

## PART C – Decision under Appeal

The appellant appeals the Ministry's Reconsideration Decision dated January 16, 2012, which denied his request for Monthly Nutritional Supplement ("MNS") on the basis that he did not meet the criteria set out in the *Employment and Assistance for Persons with Disabilities Regulation*, section 67 and Schedule C, section 7(a). The Ministry determined that the appellant's medical practitioner did not confirm that the appellant displays two or more of the symptoms listed in subsection 67(1.1)(b) as a result of his chronic, progressive deterioration of health. The Ministry determined that the appellant's medical practitioner did not confirm that the appellant requires vitamin/mineral supplements: to alleviate the symptoms of his chronic, progressive deterioration of health, as required by subs. 67(1.1)(c); as part of his regular dietary intake; and to prevent imminent danger to life as required by subs. 67(1.1)(d). The Ministry further determined that the appellant's medical practitioner did not confirm that the appellant requires the requested additional nutritional items: to alleviate the symptoms of his chronic, progressive deterioration of health, as required by subs. 67(1.1)(c); as part of a caloric supplementation to a regular dietary intake, as set out in s. 7(a) of Schedule C; and to prevent imminent danger to life, as required by subs. 67(1.1)(d).

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) section 67 and Schedule C – Health Supplements, s. 7.

## PART E – Summary of Facts

### Information before the Ministry at Reconsideration:

- 1) The appellant's Application for MNS signed by the appellant on August 30, 2011, with the portion completed by the appellant's physician dated September 9, 2011.  
 The panel notes that the copy of the MNS request form provided with the appeal materials is incomplete – the reproduced copy is 2 pages long – on the first page are Parts A & B completed by the appellant and Part C, questions 1 & 2 completed by the appellant's physician – on the second page is question 6 "cont'd" and "additional comments" completed by the appellant's physician. Page 2 of the form with the answers to questions 3, 4, 5 and the first part of 6 completed by the appellant's physician is missing. During the hearing, the Ministry representative confirmed that the package of materials was "complete" and she did not have any additional material in her package.  
 On the first page of the MNS application form, the appellant's physician indicated that the appellant's severe medical conditions (question #1) are paranoid schizophrenia, scoliosis, and anxiety. In response to question #2, "As a result of the severe medical condition(s) ... is the applicant being treated for a chronic, progressive deterioration of health? If so, please provide details ...", the appellant's physician wrote, "Being followed by mental health team ... for schizophrenia & currently undergoing adjustments in medication c/o weight loss & dizziness with low BP."  
 Page 2 of the form with questions 3, 4, 5 & the first part of 6 and corresponding answers was not provided to the panel with the appeal materials.  
 On the third page of the MNS application form, under question #6 "nutritional items cont'd" (3 bullets), the appellant's physician wrote "alcohol dependence 6/day" in response to the first bulleted question on the page, "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? If yes, please describe." The appellant's physician wrote "N/A" in response to the next 2 bulleted questions on the page: "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" and "Describe how the nutritional items requested will prevent imminent danger to the applicant's life."
- 2) Prescription order for the appellant dated August 23, 2011 from the appellant's community health centre for the following vitamin and mineral supplements: multivitamin, thiamine, vitamin D, calcium and folic acid (2 copies);
- 3) Prescription order for the appellant from the appellant's community health centre, not dated, which states: "[The appellant] is currently [taking] Clozapine which can decrease the production of his blood cells. He currently is suffering from anemia and would benefit from extra nutritional supplements."
- 4) Handwritten note signed by a physician with a mental health service dated November 14, 2011, which states: "[the appellant] is on Clozapine treatment, he has continuous risk of ... (low white blood cell)."
- 5) The Ministry's Monthly Nutritional Supplement Decision Summary dated November 18, 2011.
- 6) The appellant's Request for Reconsideration, signed December 13, 2011.

The appellant did not attend the hearing (s. 86(b) of the *Employment Assistance Regulation* allows the panel to hear an appeal in the absence of a party if the party was notified of the hearing). The Reconsideration Decision states that the appellant is a person with disabilities in receipt of disability assistance. As stated in the Reconsideration Decision, on the appellant's request form for MNS, a medical practitioner indicated that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically paranoid schizophrenia, scoliosis and anxiety.

Under the heading "Symptoms" in the Reconsideration Decision, the Ministry referred the panel to where the Reconsideration Decision states that "[the appellant's doctor] reports that, as a result of [the appellant's] chronic, progressive deterioration of health, [the appellant] displays the symptoms of malnutrition, significant weight loss and significant muscle mass loss." The Ministry referred to the Reconsideration Decision's finding immediately subsequent to this statement that, "However, the indication that [the appellant] suffers malnutrition

due to a poor diet is not a result of [the appellant's] chronic, progressive deterioration of health." The Ministry also referred to the Reconsideration Decision which stated that, "[the appellant's physician] describes that you [the appellant] portray significant weight loss due to losing 10 pounds". The Ministry referred to the Reconsideration Decision's finding immediately subsequent to this statement, "however, the ministry does not consider the loss of 10 pounds a significant amount of weight. Thus, [the appellant's physician] has confirmed a single symptom of significant muscle mass loss."

Under the heading "Vitamin/Mineral Supplementation", the Reconsideration Decision stated that, in the application for MNS, "[the appellant's physician] states that [the appellant] require multivitamins, thiamine, vitamin D, calcium and folic acid as "an ongoing need to aid in proper nutrition." The Ministry also noted, as stated in the Reconsideration Decision, that "the purpose of the vitamin/mineral supplementation is not to aid in proper nutrition. This is required as a part of [the appellant's] regular dietary intake." The Ministry also referred to the statement in the Reconsideration Decision that "the information submitted does not establish that vitamin/mineral supplementation is required to prevent imminent danger to life."

Under the heading "Nutritional Items", the Reconsideration Decision stated that the appellant's physician "does not specify any additional nutritional items required." The Reconsideration Decision stated that the appellant's physician indicated that the appellant has "an inability to absorb sufficient calories due to 'alcohol dependence 6 days per week'", and went on to state that "this is not due to [the appellant's] chronic progressive deterioration of health" as a result of the appellant's medical conditions. The Ministry noted that the Reconsideration Decision referred to 2 notes from physicians indicating that the appellant is taking Clozapine and has low white blood cell counts, but that the Reconsideration Decision determined that "this information does not indicate that [the appellant has] a chronic, progressive deterioration of health due to a medical condition. The information establishes that the current treatment is resulting in low white blood cells. The Reconsideration Decision also states that "the information submitted does not establish that nutritional items are required to prevent imminent danger to life."

The Panel makes the following findings of fact:

- the appellant is a person with disabilities in receipt of disability assistance.
- the appellant's medical practitioner confirmed that the appellant is being treated for chronic, progressive deterioration of health on account of his severe medical conditions of paranoid schizophrenia, scoliosis and anxiety.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's decision to deny the appellant's request for the MNS on the following bases is reasonably supported by the evidence: 1) that the appellant's medical practitioner did not confirm that he displays two or more of the symptoms listed in subsection 67(1.1)(b) as a result of his chronic, progressive deterioration of health; 2) that the appellant's medical practitioner did not confirm that the appellant requires vitamin/mineral supplements to alleviate the symptoms of his chronic, progressive deterioration of health, as required by subs. 67(1.1)(c), as part of his regular dietary intake, and to prevent imminent danger to life as required by subs. 67(1.1)(d); and 3) that the appellant's medical practitioner did not confirm that the appellant requires the requested additional nutritional items to alleviate the symptoms of his chronic, progressive deterioration of health, as required by subs. 67(1.1)(c), as part of a caloric supplementation to a regular dietary intake, as set out in s. 7(a) of Schedule C, and to prevent imminent danger to life, as required by subs. 67(1.1)(d).

### Legislation

#### EAPWDR

### 67. Nutritional Supplement

- (1) 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 center,
- 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).

### Schedule C – Health Supplements

#### 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;
- (b) Repealed
- (c) For vitamins and minerals, up to \$40 each month.

In his notice of appeal submitted January 22, 2012, the appellant wrote: "I have quit alcohol. I need to fix my anemia (blood cell count low) ... Clozapine has stopped. ..." The appellant's submission on the Request for Reconsideration, completed by an advocate and dated December 13, 2011, stated:

We submit that the [appellant] meets the eligibility requirements for the vitamin/mineral supplement amount of the MNS. When one considers the information provided with the application, we submit that it can be confirmed that the [appellant] has a chronic progressive deterioration of health and displays at least two wasting symptoms as a direct result of his medical condition. His doctor has recommended multivitamins, thiamine, Vitamin D, calcium, Folic Acid to alleviate his symptoms and to prevent imminent danger to life. His doctor has further commented that as a result of the medication he takes (Clozapine) he has decreased production of white blood cells so he is suffering from anemia and requires nutritional supplements to address this need.

The Ministry agrees that the appellant's severe medical conditions are paranoid schizophrenia, scoliosis and anxiety. The Ministry says that, in order to qualify for a monthly nutritional supplement, *EAPWDR* subs. 67(1.1)(b) requires that the appellant's physician (medical practitioner) confirm that, as a direct result of the chronic, progressive deterioration of health, the appellant displays two or more of the symptoms listed in subs. (1.1)(b)(i) through (vii). The Ministry says that the appellant's physician indicates he suffers from 3 of the listed symptoms: malnutrition due to a poor diet (i); significant weight loss of 10 pounds (iii); and significant muscle mass loss (iv). However, the Ministry says that the appellant's physician did *not* confirm that his malnutrition is a result of his chronic, progressive deterioration of health caused by his schizophrenia, scoliosis and anxiety, but rather that it is as a result of "poor diet". The Ministry also says that a loss of 10 pounds is *not* a significant weight loss. Accordingly, the Ministry says that the appellant's physician has only indicated one required symptom, significant muscle mass loss (1.1)(b)(iv), as a direct result of the appellant's chronic progressive deterioration of health. The Ministry says that the appellant thus does not meet the requirement under subs. 67(1.1)(b) that he display 2 or more of the listed symptoms.

The Ministry also says that the appellant's physician did not confirm, as required by subs. 67(1.1)(c) of the

*EAPWDR*, that the requested vitamin/mineral supplements are required to alleviate the appellant's listed symptoms. The Ministry says that the appellant's physician indicated that the requested vitamin/mineral supplements are required for "an ongoing need to aid in proper nutrition", as opposed to being "required as part of your regular dietary intake." The Ministry says that the appellant's physician did not confirm, as required by subs. 67(1.1)(d) of the *EAPWDR*, that the requested vitamin/mineral supplements are required to prevent imminent danger to the appellant's life.

The Ministry also says that the appellant's physician indicated that his alcohol dependence results in the appellant's inability to absorb sufficient calories, but that the appellant's physician did not confirm this is due to the appellant's chronic, progressive deterioration of health as a result of the appellant's medical conditions, as required by subs. 67(1.1)(c). The Ministry says that the appellant's physician did not confirm, as required by subs. 67(1.1)(d) of the *EAPWDR*, that the requested additional nutritional items are required to prevent imminent danger to the appellant's life.

Under subs. 67(1)(c) of the *EAPWDR*, in order to qualify for the MNS, the appellant's medical practitioner must confirm that the appellant meets *all* of the requirements set out in subs. 67(1.1)(a) through (d). Under s. 7(a) of Schedule C of the *EAPWDR*, additional nutritional items may be provided if they "are part of a caloric supplementation to a regular dietary intake."

The Panel finds that the appellant's physician has confirmed (and the Ministry agrees) that the appellant is a person with disabilities who is being treated for chronic, progressive deterioration of health on account of his severe medical conditions of paranoid schizophrenia, scoliosis and anxiety, meeting the first criteria set out in subs. 67(1.1)(a).

#### *Symptoms:*

The Reconsideration Decision determined that the appellant's physician "confirmed a single symptom of significant muscle mass loss." In the Reconsideration Decision, it states that the appellant's physician describes that the appellant portrays "significant weight loss due to losing 10 pounds; however, the ministry does not consider the loss of 10 pounds a significant amount of weight." The panel notes that there is no information in the Reconsideration Decision indicating the basis on which the ministry determined – contrary to the appellant's medical practitioner's report – that the appellant's loss of 10 pounds is *not* a significant amount of weight as indicated by his medical practitioner. The panel notes that the appellant's weight and height is not set out in the Reconsideration Decision. Accordingly, the Panel finds that the Ministry's determination in the Reconsideration Decision that the appellant's physician confirmed only the single symptom of significant muscle mass loss under subs. 67(1.1)(b)(iv) of the *EAPWDR* is not reasonably supported by the evidence.

#### *Vitamin/Mineral Supplements:*

Under the heading "vitamin/mineral supplements" in the Reconsideration Decision it stated that "the Ministry cannot determine that [the appellant] displays 2 or more of the symptoms listed as per the legislation." The panel restates its finding that the Ministry's determination that the appellant's physician confirmed only the single symptom of significant muscle mass loss under subs. 67(1.1)(b) is not reasonably supported by the evidence.

The panel finds further that the Reconsideration Decision does not address whether the appellant's physician confirmed that the appellant requires vitamin/mineral supplements to alleviate his symptoms as required by subs. 67(1.1)(c).

The panel notes that section 7(a) of Schedule C sets out the requirement that requested additional nutritional items "are part of a caloric supplementation to a regular dietary intake", but that this requirement is not contained in section 7(b) of Schedule C (the part which applies to requested vitamin and mineral

supplements). Accordingly, the panel finds that the Reconsideration Decision's determination that the purpose of vitamin/mineral supplementation "is required as part of [the appellant's] regular dietary intake" and "not to aid in proper nutrition" as indicated by the appellant's physician, is not a reasonable application of the legislation in the appellant's circumstances.

The Reconsideration Decision determined that "the information submitted does not establish that vitamin/mineral supplementation is required to prevent imminent danger to life." However, the panel notes that the Reconsideration Decision does not indicate the evidence upon which this finding is based - it does not indicate that the appellant's physician confirmed in the MNS form that the requested vitamin/mineral supplements are not required to prevent imminent danger to life. Without a copy of the second page of the appellant's MNS form on which this question is set out, the panel is unable to determine that the Reconsideration Decision's determination that the appellant's physician did not confirm that the vitamin/mineral supplement are required to prevent imminent danger under subs. 67(1.1)(d) is reasonably supported by the evidence.

Accordingly, the panel rescinds that portion of the Reconsideration Decision denying the appellant's application for vitamin/mineral supplements on the basis that its determination that the appellant's physician did not confirm all of the required criteria set out in subs. 67(1.1) of the *EAPWDR* is not reasonably supported by the evidence and, in respect to the Reconsideration Decision's finding that the vitamin/mineral supplements are required as part of the appellant's regular dietary intake, is not a reasonable application of s. 7(a) of Schedule C of the *EAPWDR*.

*Additional Nutritional Items:*

Given the appellant's physician's answer of "N/A" in response to the third bulleted question under question #6 on page 3 of the reproduced request for MNS form ("Describe how the nutritional items requested will prevent imminent danger to the applicant's life"), the Panel finds that the Ministry's determination that the information submitted does not establish that the requested additional nutritional items are required to prevent imminent danger to life under subs. 67(1.1)(d) is reasonably supported by the evidence.

Accordingly, the panel confirms that portion of the Reconsideration Decision denying the appellant's request for additional nutritional items under the MNS on the basis that the appellant's physician did not confirm that he met the requirement set out in subs. 67(1.1)(d) of the *EAPWDR*.