

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated September 6, 2023, which determined the appellant was not eligible for the monthly nutritional supplement - nutritional items and vitamin/mineral supplements.

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (Regulation) section 67(1) and Schedule C, section 7

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts

Relevant Evidence Before the Minister at Reconsideration

Ministry Records show the appellant is a person with disabilities in receipt of disability assistance.

Request for Reconsideration (August 16, 2023)

The information was provided by the appellant's physician. They state this case needs reconsideration and approval immediately and add that there was no relevant or obvious reason for denial in the first place; this case meets and far exceeds criteria to be granted under this legislation.

Letter to the Appellant from the Ministry (July 13, 2023)

-denying the appellant's application for a monthly nutritional supplement.

Application for Monthly Nutritional Supplement (application) (April 4, 2023) (signed April 12, 2023 by a dietician and endorsed by the appellant's physician, re-submitted August 15, 2023).

The dietician and physician provided the following information and responses to the questions below

A note attached states, the appellant wears a hearing aid, eye glasses and braces.

List and describe the appellant's severe medical condition(s)

1. Diagnosis

Autism- severe, non-verbal, hearing aid

CV (congenital) disease, CMV congenital infection

Muscular malformation/needs braces

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?

The appellant drinks orally but due to her autism will only drink formulas. Many therapists have tried to get her to drink or eat other things but she refused - would starve.

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 – *if she doesn't drink formula she will not get her nutrients*
- Underweight status – *left blank*
- Significant weight loss – *if no formula will have weight loss*
- Significant muscle mass loss – *left blank*
- Significant neurological degeneration – *left blank*
- Moderate to severe immune suppression – *left blank*
- Significant deterioration of a vital organ – *left blank*

4. height – 5' 7", weight 42 kg

5. Vitamin or Mineral Supplementation

Specify the vitamin or mineral supplement(s) required and expected duration of need.
left blank

Describe how this item will alleviate the specific symptoms identified.
left blank

Describe how this item or items will prevent imminent danger to the applicant's life.
left blank

6. Nutritional Items

Specify the additional nutritional items required and expected duration of need.
Despite many therapy sessions, the applicant refuses to eat food and will only drink supplemental drinks.

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?
left blank

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.
Prevent weight loss and meet calorie and nutritional needs

Describe how the nutritional items requested will prevent imminent danger to the applicant's life.
Prevent weight loss and dehydration

Additional Information

Appellant

Notice of Appeal (September 14, 2023)

No information was provided under the Reasons for Appeal,

Submission 1 (received September 21, 2023)

Letter from the Appellant's Pediatrician to Whom it May Concern (September 20, 2023)

The pediatrician states they have been following the appellant since 2014. The appellant has severe global developmental delay, autism spectrum disorder and congenital cytomegalovirus infection. She has hearing and visual impairments and her development and cognition are similar to a toddler at best.

The pediatrician adds that the appellant is unable to consume a normal solid diet. While this is not due to any gastrointestinal malabsorption syndrome or mechanical gastrointestinal tract obstruction, her severe developmental disability and autism spectrum disorder make her dependent on a liquid nutritional supplement. Her liquid nutritional supplement is life sustaining and without it, she will surely start to lose weight rapidly and suffer the consequences of malnutrition and health decline. While a developmentally normal individual may be able to change their behaviour in the midst of starvation, the appellant does "NOT" possess the mental capacity to understand and follow the appropriate course of actions.

The doctor adds they understand that the provision for additional financial support for nutritional supplements requires documentation of progressive health decline and they have no doubt the appellant will meet these criteria if she is not provided with adequate support to meet her nutritional needs. The pediatrician also states the ministry will have to burden the responsibility for the consequences of the appellant's health deterioration and acknowledge that previous medical advice as outlined above, was declined.

Submission 2 (received October 6, 2023)

Letter from the Director of a Church program to Whom It May Concern (September 23, 2023)

The director states over the last couple of years, they have observed the appellant to be resistant to eating solid foods. Her mother has been supplementing her with Ensure milk to provide needed nutrition. It is becoming the only source of nutrients the appellant will regularly take; however, Ensure is not covered by current financial supports.

At the hearing, the appellant (represented by her mother) stated that she cannot tolerate food and spits it out. This is caused by her autism, not a malabsorption issue. She can't afford to purchase the Ensure but has been buying it to make sure the appellant is healthy and not losing weight. She added that the appellant's condition has not worsened over the years as she has been provided with the nutrition she needs.

The appellant's mother added that her husband died last year, and she has no family support and this situation has caused her a great deal of stress. She also stated that she thinks denying the funds for the nutritional supplement is unfair.

Ministry

At the hearing, the ministry relied on its record. The ministry did not object to the additional information provided.

Admissibility

The panel determined the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably decide that the appellant was not eligible for the monthly nutritional supplement - nutritional items and vitamin/mineral supplements?

Appellant Position

The appellant's mother argues her daughter can't tolerate food, and she can't afford to purchase the Ensure and has no family support. This situation has caused a great deal of stress and she thinks denying the funds for the nutritional supplement is unfair.

Ministry PositionChronic Progressive Deterioration of Health

The ministry acknowledges that although autism and congenital cytomegalovirus infection are severe medical conditions they are not necessarily conditions that can be assumed to be progressive in nature, causing a continual deterioration of health.

The ministry notes the information provided by the dietician and physician confirms the appellant's medical conditions and the resulting impairments, including non-verbal communication, hearing impairment, and muscular malformations. However, based on this information, the ministry argues it cannot be confirmed that the appellant experiences a chronic, progressive deterioration of health as a direct result of her medical conditions. Therefore, the appellant does not meet the eligibility criterion in the Regulation, subsection 67(1.1)(a).

Symptoms

The ministry argues that the information from the dietician and physician do not speak to the display of symptoms in question 3 of the application. The ministry notes in the application the dietician states if the appellant does not drink formula she will not get her nutrients and will experience weight loss. The ministry finds these statements do not confirm the appellant is currently displaying the symptoms of malnutrition or weight loss. Furthermore, the dietician has not described the nature of vitamin/mineral deficiencies causing malnutrition, or lab results confirming the same. Additionally, they have not described an amount of weight loss or the time period over which weight loss occurred. Without this information the ministry cannot be satisfied the appellant experienced significant weight loss, as set out in the legislation.

The ministry also notes that based on the height and weight shown in the application the appellant's body mass index is 19.9, which is within the lower end of the normal range.

Based on the nature of the appellant's medical conditions, the ministry is satisfied the symptom of significant neurological degeneration is supported by the evidence provided. However, as a chronic progressive deterioration of health has not been established, it cannot be confirmed the appellant is displaying the symptom of significant neurological degeneration as a direct result of a chronic progressive deterioration of health.

Therefore, the ministry argues that a medical practitioner or dietician has not confirmed the appellant is displaying at least two of the symptoms as set out in the Regulation, subsection 67(1.1)(b).

Vitamin/Mineral Supplementation

The ministry argues as it has not been established that the appellant is displaying a symptom as listed in question 3 of the application, it cannot be established that she requires vitamin/mineral supplementation to alleviate a symptom. As well, the ministry is not satisfied that the appellant requires vitamin/mineral supplementation to alleviate a symptom set out in subsection 67(1.1)(b) and prevent imminent danger to life.

The ministry finds the statements from the dietician and physician do not speak to the need for vitamin/mineral supplements specifically. As well, the dietician did not complete question 5 of the application. They did not specify any required vitamin/mineral supplements and did not describe how vitamin/mineral supplements will alleviate a specific symptom or how vitamin/mineral supplements will prevent imminent danger to the appellant's life. The ministry determines the eligibility requirements set out in the Regulation, subsections 67(1.1)(c) and (d) have not been met.

Nutritional Items

The ministry argues as it has not been established that the appellant is displaying a symptom as listed in question 3 of the application, it cannot be established that she requires nutritional items to alleviate a symptom.

The ministry also argues it is not satisfied that the appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate symptoms as set out in subsection 67(1.1)(b) due to a progressive deterioration of health and to prevent imminent danger to life.

The ministry finds the information from the dietician and physician do not speak to the need for nutritional items in the form of caloric supplementation specifically. The dietician does not provide enough evidence to demonstrate that the appellant is displaying a symptom set out in the Regulation, subsection 67(1.1)(b), which would indicate a need for caloric supplementation specifically, such as underweight status, significant weight loss, or significant muscle mass loss. The dietician does not confirm that 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 ministry argues a medical practitioner or dietician has not 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 paragraph (b); and that failure to obtain the items requested would result in imminent danger to her life.

Therefore, the ministry again finds the eligibility criteria set out in the Regulation, subsections 67(1.1)(c) and (d) have not been met.

Panel Analysis

Section 67(1)(a) – person with disabilities

Section 67(1)(a) states the minister may provide a nutritional supplement in accordance with section 7 [*monthly nutritional supplement*] of Schedule C for a family in receipt of disability assistance, if the supplement is provided to a person in the family unit who is a person with disabilities. Ministry Records show the appellant is a person with disabilities in receipt of disability assistance.

Section 67(1.1)(a) – chronic progressive deterioration of health

Section 1.1(a) states for a person with disabilities to receive a nutritional supplement, a medical practitioner or dietitian must confirm that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition.

The panel notes in the application, the dietician shows a diagnosis of autism, and congenital disease. The pediatrician states the appellant has severe global developmental delay, autism spectrum disorder and congenital cytomegalovirus infection as well as hearing and visual impairments. The panel finds this evidence supports a severe medical condition.

In the application, in response to the question, “As a direct result of the severe medical conditions(s), is the applicant being treated for a chronic, progressive deterioration of

health?, the dietician states the appellant drinks orally but due to her autism will only drink formulas and many therapists have tried to get her to drink or eat other things but she refused – and would starve.

The pediatrician states they understand that the provision for additional financial support for nutritional supplement requires documentation of progressive health decline and they have no doubt the appellant will meet these criteria if she is not provided with adequate support to meet her nutritional needs.

Although the panel finds the appellant’s medical condition is severe, the panel finds the dietician’s and pediatrician’s information do not confirm that the appellant is presently being treated for a progressive deterioration of health. The dietician did not directly respond to the question and the pediatrician states the appellant will meet the criteria, if not provided with adequate support (indicating at a future time).

Therefore, the panel finds the ministry reasonably determined the criteria under section 67(1.1)(a) of the Regulation was not met.

Section 67(1.1)(b), Regulation – symptoms

Section 67(1.1)(b) requires that as a direct result of this deterioration of health, the appellant displays two or more of the symptoms shown in section 67(1.1)(b) of the Regulation. The panel notes the legislation states “displays”, which is present tense.

In the application, the dietician indicated two symptoms:

- malnutrition (if she doesn’t drink formula, she will not get her nutrients), and
- significant weight loss (if no formula will have weight loss).

The panel finds that the information from the dietician does not confirm the appellant is presently displaying these symptoms.

Although the ministry stated it was satisfied that the symptom of significant neurological degeneration is supported by the evidence, the legislation requires at least two symptoms.

In addition, as the panel found there is insufficient evidence to confirm that the appellant is presently being treated for a chronic, progressive deterioration of health, the symptoms cannot be considered a direct result of this deterioration. Therefore, the panel finds the ministry reasonably determined the appellant does not meet the requirement under section 67(1.1)(b) of the Regulation.

Section 67(1.1)(c), Regulation – requires supplement to alleviate symptom

Sections 67(1.1)(c) states that for alleviating one of the symptoms listed in (b) the appellant requires one or more of the items set out in section 7 of schedule C.

As the panel found there is insufficient evidence to confirm that the appellant is presently being treated for a chronic, progressive deterioration of health, it follows that it cannot be confirmed that a nutritional supplement is a necessary requirement for alleviating the symptoms.

Section 67(1.1)(d) prevent imminent danger to life

Section 67(1)(d) states failure to obtain the items will result in imminent danger to the person's life. The panel notes the pediatrician states that a liquid nutritional supplement is life sustaining and without it, the appellant will surely start to lose weight rapidly and suffer the consequences of malnutrition and health decline. Although the panel finds this statement supports the criterion of "imminent danger", schedule C, section 7 specifies that the amount of a nutritional supplement that may be provided for additional nutritional items must be part of a caloric supplementation to a regular dietary intake. The panel notes the pediatrician states the appellant is unable to consume a normal solid diet. Therefore, the panel finds the nutritional supplement used by the appellant cannot be considered "additional" nutritional items.

In addition, where the dietician was asked if this applicant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the response was left blank.

Also, in the application, the dietician did not provide any information on the requirement for vitamins and minerals.

Although the panel found the evidence supports the criterion for 67(1.1)(d), all the criteria under 67(1.1) must be met to qualify for a nutritional supplement. Therefore, the panel finds the ministry reasonably determined the appellant is not eligible for a monthly nutritional supplement under the legislation.

The panel acknowledges the appellant's difficult situation; however the panel is bound by the legislation, as is the ministry.

Conclusion

In conclusion, the panel finds the ministry decision, which determined that the appellant is not eligible for the monthly nutritional supplement - nutritional items and vitamin/mineral supplements 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, ...

(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.

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;...

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

APPEAL NUMBER 2023-0275

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

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2023/10/26

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2023/10/26

Print Name

Erin Rennison

Signature of Member

Date (Year/Month/Day)

2023/10/26