

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision, dated January 16, 2024 (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 it had not been determined by a medical practitioner that the Appellant was displaying at least two of the symptoms set out 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”)- section 67 and Schedule C- section 7

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

- the Ministry's letter to the Appellant, dated November 16, 2023;
- the Ministry's Nutritional Supplement Decision Summary, dated November 16, 2023 (the "Decision"), in which the Ministry determined that the Appellant was not displaying two or more of the symptoms described in section 67(1.1)(b) of the Regulation;
- an invoice from the Appellant's doctor (the "Doctor"), dated September 28, 2023, for the cost of completing Part B of the Appellant's Application for Monthly Nutritional Supplement, dated July 26 2023 (the "Application");
- the Application, which was received by the Ministry on September 27, 2023, in which the Doctor noted that:
 - the Appellant was 169 centimetres tall and weighed 67 kilograms;
 - the Appellant displayed symptoms of malnutrition from "malabsorption due to hypothyroidism" and that the Appellant's thyroid and parathyroid conditions, as well as left arm mobility issues caused by injuries from a motor vehicle accident, resulted in an "increasing risk of significant muscle mass loss";
 - required calcium, magnesium iron, and a vitamin D supplement;
 - the required items would reduce muscle spasm, increase strength, and maintain nutritional balance;
 - low calcium levels can be severe up to cardiac arrest, low iron can increase fatigue and imbalance, magnesium is essential to increase calcium absorption and maintain muscle and nerve function, and vitamin is essential for calcium and immune regulation;
 - the Appellant has "malabsorption issues due to parathyroid destruction, affecting her ability to proper (sic) absorb calcium, thereby impacting overall nutrition" which "necessitates calcium and vitamin D supplementation to prevent severe complications, including the risk of cardiac arrest from low calcium levels";
 - "calcium and Calcitriol supplements maintain safe calcium levels to prevent cardiac risk. Vitamin D aids calcium absorption crucial due to parathyroid issues. Magnesium and iron are vital for metabolic functions and preventing anemia; and

- “the patient is at risk of malnutrition due to the chronic, progressive deterioration of health caused by thyroid and parathyroid dysfunction. Nutritional supplementation is medically essential to prevent imminent danger, including severe hypocalcaemia; and
- the Appellant’s Request for Reconsideration, dated December 28, 2023, in which the Appellant wrote that:
 - she does meet two of the eligibility criteria;
 - in addition to having malnutrition, she is also experiencing muscle mass loss;
 - she has hyperthyroidism which causes fatally low calcium levels;
 - she had critically low calcium levels;
 - she has been instructed by her doctor to remain inactive to keep her heart rate low and reduce her risk of cardiac arrest;
 - she experiences muscle spasms and tingling and numbness; and
 - her body does not always absorb calcium in pill form and needs to supplement calcium with nutritious food to maintain muscle mass.

In her Notice of Appeal, the Appellant wrote that she has severe muscle weakness and spasms, and the supplements were vital for her. She also wrote that she doesn’t get out of bed for days because of dizziness and nausea.

Prior to the hearing of the appeal, the Appellant submitted two additional documents for consideration:

- a letter, dated June 7, 2023 (the “Counselor’s Letter”), from a counselor who wrote that the Appellant had been in counseling from November 15, 2022, and had shown symptoms of anxiety, low mood, and post-traumatic stress disorder with intrusive memories and avoidance; and
- a letter from another doctor (the “Second Doctor’s Letter”), which set out that the Appellant had hypoparathyroidism and hypocalcemia, with severe symptoms, and needed IV calcium to raise her levels to the lower limit of normal.

At the hearing of the appeal, the Ministry did not object to the admissibility of either the Counselor’s Letter or the Second Doctor’s Letter but indicated that a counselor’s opinion was not one that could be accepted in respect of an application for a nutritional supplement. The Ministry took the position that the panel should give the Counselor’s Letter very little weight.

Section 22(4) of the *Employment and Assistance Act* permits the panel to consider evidence that is “not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.”

With respect to the Counselor’s Letter, it is difficult to see how the Appellant’s psychological symptoms have any bearing on the issue before the panel in this appeal. As such, the panel does not admit the Counselor’s Letter, as it is not reasonably required for a full and fair disclosure of the matters related to the decision under appeal. Even were it to be admitted, the panel would give it no weight as it does not address any relevant issues in this appeal.

The panel admits the Second Doctor’s Letter, which does address the condition that the Ministry had determined to be a severe medical condition, as contemplated by section 67(1.1) of the Regulation.

The Hearing

The Appellant

The Appellant’s niece is a nurse. She gave evidence about the Appellant’s condition and muscle mass loss.

In 2019, the Appellant’s thyroid gland was removed, which resulted in the Appellant’s parathyroid gland being damaged. The result of the injury was a condition called hypoparathyroidism. This causes a deficiency in the body’s ability to absorb calcium. The condition is rare and one that cannot be rectified by a transplant.

The lack of calcium also affects the Appellant’s heart, which has resulted in the Appellant being advised to remain inactive to prevent the risk of cardiac arrest and other heart issues. The Appellant, for example, has been told not to climb stairs. The Appellant’s niece stated that the Appellant’s inactivity is leading to a loss of muscle mass.

The Appellant’s niece questioned the Ministry’s measure of muscle mass loss and stated that, for example, body mass index was not a reliable indicator of muscle mass loss.

The Ministry

The Ministry stated at the hearing that the information from the Doctor indicated that while the Appellant was at risk of suffering from muscle mass loss, there was not sufficient

evidence that the Appellant was currently displaying the symptom of significant muscle mass loss. The Ministry stated that there was no one single criteria that it looked at as an indicator of significant muscle mass loss but that it required confirmation from one of the prescribed professionals that an applicant was displaying significant muscle mass loss. Confirmation that an individual was at risk of significant muscle mass loss was not sufficient.

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 vitamins and minerals because it had not been determined by a medical practitioner that the Appellant was displaying at least two of the symptoms set out in section 67(1.1)(b) of the Regulation.

Panel Decision

Eligibility for a supplement in respect of the vitamins and minerals and nutritional items described in section 7 of Schedule C to the *Regulation* is governed by section 67(1.1) of the *Regulation*.

Section 67(1.1) requires confirmation, in the form specified by the Ministry (in this case, the Application) that a person with disabilities:

- is being treated by a medical practitioner or nurse practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;
- displays, as a direct result of the chronic, progressive deterioration of health, two or more of the following symptoms:
 - malnutrition;
 - underweight status;
 - significant weight loss;
 - significant muscle mass loss;
 - significant neurological degeneration;
 - significant deterioration of a vital organ; or
 - moderate to severe immune suppression;
- requires the items set out in section 7 of Schedule B for the purpose of alleviating one of the above symptoms; and
- will suffer an imminent danger to life if he or she cannot obtain the nutritional items described above.

In this case, the parts of the Application completed by the Doctor confirmed that the Appellant is being treated for hypothyroidism and parahypothyroidism. The Application also confirmed that the Appellant is presently displaying symptoms of malnutrition.

However, in respect of the other symptoms set out in section 67(1.1)(b) of the Regulation, only muscle mass loss was addressed at all in the Application.

With respect to muscle mass loss, the Doctor wrote: “thyroid and parathyroid conditions increasing risk of significant muscle mass loss.” The legislation uses the term “displays”, indicating that the symptoms must be current, not something that is a future risk, in order for the criteria in the legislation to be satisfied. While the Appellant’s niece gave evidence on the issue of muscle mass loss, that evidence was focused on the mechanism by which the Appellant’s condition leads to muscle mass loss. The legislation also requires that confirmation of the symptoms be “in the form specified by the Minister”.

In view of all the foregoing, the panel finds that, while the Appellant may be at risk of developing significant muscle mass loss, the Ministry was reasonable in its determination that the Appellant does not presently display symptoms of significant muscle mass loss.

The Appellant is not successful in this appeal.

Relevant Legislation

Employment and Assistance for Persons with Disability Regulation- Section 67

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.]

Employment and Assistance for Persons with Disability Regulation- Schedule C, section 7

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 \$180 each month;
- (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
- (c) for vitamins and minerals, up to \$45 each month.

2024-0028

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)

2024/02/23

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2024/02/23

Print Name

Maryam Majedi

Signature of Member

Date (Year/Month/Day)

2024/02/19