

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision, dated October 30, 2023 (the “Reconsideration Decision”) of the Ministry of Social Development and Poverty Reduction (the “Ministry”). The Ministry determined that the Appellant was not eligible for a monthly nutritional supplement for vitamins and minerals because:

- the Appellant resides in a special care facility that is not an alcohol or drug treatment centre; and
- the Appellant had not established that he was displaying two or more of the symptoms listed in section 67(1.1)(b) of the *Employment and Assistance for Persons with Disabilities Regulation*.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”)- sections 1, 67, and 70.5, Schedule A- section 8(2)(b)

A full text of the above-noted legislation is reproduced at the end of Part F of this decision.

Part E – Summary of Facts

The Appellant is a recipient of disability assistance.

The information before the Ministry at the time of the Reconsideration Decision included:

- the Monthly Nutritional Supplement Decision Summary, dated September 26, 2023, in which the Ministry determined that:
 - the Appellant lived in a long term care facility that was not an alcohol or drug treatment centre; and
 - the Appellant was not displaying two or more of the symptoms listed in section 67(1.1)(b) of the *Employment and Assistance for Persons with Disabilities Regulation*.
- the Ministry's letter to the Appellant, dated September 26, 2023;
- letter from a neurologist, dated September 6, 2023, which sets out that the Appellant requires Vitamin D supplementation for bone prophylaxis, resulting from his use of multiple long term anti-seizure medication;
- the Appellant's Application For Monthly Nutritional Supplement, which included part of a consult report from the neurologist, which set out that:
 - the Appellant was diagnosed with drug resistant epilepsy; and
 - the Appellant should be taking 2000 units of Vitamin D for bone health daily;
- the Appellant's Request for Reconsideration, which included:
 - a typed letter from the Appellant's advocate, which set out that:
 - the Appellant was receiving disability benefits, contrary to what was indicated in the initial denial letter;
 - the Appellant lived in supported housing but not in a long term care facility; and
 - the Appellant required Vitamin D supplementation as he was at increased risk of fractures and that there was also the possibility that the Appellant could suffer from neurological deterioration due to epilepsy; and
 - a brief letter from a professor of anatomy which set out that the bones function as an organ; and
- the Facility Admittance Form from the Appellant's current residence which indicated that:
 - the Appellant was eligible for comforts funds and that the facility was categorized as a "Residential Mental Health Facility".

The Appellant's Notice of Appeal was filed on November 21, 2023, and noted that the Appellant required Vitamin D, attaching the September 6, 2023 letter from the neurologist.

The Appellant also provided a submission prior to the hearing consisting of a summary from the Epilepsy Foundation describing how Vitamin D can be necessary for persons suffering from Epilepsy.

The Hearing

The Appellant

At the hearing of the appeal, the Appellant's advocate pointed out the necessity of the Vitamin D supplementation and noted that its cost was relatively low.

The advocate highlighted that, in addition to the bone systems being a major organ, Epilepsy can also cause neurological damage.

The advocate referred to the summary set out in the submission which noted that Vitamin D can impact Epilepsy symptoms and plays a role in preventing seizures.

The Appellant confirmed that he has been living at his current residence for four years and that they are unable to provide him with Vitamin D. Instead, after payment of his shelter allowance, the Appellant has \$274.00 left over each month to pay for his expenses.

The Appellant confirmed that he is seeing a neurologist on an "as needed" basis.

When asked, the Appellant stated that he is not suffering from malnutrition, being underweight, weight loss, or significant muscle mass loss.

The Ministry

The Ministry noted that it had accepted, in the Reconsideration, that bones are a vital organ. However, the Ministry also stated that eligibility required a request completed by a medical practitioner which confirmed that the Appellant was suffering from a second symptom set out in section 67(1.1)(b) of the *Regulation*. The Ministry conceded that while it was reasonable to surmise that the Appellant would display symptoms of significant neurological degeneration as a result of having Epilepsy, it required that confirmation from one of the prescribed practitioners.

The Ministry also noted, however, that even if the Appellant had satisfied the criteria in section 67(1.1), the evidence about the Appellant's current living circumstances was such

that he was a person described in section 8(2)(b) of Schedule A to the *Regulation*, namely, a “person in special care.” In particular, the Appellant receives a comfort allowance and the Ministry pays directly for the Appellant’s living expenses at a facility which is not an alcohol or drug treatment centre.

The Ministry did not object to the admissibility of the new information provided by the Appellant prior to the appeal. Although the Ministry had conceded in the Reconsideration Decision that bones were a vital organ, the panel nevertheless admits the new information as it addresses the benefits of Vitamin D for persons with epilepsy and, as such, constitutes evidence that is not part of the record but reasonably required for a full and fair disclosure of all the matters related to the appeal.

Part F – Reasons for Panel Decision*Issue on Appeal*

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant was not eligible for a monthly nutritional supplement for Vitamin D because:

- the Appellant resides in a long-term care facility that is not an alcohol or drug treatment centre; and
- the Appellant had not established that he was displaying two or more of the symptoms listed in section 67(1.1)(b) of the *Regulation*.

Panel Decision

Eligibility for a nutritional supplement is governed by section 67 of the *Regulation*.

Under section 67, a monthly nutritional supplement may be provided to a person with disabilities who is in receipt of disability assistance and is not a person described in section 8(2)(b) of Schedule A to the *Regulation*, unless the person is in an alcohol or drug treatment centre.

The Appellant is a person with disabilities and he is not in an alcohol or drug treatment centre.

Section 8(2)(b) of Schedule A to the *Regulation* sets out that the amount of disability assistance payable to a person in special care is the actual amount of the person's actual cost of care and a comforts allowance at a specified rate, depending on whether the person is a person with disabilities or not.

Section 8 of Schedule A refers to a "person in special care facility", a term which is defined in section 70.5 of the *Regulation* as a person who "receives accommodation and care in a special care facility or a private hospital, other than a special care facility operated by a service provider as defined in section 1 of the *Community Living Authority Act*" or someone admitted to hospital.

A special care facility is defined in section 1 of the *Regulation* as a "facility that is a licensed community care facility under the *Community Care and Assisted Living Act* or a specialized adult residential care setting approved by the Minister under subsection (3)."

Section 1(3) of the *Regulation*, sets out that a “special care facility” can include a place that provides accommodation and care for adults that has been approved by the Minister.

The Facility Admittance Form provided to the Ministry sets out that the Appellant is living in a Residential Mental Health Facility, which is consistent with the definition of “special care facility” and making the Appellant a “person in special care.” The Ministry confirmed that it was paying for the Appellant’s living costs, as per section 8(2)(b) of the Schedule A to the Regulation. The Facility Admittance Form also indicates that the Appellant was eligible for comforts funds, which are being paid by the Ministry.

The above is consistent with the Appellant being a person who is described in section 8(2)(b) of Schedule A to the *Regulation*, which precludes a person from receiving a monthly nutritional supplement unless that person is residing in an alcohol or drug treatment facility. The Appellant is not living in an alcohol or drug treatment facility.

In the result, the panel finds that the Ministry was reasonable in its determination that the Appellant was not eligible to receive a monthly nutritional supplement pursuant to section 67(1)(b) of the *Regulation*.

Section 67(1.1) of the *Regulation*, requires that a request for a monthly nutritional supplement be completed by a prescribed practitioner and confirm that the person making the request is being treated for a chronic, progressive deterioration of health on account of a severe medical condition and, as a result is displaying at least two of the symptoms set out in section 67(1.1)(b), namely:

- malnutrition;
- underweight status;
- significant weight loss;
- significant muscle mass loss;
- significant neurological degeneration;
- significant deterioration of a vital organ; and
- moderate to severe immune suppression.

The Appellant stated that he is not suffering from any of the first four symptoms listed in section 67(1.1)(b). For the purposes of the application, the Ministry accepted that the bone system, which the Appellant’s doctor noted was at risk from his epilepsy medication, was a vital organ.

However, the Appellant's request did not contain confirmation from a prescribed practitioner that the Appellant was suffering from a second of the other symptoms set out in section 67(1.1)(b) of the *Regulation*. In addition, none of the information submitted by the Appellant with the Request for Reconsideration, the Notice of Appeal, or the submission prior to the hearing confirmed that the Appellant was suffering from another of the other symptoms set out in section 67(1.1)(b). While the Ministry surmised that it stands to reason that the Appellant's epilepsy could contribute to neurological degeneration, no such confirmation from a prescribed professional was before the Ministry or is before the panel. For that reason, the panel finds that the Ministry was also reasonable in its determination that the Appellant had not satisfied the requirement of confirmation, from a prescribed practitioner, that he displays two or more of the symptoms described in section 67(1.1)(b).

The Appellant is not successful in this appeal.

Relevant Legislation

Definitions

1 (1) In this regulation:

...

"**special care facility**" means a facility that is a licensed community care facility under the *Community Care and Assisted Living Act* or a specialized adult residential care setting approved by the minister under subsection (3);

...

(3) For the purposes of the definition of "special care facility", the minister may approve as a specialized adult residential care setting a place that provides accommodation and care for adults and for which a licence under the *Community Care and Assisted Living Act* is not required.

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.]

Definitions

70.5 In this Division:

"**person in special care**" means a person who

- (a) receives accommodation and care in a special care facility or a private hospital, other than a special care facility operated by a service provider as defined in section 1 of the *Community Living Authority Act*, or
- (b) is admitted to a hospital because the person requires extended care;

People in special care or otherwise living away

8 (1) In this section, "**person in special care**" and "**specified person**" have the same meanings as in section 70.5 [*definitions — housing stability supplement*] of this regulation.

(2) For a family unit that includes one or more specified persons, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the amount that would be calculated under this Schedule if the specified persons were not part of the family unit, and

(b) for each specified person who is a person in special care,

(i) the actual cost, if any, to the person of the accommodation and care at the rate approved by the minister for the type of the facility, and

(ii) a comforts allowance in the following amount:

(A) if the person is a person with disabilities, \$222;

(B) if the person is not a person with disabilities, \$115.

(3) For certainty, this section applies in relation to a family unit that includes only one or more persons in special care and, in that case, the amount referred to in subsection (2) (a) is to be considered to be zero.

2023-0358

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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2023/12/21

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2023/12/21

Print Name

Mary Chell

Signature of Member

Date (Year/Month/Day)

2023/12/21