

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 5, 2012, which denied the appellant's request for Monthly Nutritional Supplements (MNS) for nutritional items and vitamins/minerals pursuant to Section 67 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and Section 7 of the Schedule C of the EAPWDR. The ministry held that the information provided by the appellant's physician did not establish that:

- The appellant displays two or more symptoms that are a direct result of a chronic, progressive deterioration of health;
- The appellant requires additional nutritional items for the purpose of alleviating one or more of the symptoms that are a direct result of a chronic, progressive deterioration of health;
- Failure to obtain additional nutritional items would result in imminent danger to life.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Section 67
Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Schedule C, Section 7

PART E – Summary of Facts

The evidence before the ministry at the reconsideration decision included:

- Application for Monthly Nutritional Supplement completed and signed by the appellant's physician on October 12, 2011;
- Monthly nutritional supplement decision summary dated November 30, 2011;
- Request for reconsideration dated December 13, 2011.

The appellant's physician in the application for MNS stated that the appellant is diagnosed with diabetes and he has been treated for a chronic, progressive deterioration of health. The physician further stated that the appellant, as a result of the chronic, progressive deterioration of health, displays symptom of malnutrition and significant muscle mass loss. The physician specified the appellant's height 6 ft. and weight 160 lb. The physician answered "NIL" specifying the vitamin or mineral supplements required for the appellant. The physician stated "weight control" respecting how the requested items would alleviate one or more symptoms identified. Regarding the question "how the requested items would prevent imminent danger to the applicant's life", the physician noted "more protein/more fruit". The physician specified "Ensure" as the additional nutritional items required and stated yes in response to whether the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

At the hearing the appellant provided a copy of his latest blood test dated January 26, 2012. He confirmed that he does not have any other new evidence. The panel reviewed the information. The ministry did not object to admitting the information. The panel admits the document in support of the information before the ministry at the reconsideration pursuant to Section 24 (4) of the *Employment and Assistance Act EAA*. However, the panel notes that the document is the result of the appellant's blood test and does not have any other information as to the medical conditions of the appellant or a diagnosis.

The appellant stated that he has diabetes and sleep-walks. He has lost over 40 pounds in the last 4 years and needs vitamins and nutrition to be able to control his weight loss. The appellant further stated the he could not afford buying healthy food.

The ministry stated that there are no issues regarding the appellant is a person with disabilities and is eligible for support and shelter. The ministry also confirmed that the nutritional items were prescribed by a medical practitioner and the appellant is diagnosed with diabetes. The ministry further stated that there is no issue that the appellant is being treated for a chronic, progressive, deterioration of health. However, the ministry stated that the medical practitioner only confirmed that the appellant displays one symptoms (malnutrition) and submits that although the physician indicates the appellant has significant muscle mass loss, the applicant height/weight data is within the normal range (6.0 and 160 lbs.) and the physician did not provide any historical weight information.

The ministry further submitted that the medical practitioner did not report how the requested items would prevent imminent danger to the appellant's life.

The appellant stated that he has significant muscle mass loss and requires nutrition and vitamins. The appellant after reviewing his initial application requesting MNS, confirms that the medical practitioner did not indicate that he needs vitamins and agrees that the application lacks some of the required information.

The panel finds that:

- The medical practitioner confirmed that the appellant has diabetes;
- The medical practitioner confirmed that the appellant is being treated for a chronic, progressive deterioration of health;
- The medical practitioner confirmed that as a result of the chronic, progressive deterioration of health,

the appellant displays two symptoms – malnutrition and significant muscle mass loss;

- The medical practitioner did not specify that vitamin or mineral supplements are required for the appellant;
- The medical practitioner specified Ensure as additional nutritional items required for the appellant; however, did not confirm the expected duration of need;
- The medical practitioner confirmed that the appellant is unable to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's determination that the appellant is not eligible for MNS was a reasonable application of the applicable enactment in the circumstances of this case. The ministry held that the information provided by the appellant's physician did not establish that:

- The appellant displays two or more symptoms that are a direct result of a chronic, progressive deterioration of health;
- The appellant requires additional nutritional items for the purpose of alleviating one or more of the symptoms that are a direct result of a chronic, progressive deterioration of health;
- Failure to obtain additional nutritional items would result in imminent danger to life.

The applicable legislation, Section 67 and Schedule C, Section 7 of the EAPWDR sets out the criteria that must be met for the approval a request for the Monthly Nutritional Supplements.

Pursuant to Section 67 (1) of the EAPWDR - Nutritional supplement - The minister may provide a nutritional supplement in accordance with section 7 [*monthly nutritional supplement*] of Schedule C to or for a person with disabilities in a family unit who receives disability assistance under

(a) section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A, or

(b) section 8 [*people receiving special care*] of Schedule A, if the special care facility is 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 a supplement under section 2 (3) [*general health supplement*] of Schedule C,

(e) the person is not receiving a supplement under subsection (3) or section 66 [*diet supplements*],

(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 or nurse practitioner, in which the practitioner has confirmed all of the following:

(a) the person with disabilities to whom the request relates is being treated by the 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 or nurse practitioner other than the practitioner referred to in subsection (1) (c).

(3) The minister may provide a nutritional supplement for a period of 3 calendar months to or for a family unit if the supplement is provided to or for a recipient of disability assistance or a dependent child of a recipient of disability assistance if

- (a) the recipient or dependent child is not receiving a supplement under subsection (1) of this section or section 2 (3) of Schedule C, and
- (b) a medical practitioner or nurse practitioner confirms in writing that the recipient or dependent child has an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from
- (i) surgery,
 - (ii) a severe injury,
 - (iii) a serious disease, or
 - (iv) side effects of medical treatment.

Section 7 of the schedule C of the EAPWDR states: 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.

The ministry submitted that based on the physician report, the appellant, as a result of his chronic, progressive deterioration of health, displays the symptom of malnutrition. The ministry further submitted that although the physician indicated that the appellant has significant muscle mass loss, the physician did not provide any information to explain the amount of muscle mass loss nor indicated any history of the muscle mass loss.

The appellant argued that he does display two symptoms as a result of his chronic, progressive, deterioration of health. The appellant said that he needs vitamins and nutritional supplement and can't afford to pay for the costs. The appellant further confirmed that his physician did not complete all the information required and agreed with the ministry that his physician should have provided more information regarding his medical conditions. The appellant further stated that he would like to have an assistant to go back to the doctor and reapply for the MNS.

The ministry relies on Section 67 of the EAPWDR and Section 7 of the Schedule C of the EAPWDR and submitted that based on the information before the ministry at the reconsideration the appellant is not eligible to receive MNS.

Section 67 (1.1) of the EAPWDR sets out specific criteria that must all be confirmed by a medical practitioner or nurse in order for a person with disabilities to receive a nutritional supplement under this section.

There is no dispute that the appellant meets the requirements in Section 67 (1.1) (a) of the legislation.

Respecting Section 67 (1.1) (b), the medical practitioner confirmed two of the listed symptoms, malnutrition and significant muscle mass loss. The panel accepts the finding of the medical practitioner and finds that based on the evidence, the ministry's decision stating that the appellant is displaying one symptom as a direct result of a chronic, progressive deterioration of health was unreasonable.

Respecting subsection 67(1.1) (c), the medical practitioner did not provide any information as whether the vitamin or mineral supplements are required to alleviate the identified symptoms and/or they are necessary to prevent imminent danger to the appellant's life. The physician, in response to how the supplements will prevent imminent danger to the appellant's life stated "more protein and more fruit". The physician specified ensure as nutritional items required however, failed to state for how long.

Respecting subsection 67 (1.1) (d), "failure to obtain the items will result in imminent danger to the appellant's life", the medical practitioner stated "weight control, diabetes and sugar control". Therefor the panel finds that

the medical practitioner did not indicate or describe how failure to obtain more protein and more fruit will result in "imminent danger" to the appellant's life.

Section 7 of the Schedule C of the EAPWDR states the nutritional supplement may be provided pursuant to Section 67 is the sum of the amounts for additional nutritional items as part of a caloric supplementation to regular dietary intake up to \$165 each month and for vitamins and minerals up to \$40 each month.

The panel finds that the medical practitioner did not specify any vitamin or mineral supplements; therefore, the panel finds that vitamin and mineral supplement were not requested. Respecting the additional nutritional items, the medical practitioner specified "ensure"; however, the physician did not provide any further information on the expected duration of need. Furthermore, the physician did not provide any information regarding how the requested item "ensure" will alleviate one or more symptoms specified. The physician stated "yes" respecting whether the appellant has a medical condition that results in the inability to absorb sufficient calories through a regular dietary intake; however, the physician did not provide any further information on how the appellant's medical condition, diabetes, results in the inability to absorb sufficient calories or how the requested item "ensure" would alleviate the appellant's symptoms.

Based on all available information and the oral evidence of the appellant and the ministry at the hearing, the panel finds that the ministry reasonably determined that the appellant did not meet all the requirements in Section 67 (1.1) (c) and 67(1.1) (d) of the EAPWDR.

The panel finds that the ministry's reconsideration decision in the appellant's circumstances was reasonably supported by the evidence and applicable legislation and confirms that decision.