported by the evidence and was a reasonable application of the legislation. Therefore, the Ministry's decision is confirmed. The appellant is not successful in this appeal.

**APPENDIX
RELEVANT LEGISLATION**

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.

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.

APPEAL NUMBER 2023-0017

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

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2023 February 6

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2023 February 7

Print Name

Mary Chell

Signature of Member

Date (Year/Month/Day)

2023 February 7