

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated October 20, 2023, where the ministry denied the appellant’s request for funding for diabetic appropriate food and vitamins/minerals. The ministry determined that the appellant does not meet the required criteria of the Employment and Assistance for Persons with Disabilities Regulation and is therefore not eligible for the requested funding under section 66 (diet supplement), 67 (monthly nutritional supplement), or section 69 (imminent life-threatening health need supplement).

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (the Regulation) sections 61.01, 62, 66, 67 and 69

Part E – Summary of Facts

From the ministry file:

- The appellant is a single person with Persons with Disabilities (PWD) designation. He is in receipt of federal retirement benefits (e.g. CPP, OAS).
- Due to his federal income the appellant is not eligible for disability assistance and therefore does not receive disability assistance. [The appellant does not dispute this.]
- As someone formerly in receipt of assistance, the appellant's file remains open as "medical service only."

On July 25, 2023 the appellant submitted a 3-page statement that included a list of 11 items, 6 of which were crossed out.

- The remaining 5 items were Apple Cider Vinegar, Omega 369, Cinnamon, Fenugreek, and Maca for men.
- The appellant reported that he developed diabetes during his stay in a hospital in 2018. He lost his home in 2018 and is homeless ever since. He must continue to heal his diabetes with the requested supplements and must change his food which is very expensive. Because he does not have a home he cannot cook. In summer he must throw away surplus food because he has no fridge.

On the same day (July 25, 2023) the appellant also submitted a 1-page statement (he repeatedly refers to it as "page 4") where he writes that

- he needs "6 vitamins regularly.
- Benfotiamine, alpha-lipoic acid, Vitamin B6, vitamin B12, Vitamin D, and Acetyl-L-Carnitine are perfect to prevent diabetes complications...
- Dr. [E] is an endocrinologist with a particular interest and passion for diabetes care."

In his Request for Reconsideration dated October 2, 2023

- the appellant submitted various receipts for purchases of vitamin/minerals and food items.
- He re-submitted the list of requested items from his July 25, 2023 "page 4" submission (Benfotiamine, alpha-lipoic acid, Vitamin B6, vitamin B12, Vitamin D, and Acetyl-L-Carnitine) with the comment "This list was and is for diabetes and was ignored and not included with my request for financial support."
- He wrote that he has been regularly taking the requested items since September 2022 and that he has the right to refuse injections of insulin and other treatments because insulin is not a cure but only addresses the symptoms.

In his Notice of Appeal dated November 3, 2023 the appellant states that

- the ministry ignored and did not respond to his “page 4” request for Benfotiamine, alpha-lipoic acid, Vitamin B6, vitamin B12, Vitamin D, and Acetyl-L-Carnitine.
- Dr. E. is licensed in the USA.

In a submission dated November 3, 2023 the appellant repeats previous information and adds that

- he needs a proper diet of organic food, vegetables, fruit, nuts etc. to get better.
- His lab tests results are “very serious and very scary”.

In an email dated November 6, 2023 the appellant writes that

- food items available in regular stores are “contaminated with sugar”.
- He is not in favor of synthetic or manmade medication from pharmaceutical laboratories.

He provides a link for a YouTube video on diabetes.

An email from a medical clinic dated November 5, 2023 states that the appellant’s “LDL, or bad cholesterol levels were high.”

Admissibility of New Evidence:

The panel finds that the information provided by the appellant on appeal is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel’s understanding of the circumstances surrounding the appellant’s request for a health supplement for funding for diabetic appropriate food and vitamins/minerals. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request for funding for diabetic appropriate food and vitamins/minerals was a reasonable application of the legislation or reasonably supported by the evidence.

Section 66 (diet supplement) includes the requirement that the appellant must be in receipt of disability assistance or hardship assistance. Section 67 (monthly nutritional supplement) only requires receipt of disability assistance.

Section 69 (health supplement for persons facing direct and imminent life-threatening health need) applies for persons who are otherwise not eligible under this regulation. Diet supplements or nutritional supplements are not among the items available for funding under this section.

Appellant Position

The appellant argues he should be eligible for the requested items because he needs them to heal his diabetes and because he is not in favor of synthetic medication. He also needs an expensive diet of organic food, vegetables, fruit and nuts. In addition, the appellant argues that the ministry was negligent by failing to address the list of required items (Benfotiamine, alpha-lipoic acid, Vitamin B6, vitamin B12, Vitamin D, and Acetyl-L-Carnitine) on his "page 4".

Ministry Position

The ministry determined the appellant is not eligible for funding for diabetic appropriate food and vitamins/minerals as a diet supplement or as a monthly nutritional supplement. Section 66 states the ministry may pay for a diet supplement to or for a family unit in receipt of disability assistance or hardship assistance. Section 67 states that the ministry may provide a monthly nutritional supplement to or for a family unit in receipt of disability assistance. The appellant is not in receipt of disability assistance and therefore is not eligible under section 66 or 67.

Section 69 (direct and imminent life-threatening health need) only applies to medical transportation, medical equipment/devices, and some types of medical supplies; diet supplements, nutritional supplements, and vitamin/mineral supplements are not among these. Section 69 does not apply in the appellant's case because he is otherwise eligible for health supplements as a "continued person". In addition, the ministry determined that a direct and imminent life-threatening need could not be established.

Panel Decision

While the appellant argues he should be eligible for the requested items because he needs them to heal his diabetes and because he does not favor synthetic medication, the panel finds the ministry was reasonable when it denied the appellant's request for funding for diabetic appropriate food and vitamins/minerals.

The panel finds the ministry was reasonable when it denied the appellant's request for funding for diabetic appropriate food and vitamins/minerals as diet supplement (section 66) or monthly nutritional supplement (section 67). Section 66 requires a successful applicant to be in receipt of disability assistance or hardship assistance. Section 67 only requires receipt of disability assistance. As the appellant does not receive disability assistance, he cannot be found eligible for a nutrition-related supplement as set out in sections 66 or 67.

The panel also finds the ministry was reasonable when it determined the appellant did not qualify under section 69 for the requested items as a person facing a direct and imminent life-threatening health need. This section only applies to medical transportation, medical equipment/devices, and some types of medical supplies which do not include diabetic appropriate food or vitamins/minerals. Section 69 only applies for persons who are otherwise not eligible for health supplements. The appellant, however, is eligible for health supplements as a "continued person". In addition, there is insufficient evidence that the appellant experiences a direct and imminent life-threatening health need.

While the appellant argues that the ministry failed to address the items he requested on "page 4", the panel finds there is no evidence to support this claim. On his "page 4" the appellant requested the following items: Benfotiamine, alpha-lipoic acid, Vitamin B6, vitamin B12, Vitamin D, and Acetyl-L-Carnitine. The panel finds that in its reconsideration decision the ministry appropriately classified the requested items as diabetic appropriate food and vitamins/minerals. The panel notes that this appeal is about the ministry's reconsideration decision, not its original decision.

Conclusion

The panel acknowledges the appellant may benefit from diabetic appropriate food and vitamins/minerals. However, the panel finds the ministry was reasonable when it determined that he was not eligible under section 66 (diet supplement), 67 (nutritional

supplement) or 69 (imminent life-threatening health need). The ministry's reconsideration decision is confirmed and the appellant is not successful on appeal.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Definitions

61.01

"**nutrition-related supplement**" means any of the following supplements:

- (a) a supplement under section 66 [*diet supplement*];
- (b) a supplement under section 67 [*nutritional supplement — monthly*], other than a supplement for vitamins and minerals;
- (c) a supplement under section 67.001 [*nutritional supplement — short-term*];
- (d) a supplement under section 67.01 [*tube feed nutritional supplement*];
- (e) a supplement under section 2 (3) of Schedule C that is related to nutrition

General health supplements

62 The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

Diet supplement

66 (1) Subject to subsection (2), the minister may pay for a diet supplement in accordance with section 6 [*diet supplements*] of Schedule C that is provided to or for a family unit in receipt of disability assistance or hardship assistance, if the supplement is provided to or for a person in the family unit who

- (a) is described in section 6 (1) of Schedule C, and
- (b) is not described in section 8 (2) (b) [*people in special care*] of Schedule A.

(2)A person is not eligible to receive a supplement under subsection (1) unless

- (a)the person is not receiving another nutrition-related supplement, and
- (b)a medical practitioner, nurse practitioner or dietitian confirms in writing the need for the special diet.

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.

Health supplement for persons facing direct and imminent life threatening health need

69 (1)The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

(2) For the purposes of subsection (1) (c),

- (a) "**adjusted net income**" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and
- (b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit, other than a dependent child.

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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) and Section 24(1)(b)
Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2023/12/17

Print Name

Corrie Campbell

Signature of Member

Date (Year/Month/Day)

2023/12/19

Print Name

Melissa McLean

Signature of Member

Date (Year/Month/Day)

2023/12/19