

PART C – Decision under Appeal

The decision at appeal is the ministry's reconsideration decision of November 28, 2011. In that decision the ministry denied the appellant's request for Monthly Nutritional Supplements (MNS) of vitamins and minerals. The ministry determined that the appellant did not meet the criterion set out in section 67 (1.1) (b) of the *Employment and Assistance for Persons with Disabilities Regulation, EAPWDR*. Additionally the ministry found that it was not satisfied that the appellant requires vitamin and mineral supplementation to alleviate the symptoms of a chronic, progressive deterioration of health on account of a severe medical condition and to prevent imminent danger to life as set out in Section 67 (1.1) of the *EAPWDR*.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) 67 (1) (1.1) and (2)

Schedule C Section 7, Health Supplements

PART E – Summary of Facts

Documents before the ministry at reconsideration included:

- the appellant's application for Monthly Nutritional Supplement signed by her on April 18, 2011;
- a letter from the ministry dated August 9, 2011, informing the appellant that she did not meet the eligibility requirements for the requested vitamins and minerals supplement;
- a Request for Reconsideration Form signed by the appellant on October 2, 2011, together with a handwritten note from the appellant and letters from the appellant's physician dated November 2, 2011, and September 14, 2011;
- a Faxed note from the reconsideration officer, dated November 28, 2011 to the appellant's physician seeking clarification on matters relating to the appellant's application for reconsideration, together with the notes of the doctor's response given over the telephone.

Prior to the hearing the appellant provided submissions in the form of a one-page handwritten note setting out reasons for her request for the vitamin and mineral supplement. This submission was clearly in support of materials that had been before the ministry at reconsideration, and as such the panel accepted them into evidence, based on Section 22 (4) (b) of the *Employment and Assistance Act (EAA)*.

Based on the written evidence before it, the panel makes the following finding of facts:

1. The appellant is a Person with Disabilities in receipt of disability assistance.
2. The appellant's physician confirms that the appellant suffers from a chronic progressive disorder defined as rheumatoid arthritis which requires disease-modifying medication to stabilize her clinical path.
3. The appellant's physician confirms that due to the appellant's use of Methotrexate, both he and the appellant's rheumatologist prescribe folic acid (1 gram 6 days per week), Vitamin D (2000 IU per day) Calcium and multivitamin 1 p.o. daily for the appellant.
4. Additionally, the appellant's physician diagnoses the appellant as suffering from osteopenia.
5. The appellant's physician confirms that previously the appellant had shown Vitamin D deficiency.
6. On the application form, the appellant's physician provided information on one of the legislatively defined symptoms, namely that of malnutrition, noting "low serum vitamin D level/osteopenia).
7. The appellant's physician gives the appellant's height as 5'4", her weight as 123lbs and her Body Mass Index as 21.1.
8. On the appellant's application form, her physician wrote "appropriate therapy with Methotrexate" in answer to the question 5, "Describe how this item or items [vitamins and minerals] will prevent imminent danger to the applicant's life.
9. The appellant did not apply for additional nutritional items over and above a regular dietary intake.

PART F – Reasons for Panel Decision

The issue to be determined on appeal is whether the ministry's decision at reconsideration to deny the appellant's request for the MNS of vitamins and minerals was reasonably supported by the evidence. The ministry determined that the appellant did not meet the criterion set out in section 67 (1.1) (b) of the *Employment and Assistance for Persons with Disabilities Regulation, EAPWDR*. Additionally the ministry found that it was not satisfied that the appellant requires vitamin and mineral supplementation to alleviate the symptoms of a chronic, progressive deterioration of health on account of a severe medical condition and to prevent imminent danger to life as set out in Section 67 (1.1) of the *EAPWDR*.

Section 67 states at (1) that, "*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*". When that condition is met the legislation at 67 (1.1.) states that, "*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.*"

Regarding nutritional items, Section 7 of Schedule C 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 the regular dietary intake, \$165 each month. ... (c) for vitamins and minerals, up to \$40 each month.*"

At reconsideration the ministry stated that it was satisfied with the confirmation received from the appellant's physician that the appellant has a severe medical condition and that the appellant was being treated for a chronic progressive deterioration of health.

The ministry then turned its attention to the legislated seven symptoms and noted that the appellant's physician had reported the appellant suffering from only one of the seven symptoms, namely malnutrition. The ministry found that the physician's description of malnutrition – "low serum vitamin D level/osteopenia" does not adequately describe the symptom of malnutrition. Further the ministry took note of the physician's description of the appellant's height, weight and her BMI of 21.1 and found that this BMI was within the normal range. The ministry therefore found that the appellant had not met the legislative criterion for two or more symptoms as a result of a chronic, progressive deterioration of health under the *EAPWDR*, Section 67 (1.1) (b).

There is no argument or evidence put forward by the appellant regarding a second legislatively required symptom.

The *EAPWDR* at Section 67 (1.1.) (b) is clear that in order for a person to receive a nutritional supplement, the person's medical practitioner must confirm that as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the seven enumerated symptoms. As the appellant's physician provided evidence of only one of the enumerated symptoms, namely malnutrition, the panel finds the ministry's conclusion that the legislative criteria of Section 67 (1.1.) (b) have not been met, to be a reasonably supported by the evidence. Further, when the ministry considered whether the evidence before them supported a finding that the appellant suffers from malnutrition, they point out that the appellant's BMI was 21.1 and find this to be within the normal range. The appellant does not put forth any argument in terms of malnutrition.

At reconsideration the ministry was not satisfied that the appellant requires vitamin and mineral supplementation to alleviate the symptoms of a chronic, progressive deterioration of health on account of a severe medical condition and to prevent imminent danger to life, as is set out in section 67 (1.1) (c) of the *EAPWDR*. The ministry was not satisfied that the requested items – Folic acid, vitamin D and multivitamins – would alleviate the symptom of malnutrition – as indicated by the appellant's physician on the application form. Rather, the ministry argued, these items may treat a low vitamin D level and osteopenia – symptoms that the appellant's physician noted on the application form, but symptoms that are not among the seven symptoms listed in the *EAPWDR* at Section 67 (1.1.) (b). In response to the question of how the items will alleviate the specific symptoms identified – malnutrition – the appellant's physician responded, "improve tissue health and are recommended with concurrent use of Methodrex" which the appellant takes for arthritis. The panel finds the ministry's conclusion that the appellant does not require vitamin and mineral supplementation to alleviate the symptom – malnutrition - of a chronic, progressive deterioration of health on account of a severe medical condition is reasonable.

Finally the ministry turned their attention to the legislated requirement that the requested items must be shown to, "prevent imminent danger of life" as per s. 67(1.1) (d) *EAPWDR*. The ministry state that the appellant's physician had indicated that the requested items would "improve tissue health and are required with concurrent use of Methotrexate". This was not what the appellant's physician had indicated when asked on the application form to describe how the requested items will prevent imminent danger to the applicant's life. Rather, his answer was that the requested items were "appropriate therapy with Methotrexate". The answer quoted by the ministry in their decision was the answer given by the physician to the question, "Describe how this item or items will alleviate the specific symptoms identified". The ministry misstates the physician's answer to the question relating to the "imminent danger of life". However, having looked at all the evidence before the ministry at reconsideration and the evidence before the panel at appeal, the panel finds that the ministry's statement that there is no indication in the documents that the appellant's life is in imminent danger was reasonable. The panel cannot find evidence before it that the requested items would prevent imminent danger to the life of the appellant.

Based on the analysis above the panel finds that the ministry's decision is reasonably supported by the evidence. Accordingly, the panel confirms the ministry's decision.