

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated December 13, 2022. The ministry determined the appellant was not eligible for a monthly nutritional supplement for vitamin/mineral supplements and nutritional items.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (The Regulation), section 67 and Schedule C, section 7

See attached Schedule of Legislation.

Part E – Summary of Facts

Evidence Before the Minister at Reconsideration

- The appellant’s mother is designated as a Person with Disabilities and the family unit is currently in receipt of disability assistance.
- The family includes the appellant’s mother and one other dependent child.
- The monthly nutritional supplement application was completed by a medical practitioner for the nutritional needs of a dependent child, who is a minor and the appellant.
- The appellant does not reside in a special care facility and that the family unit does not have resources to pay for the nutritional items requested.

Application for Monthly Nutritional Supplement (signed by the medical practitioner July 24, 2022)

(questions on the form are noted in quotes with the responses below)

1. ‘Diagnosis’: ADHD – “Meds inhibit appetite.
2. “As a direct result of the severe medical conditions(s) noted above, is the applicant being treated for a chronic, progressive deterioration of health?”
 - “Eval for development – conclusions attached”.
3. “As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms?”
 - Significant deterioration of a vital organ: “Brain; learning disability – pending further eval”.
4. height – (not indicated) , weight – 25 kgs
5. Vitamin or Mineral Supplementation
“Specify the vitamin or mineral supplement(s) required and expected duration of need”
 - “Multivitamin, omega-3, Ferramax, and Melatonin”.“Describe how this item will alleviate the specific symptoms identified”
 - “Support nutrition/Brain development, improve sleep”.“Describe how this item will alleviate the specific symptoms identified”
 - Left blank
6. Nutritional Items
“Specify the additional nutritional items required and expected duration of need”
 - “High calorie/high protein shakes/meal replacement”.

“Does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake?”

- “Medication side effect of ADHD treatment”.

“Describe how the nutritional items required will alleviate one or more of the symptoms specified in Question 3 and provide caloric supplementation to the regular diet”

- “Easily consumed calories”.

“Describe how the nutritional items requested will prevent imminent danger to the applicant’s life:”

- “Support brain/muscle health”.

“Additional comments”: Left blank.

Additional Evidence

- 2-pages of a psychological assessment from the appellant’s psychiatrist, dated June 12, 2022. The assessment is regarding ADHD, and outlines a plan for addressing behavioural issues, organizing the appellant and processes to put in place to help complete homework. It is noted that the 2-pages of the assessment that were provided did not address or mention anything regarding nutrition, deterioration of health or need for additional vitamins/mineral supplements.
- Request for Reconsideration dated November 25, 2022. It stated that the appellant does not get enough daily calories or vitamins/minerals due to ADHD medication. Assistance is required to provide the appellant with a high calorie protein and other meal replacements. Omega-3 is also required for brain development and multi-vitamins to aid the immune system. The appellant is also anemic and requires iron supplements.

Evidence at Appeal

Notice of Appeal dated December 24, 2022, which stated [the appellant] “is extremely underweight. [The appellant] needs a special diet and supplements because the medication [the appellant] takes for ADHD hinders [the] ability to eat which in turn means [the appellant is] unable to get the nutrition, vitamins and minerals”.

The panel considers the Notice of Appeal to be argument and therefore does not require a determination of admissibility.

Prior to the hearing the appellant submitted the following information:

- An email dated January 31, 2023 from the Autism Integrated Medical Services clinic. This email indicated that the appellant’s lab results, the Autism specialist indicated that iron stores are somewhat low but not terrible. Adding over the counter supplements and iron rich food is welcomed.
- An undated assessment from a specialist in Autism. The specialist provided information regarding the appellant’s problem history, presenting history, medical history, examination, and impression and plan.

Evidence at the Hearing

At the hearing, the appellant's mother stated in part the following:

- She initially thought the Panel could make a consideration independent of the legislation.
- She understands the legislation and it indicates that the monthly nutritional supplement is available to those on assistance.
- The appellant is on the assistance she (the mother) receives.
- She is on assistance and cannot work. The assistance given to her from the ministry includes assistance to her children.
- The appellant is severely underweight.
- When her child (the appellant) was born with health issues, the ministry paid for the appellant's care and provided extra supports. At that time, the appellant was covered under her benefits and should be now too.
- The appellant needs iron and omega supplements, melatonin, protein supplements and more calories which she cannot afford to purchase with her current benefits.
- The appellant needs proper nutrients for brain functioning.
- The appellant experiences positive results with the ADHD medication as the appellant is able to focus and function typically with peers. However, the side effects have been that the appetite is suppressed which has caused the appellant to rapidly lose weight. For this reason, the appellant needs the monthly nutritional supplement.

At the hearing, the ministry relied on its reconsideration decision.

When questioned, the ministry stated the following:

- The appellant is eligible for some supports under the mother's benefits, which is why the appellant received supports when first born. However, the monthly nutritional supplement is not one of the supports that is available to a dependent child via the parent's benefits.
- ADHD is considered to be a severe medical issue. However, the evidence does not indicate that ADHD is causing a chronic progressive deterioration of health.

Admissibility of Additional Information

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

The panel found that the January 31, 2023 letters and undated assessment from the specialist provided additional detail or disclosed information that provides a full and fair disclosure of all matters related to the decision under appeal. The panel has admitted this new information as being in accordance with s. 22(4) of the *Employment and Assistance Act*. An analysis of each is provided in the panel's decision. However, the panel places little weight on this new information as neither document address the issues under appeal. That is, the new information does not confirm that the appellant is being treated for a chronic progressive deterioration of health due to a severe medical condition, that the appellant suffers from at least two of the symptoms listed in the legislation and that there is an imminent danger to the appellant's life.

Furthermore, in the undated assessment, it is unclear whether the specialist is speaking about the appellant for whom the monthly nutritional supplement application was completed or the appellant's sibling.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, that determined the appellant was not eligible for a monthly nutritional supplement for vitamin/mineral supplements and nutritional items as per the Regulation, section 67, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Arguments

The appellant's mother argued that her child (the appellant) is eligible for the monthly nutritional supplement under her assistance benefits as a dependent child.

The ministry argued that information provided in the monthly nutritional supplement application and at reconsideration did not establish that the appellant's request for monthly nutritional supplement met the legislative criteria. Specifically, the ministry determined the appellant did not meet the following criteria:

- the monthly nutritional supplement was requested for a member of the family unit who is not designated as a Person With Disabilities;
- the evidence does not establish that the appellant suffers from a chronic progressive deterioration of health;
- the evidence does not establish that the appellant suffers from two or more list symptoms due to a chronic progressive deterioration of health;
- requires vitamins/minerals to alleviate a symptom of a chronic progressive deterioration of health and;
- failure to obtain vitamins/minerals and/or nutritional items will result in imminent danger to the appellant's life.

Panel's Analysis and Decision

Section 67(1)(a) of the Regulation states that the minister may provide a nutritional supplement in accordance with section 7 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 is a person with disabilities. In this case, the evidence establishes that the monthly nutritional supplement was requested for a member of the appellant's family unit who is not designated as Persons with Disabilities. This individual is also a minor and therefore cannot be designated as a Persons with Disabilities. The panel finds that the ministry reasonably determined that the appellant has not met the requirement of section 67(1)(a) of the Regulation.

Section 67 (1)(1.1) of the Regulation states that 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;

In the monthly nutritional supplement application, the medical practitioner indicated that the appellant has the severe condition of ADHD which the ministry accepts as a severe medical condition. In response to the question “As a direct result of the severe medical conditions(s) noted above, is the applicant being treated for a chronic, progressive deterioration of health?” The medical practitioner responded “Eval for development – conclusions attached”. The appellant indicated that the appellant is being treated for ADHD with medications. However, the panel finds that the evidence is not a clear that the appellant is being treated for a chronic progressive deterioration of health or that the ADHD is causing a chronic progressive deterioration of health. The evidence only establishes that the appellant is being treated for ADHD. The additional evidence submitted prior to the appeal also did not establish that the appellant is being treated for a chronic progressive deterioration of health. In the absence of any additional confirming information regarding a chronic progressive deterioration of health, the panel finds that the appellant has not met the criteria of section 67(1)(1.1)(a) of the Regulation.

In the monthly nutritional supplement application, the medical practitioner indicated that as a result of a chronic progressive deterioration of health there is significant deterioration of a vital organ “brain; learning disability – pending further eval”. All other listed symptoms in this section were left blank. The legislation is clear that two or more symptoms must be indicated to satisfy this part of the criteria. The panel finds the evidence as a whole does not establish that the appellant displays two or more of the listed symptoms. In the absence of any additional information regarding the symptoms the appellant suffers from as a result of the chronic

progressive deterioration of health, the panel finds that the appellant has not met the criteria of section 67(1)(1.1)(b) of the Regulation.

In the case of the need for vitamins and nutritional items, the information provided by the medical practitioner and the specialist fails to establish that the appellant requires vitamins and minerals to alleviate a symptom of a chronic progressive deterioration of health. Since it has not been established that the appellant suffers from a chronic progressive deterioration of health and that the appellant has two symptoms of deterioration, it cannot be established that the appellant needs vitamins or minerals to alleviate a symptom of chronic progressive deterioration of health. Furthermore, the information provided by the medical practitioner and the specialist fails to establish that failure to obtain vitamins and minerals and/or nutritional items will result in imminent danger to the appellant's life. For example, in the monthly nutritional supplement application, in the section of vitamins or minerals, in response to the question regarding imminent danger to health was left blank. Similarly, in the section regarding nutritional items, the question regarding imminent danger to health, the medical practitioner answered that the nutritional items were necessary for brain and muscle health. The panel finds that this response fails to clearly indicate that the appellant faces an imminent danger to health. Additionally, it has not been established that the appellant suffers from a chronic progressive deterioration of health, so it is unclear why the appellant would need nutritional items. The information provided by the specialist did not address the issue of imminent danger to health. As a result, the panel finds that the ministry reasonably determined that the appellant has not met the criteria of section 67(1)(1.1)(c) and (d) of the Regulation.

Conclusion

In conclusion, the panel finds the ministry's reconsideration decision, which determined that the appellant was not eligible for a monthly nutritional supplement for vitamin/mineral supplements and nutritional items as per the Regulation, section 67(1.1) was reasonably supported by the evidence. The appellant is not successful on appeal.

Schedule of 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

...

(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

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.

2022-0314

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
Neena Keram

Signature of Chair

Date: 2023/04/19

Print Name
Mimi Chang

Signature of Member

Date: 2023/04/19

Print Name
David Handelman

Signature of Member

Date: 2023/04/19