

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?”

- “Query learning/cognitive delay – consult 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?”

- Malnutrition
- Significant deterioration of a vital organ: “Brain”.

4. height – 132cm , weight – 40 kgs

5. Vitamin or Mineral Supplementation

“Specify the vitamin or mineral supplement(s) required and expected duration of need”

- “Multivitamin, omega-3”.

“Describe how this item will alleviate the specific symptoms identified”

- Left blank

“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 protein shakes/bars/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 meds”.

“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”

- “Improved nutrition”.

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

- “Support brain health”.

“Additional comments”: Left blank.

Additional Evidence

- 2-page assessment from the appellant’s paediatrician, dated June 13, 2022. The assessment includes problem history, medication, interval history (which indicates that the appellant’s appetite is ok and that the appellant eats less during school but makes up for it at the end of the day – less anxiety), examination (which indicates that the appellant weighs 39.9 kg which puts the appellant at the 100th percentile), impression and plan.
- Request for Reconsideration dated November 25, 2022. The Request for Reconsideration stated that the appellant takes very strong stimulant meds for ADHD which inhibit the ability to eat a healthy amount everyday, and because of this the appellant lacks sufficient calories and vitamin and minerals daily to be healthy. The appellant needs meal replacements, vitamins and multivitamin supplementation for immunity, Omega 3 for brain development, and melatonin to help sleep

Evidence at Appeal

Notice of Appeal dated December 24, 2022, which stated “medication makes [the appellant] not eat which in turn means [the appellant] lacks calories, vitamins, minerals to be healthy/grow”.

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

Evidence at the Hearing

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

- The appellant is overweight and needs lower calorie supplements.
- 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 receives assistance through the mother.
- She is on assistance and cannot work. The assistance given to her from the ministry includes assistance to her children.

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

Admissibility of Additional Information

A panel may consider evidence that is not part of the record that 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 June 13, 2023 assessment from the pediatrician 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 it did not address the issues under appeal. That is, the new information does not confirm that the child is being treated for a chronic progressive deterioration of health due to a severe medical condition, that the child suffers from at least two of the symptoms listed in the legislation and that there is an imminent danger to the child's life.

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 overweight and needs lower calorie supplements.

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 (PWD);
- 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 “Query learning/cognitive delay – consult attached”. The panel finds that the medical practitioner’s response is not a clear indication the appellant is being treated for a chronic progressive deterioration of health or that the ADHD is causing 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 malnutrition (with no comments) and significant deterioration of a vital organ “brain”. All other listed symptoms in this section were left blank. The application specifically requires the medical practitioner to provide a detailed description of how the applicant displays the listed symptoms and how that they are connected to the medical condition for which the applicant is being treated. The medical practitioner did not provide such information. Without any information regarding the appellant’s medical condition and it’s link to a chronic progressive deterioration of health, it is difficult to determine that the appellant suffers from malnutrition and deterioration of the brain. The panel

finds that the ministry reasonably determined that the evidence 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 ministry reasonably determined that the appellant has not met the criteria of section 67(1)(1.1)(b) of the Regulation.

In the terms of the need for vitamins and nutritional items, the information provided by the medical practitioner and the pediatrician 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 child 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 pediatrician fail 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 to support brain 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.

2022-0321

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