

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision dated 28 June 2023, in which the ministry denied the appellant’s request for a Monthly Nutritional Supplement (MNS). The ministry determined the appellant was not eligible for the Monthly Nutritional Supplements of *nutritional items* and *vitamin/mineral supplements* as the request did not meet the eligibility criteria set out in the Employment Assistance for Persons with Disabilities Regulation, subsections 67(1.1) (b), (c) and (d).

Part D – Relevant Legislation

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

Part E – Summary of Facts

The appellant is a Person with Disabilities in receipt of disability assistance.

The evidence before the minister at reconsideration included the following:

- A monthly nutritional supplement (MNS) application from the appellant, completed and signed by a medical general practitioner (GP), in which the GP states;
 - The appellant has severe end stage COPD and is being treated for a chronic, progressive deterioration of health as a direct result of the severe medical conditions noted and adds a comment “*see attached.*” The ministry notes there were no additional documents provided with the MNS application,
 - The appellant is displaying the symptoms of malnutrition (“poor diet leading to malnutrition”) and significant deterioration of a vital organ (“lungs deteriorating markedly”),
 - In specifying the vitamin or mineral supplements required, the GP writes: “Multivitamins.”,
 - In describing how these items will alleviate a specific symptom identified the GP writes “Ensure lung health & immune system health.”
 - In describing how vitamin/mineral supplementation will prevent imminent danger to the appellant’s life the GP writes “Decrease lung deterioration.”
 - In specifying the nutritional items required, the GP writes: “Balanced diet with multivitamin support.”
 - When asked if the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the GP writes: “No.”
 - In describing how the nutritional items required will alleviate one or more of the symptoms specified and provide caloric supplementation to the regular diet, the GP writes: “Improve lung health & malnutrition.”
 - In describing how the nutritional items requested will prevent imminent danger to life, the GP writes: “Decreased lung deterioration.”
- A self-report letter written by the appellant in support of the request for reconsideration that reports on the diagnosis of their disease, their actions in support of living a healthier lifestyle by stopping smoking and using a wood stove and states to “try to eat more healthy foods”. The appellant tells of problems with being on PWD, relying on charitable agencies and eating mainly primarily processed or highly refined foods, from the food banks. The appellant states that these foods cause inflammation in joints, muscles, and organs, and that that damage to the lungs causes imminent danger to their health. The appellant feels that a more plant based/ketogenic diet could help them stay out of hospital and off harmful medications and reduce the 24/7 reliance upon oxygen treatment.

- A letter from the office of the appellant's advocate with a paragraph signed by the appellant's GP stating that;
 - *"(The appellant) has a severe medical condition causing a chronic, progressive deterioration of health and as a result of this deterioration of health, (the appellant) has both underweight status and has significant deterioration of a vital organ. The nutritional supplement will help (the appellant) purchase and consume food that lowers inflammation and ultimately improve their health. Failure to obtain these items will result in imminent danger to (the appellant's) life. I support (the appellant's) application for a nutritional supplement through the Ministry of Social Development and Poverty Reduction."*

Evidence received after reconsideration.

In the Notice of Appeal, the appellant writes that they do not choose to eat the way they do, they cannot afford healthy food.

The hearing was held as an in-person hearing. Neither the appellant nor the ministry attended the hearing, however a duly appointed advocate did attend the hearing on behalf of the appellant.

After confirming that both the appellant and the ministry had been notified, the hearing proceeded in their absence under section 86(b) of the Employment and Assistance Regulation.

Appellant

At the hearing the advocate stated that the GP's report in the initial application and the letter provided at reconsideration signed by the GP clearly shows that the appellant suffers from malnutrition linked to a poor diet, and an underweight status. The appellant must rely upon church groups and food banks amongst others for food and this food is primarily processed, highly refined and causes inflammation such that the appellant is in imminent risk to their health.

The advocate noted that the comments of the GP in the letter state that failure to obtain food that lowers inflammation and improves the appellant's health will result in imminent danger to their life.

In answer to questions the advocate was not able to provide details on the appellant's

weight history other than that the appellant had stated that their current weight may be typical for others but is low for them. The appellant has been losing weight consistently and this unusual weight loss is connected to their COPD. The advocate provided information on the amount of rent for a single bedroom in the local area and stated that this is more than the amount allowed by the ministry for shelter costs.

The advocate reports the appellant has done their own research and feels a ketogenic diet is needed to allow him to become healthier, and this is what they would spend the nutritional funding on. The advocate stated that he understood the GP agreed with the appellant's intention and that this is stated in the letter signed by the GP.

The advocate was not aware if the appellant currently takes a vitamin supplement.

The advocate concluded with a query on why it appears that an individual apparently needs to be at "deaths door" to receive a couple of hundred dollars to feed themselves.

Ministry

The ministry provided no further information for the hearing.

Admissibility of new information

Section 22(4) of the Employment and Assistance Act (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 on all admissible evidence.

In this case although neither the appellant nor ministry offered direct oral testimony, the advocate for the appellant did provide several statements and answers to questions.

The panel admits the new information under section 22(4) of the EAA as evidence 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 the reasonableness of the ministry's decision that denied the appellant's request for the MNS. In particular, was the ministry's decision that the appellant was ineligible for a MNS for both nutritional items and vitamin/mineral supplements, as they do not meet the eligibility criteria set out in the Regulation, supported by the evidence or a reasonable interpretation of the legislation in the circumstances of the appellant?

The relevant legislation is provided in Appendix A.

Appellant Position

The appellant argues that he cannot obtain a balanced diet with the funds provided by the ministry. The result is continued weight loss that exacerbates their physical condition and has resulted in an underweight status with symptoms of malnutrition and that failure to obtain the nutritional supplements will and has resulted in imminent danger to their life.

Ministry Position

The ministry argues that supplements are intended to prevent imminent danger to a person's life, who has a severe medical condition causing a chronic, progressive deterioration of health *with symptoms of wasting*, by providing essential, specified items to supplement regular nutritional needs.

The ministry argues that while the GP states the appellant may be displaying the symptoms of malnutrition ("poor diet leading to malnutrition"), this statement suggests the appellant is experiencing malnutrition due to an unhealthy diet and not as a direct result of a chronic, progressive deterioration of health on account of a severe medical condition.

Further, the ministry notes that in the letter provided at reconsideration the GP states the appellant is displaying the symptom of *underweight status*, however, the height and weight recorded in the MNS application indicates the appellant's BMI is 23.9, which is within normal range.

Therefore, the ministry argues the appellant does not satisfy the legislated requirements for the minimum number of symptoms (two) displayed as a direct result of a chronic, progressive deterioration of health on account of a severe medical condition.

Panel Decision

The legislation for nutritional supplements is contained in section 67 of the Employment and Assistance for Persons with Disabilities Regulation (the Regulation), which states that the minister must receive a request completed by a medical practitioner that has confirmed that:

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; and

That for the purpose of alleviating these symptoms the person requires one or more of the items set out in section 7 of Schedule C; and lastly that failure to obtain those items will result in imminent danger to the person's life.

Section 7 of schedule C clarifies that the two MNS that may be provided under section 67 are additional nutritional items that are part of a caloric supplementation to a regular dietary intake, and vitamins and minerals.

Two or more symptoms

The ministry has already accepted that as a direct result of the chronic, progressive deterioration of health, the appellant displays significant deterioration of a vital organ, the lungs, due to severe end stage COPD.

The panel notes the GP's response in the MNS application that the appellant is being treated for a chronic, progressive deterioration of health as a direct result of the severe medical conditions and has added a comment "see attached." The panel notes there were no additional documents provided with the MNS application and is unsure if the comment refers to the more detailed individual responses following in the application form or if there was some other information that did not make its way to the ministry.

In the MNS application the GP states that the appellant exhibits a "poor diet leading to Malnutrition"; and the later letter states that the appellant has an underweight status. The panel notes however that these statements are unsupported with any detail. The GP has only reported height and weight figures that are unquantified as to the appellant's weight

loss circumstances. The ministry has calculated a body mass index (BMI) of 23.9 and argues that this figure is within the normal range.

The panel finds that the GP's single comment in the earlier application regarding an existing poor diet does not establish that the symptoms of malnutrition are due to the chronic, progressive deterioration of health resulting from the appellant's medical condition, COPD.

The panel notes the advocate's statements that the appellant has suffered consistent unusual weight loss but that no other evidence was provided by the advocate. Additionally, the panel sees no confirmation from the GP in either the application or the letter of unusual weight loss. In the absence of additional evidence, the panel accepts that the appellant's BMI may well be within the normal range and finds on the evidence submitted that the GP has not established that the appellant has underweight status or has suffered significant weight loss. The panel also notes again that the GP attributes the appellant's malnutrition to poor diet, not deterioration of health due to COPD.

Therefore, the panel finds the appellant has not been shown to display two or more of the legislated symptoms that arise as a direct result of the chronic, progressive deterioration of health, and as such the ministry was therefore reasonable in finding the appellant does not meet the requirements of section 67 (1.1) (b).

Vitamin or Mineral supplementation

With regards to the need for vitamin or mineral supplementation the panel notes the GP's responses in the original MNS application and later letter:

- In specifying the vitamin or mineral supplements required: *"Multivitamins."*
- In describing how these items will alleviate a specific symptom: *"Ensure lung health & immune system health."*
- In describing how vitamin/mineral supplementation will prevent imminent danger to the appellant's life: *"Decrease lung deterioration",*

The panel accepts the GP's position that multivitamins would be a benefit to the appellant as described in the treatment of COPD, and for the purpose of alleviating one or more of the symptoms listed in the legislation (significant deterioration of a vital organ) and would prevent imminent danger to the appellant's life. As such, the appellant's request meets the requirement set out in section 67 (1.1) (c) and section 7 of Schedule C for vitamins and minerals.

However, as the panel has found the appellant has not been shown to display two or more of the legislated symptoms that arise as a direct result of the chronic, progressive deterioration of health, the panel finds the appellant is not eligible for the vitamin/mineral supplements MNS.

Additional Nutritional Items (Caloric Supplement)

With regards to the need for additional nutritional items that are part of a caloric supplementation to a regular dietary intake the panel notes the GP's responses in the original MNS application and later letter:

- In specifying the nutritional items required, the GP writes: "Balanced diet with multivitamin support."
- When asked if the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the GP writes: "No."
- In describing how the nutritional items required will alleviate one or more of the symptoms specified and provide caloric supplementation to the regular diet, the GP writes: "Improve lung health & malnutrition."
- In describing how the nutritional items requested will prevent imminent danger to life, the GP writes: "Decrease lung deterioration."

The panel also notes the comments provide by the GP in the later letter that; "The nutritional supplement will help (the appellant) purchase and consume food that lowers inflammation and ultimately improve their health. Failure to obtain these items will result in imminent danger to (the appellant's) life. I support (the appellant's) application for a nutritional supplement..."

The panel also noted the advocate's comments that the appellant is unable to fund a suitably healthy diet with the monies provided by the ministry, and that he relies upon church groups and food banks for food and that this food causes inflammation such that the appellant is in imminent risk to their health. The panel notes that inflammation is not one of the symptoms listed in s67(1.1) (b).

The panel accepts the GP's position that a balanced diet with multivitamin support would be a benefit to the appellant as described in the treatment of COPD, and for the purpose of alleviating one or more symptoms referred to in the legislation and would prevent imminent danger to the appellant's life. Indeed, the GP has stated that the appellant is following a poor diet.

However, the panel sees no written or documentary evidence on the actual caloric value of the appellant's current diet nor how this diet is insufficient. Further, the GP has stated 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. Therefore, the panel finds that although the information shows that additional nutritional items would alleviate the deterioration of a vital organ symptom, it is not as part of a caloric supplementation to a regular dietary intake. Therefore, it does not meet the part of the test set out in section 7 of Schedule C.

Further, as the panel has found the appellant has not been shown to display two or more of the legislated symptoms that arise as a direct result of the chronic, progressive deterioration of health, the panel finds the appellant is not eligible for the additional nutritional items MNS.

The ministry was therefore reasonable in finding the information does not establish that the GP has confirmed the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating a symptom referred to in legislation; but was not reasonable in finding that failure to obtain additional nutritional items would result in imminent danger to the appellant's life.

Ketogenic diet

The panel notes the appellant's claim that he needs additional funds to pursue a ketogenic diet and the advocate's claim that the GP supports him in this intent. Further, the ministry stated that the appellant may be eligible for a ketogenic diet supplement, and if indeed the appellant requires a diet supplement of any kind he should provide confirmation from a medical practitioner, nurse practitioner or dietitian of the *specific* type of diet required and the medical condition causing the need. The panel notes that diet supplements under section 66 of the Regulation include a ketogenic diet. The appellant may wish to contact the ministry about applying for this benefit.

Summary

The panel found the appellant has not established they display two or more of the legislated symptoms and is therefore ineligible for a monthly nutritional supplement under section 67 of the legislation.

Conclusion

Based on all available evidence the panel finds that the ministry's reconsideration decision to be supported by the evidence and was a reasonable interpretation of the legislation in the circumstances of the appellant.

The ministry's reconsideration decision is confirmed. The appellant is not successful on appeal.

Appendix A

Employment and Assistance for Persons with Disabilities Act

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
- (b) is not described in section 8 (2) (b) [*people in special care*] of Schedule A, unless the person is in an alcohol or drug treatment centre,

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.]

[am. B.C. Regs. 317/2008, s. 8; 68/2010, ss. 1 and 2; 145/2015, Sch. 2, ss. 7 and 8; 123/2019, App. 2, s. 3; 21/2023, App. 2, s. 7.]

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;
- (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
- (c) for vitamins and minerals, up to \$40 each month.

APPEAL NUMBER 2023-0199

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

Donald Stedeford

Signature of Chair

Date (Year/Month/Day)

2023/08/16

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

2023/08/16

Print Name

Richard Franklin

Signature of Member

Date (Year/Month/Day)

2023/08/16