

PART C – Decision under Appeal

The decision under the appeal is the ministry's Reconsideration decision dated February 7, 2012, which held that the appellant is not eligible for the monthly nutritional supplement (MNS). The ministry concluded that the appellant does not require additional nutritional items as part of caloric supplementation to a regular dietary intake to alleviate the symptoms of a chronic, progressive deterioration of health. The ministry further concluded that the requested nutritional items do not prevent an imminent danger to the appellant's life pursuant to Section 67 (1.1) of the Employment and Assistance for Persons with Disabilities Regulation EAPWDR and Section 7 of Schedule C of the EAPWDR.

PART D – Relevant Legislation

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

The evidence before the ministry at the reconsideration decision included:

- A report of a Dorsal Spine x-ray dated September 11, 2008 indicating that the appellant has mild to moderate spondylosis in the middle lower dorsal spine and early osteoarthritis of left knee;
- A report from a plastic and reconstructive surgeon dated September 17, 2008 stating that the appellant was admitted to the hospital on December 7, 2006 after having a laceration to his left little finger while working in a restaurant. The report said that the appellant was seen by this surgeon on February 18, 2008 as a result of significant work related wound infection to his hand;
- An emergency department record indicating a discharge date of November 22, 2008;
- A report from a neurologist dated February 14, 2011 diagnosing the following:
Mononeuritis of upper limb and mononeuritis multiplex of left hand;
Concussion as a result of work injury in 2008;
Diabetes mellitus;
Hypercholesterolemia.

The neurologist suggesting ongoing psychological support as the neurologist was not confident that pharmacological agents would be helpful.

- An imaging report (CT Head) dated March 8, 2011 indicating that no intracranial mass lesion, intracranial hemorrhage or skull fracture was found;
- A report from the same plastic and reconstructive surgeon dated March 24, 2011 offering an opinion to amputate the appellant's little finger and that the appellant was resistant to follow this procedure;
- Application for MNS completed by the appellant's family physician, doctor E. dated October 6, 2011 indicating that the appellant requires primarily a high protein/diabetic dietary intake to gain muscle strength, prevent falls and provide better dietary control;
- Monthly Nutritional Supplement decision summary dated January 8, 2012;
- A letter from the ministry to the appellant dated January 10, 2012 denying the appellant's request for MNS;
- Request for reconsideration dated January 10, 2012.

The appellant in the request for reconsideration stated that he believes that he should be receiving MNS allowance from the ministry to purchase diabetic nutritional supplements such as Boost, Glucerna, and Resource to help him manage his diabetes and his other chronic diseases.

The appellant's family physician, doctor E. in the application for MNS stated the following:

- The appellant is diagnosed with chronic diabetes and reflex sympathetic dystrophy of left upper and lower limb;
- As a direct result of the chronic, progressive deterioration of health the appellant displays significant neurological degeneration to his left upper and lower extremities and due to poor DM control has moderate to severe immune suppression;
- The appellant is 172 cm. and his weight is 248 lbs.;
- He is taking multiple vitamins;
- The MNS would improve his blurred vision and left limb muscle strength;
- The requested items improves muscle strength and as a result prevent falls and further injuries;
- The physician, doctor E. answer "no" to the question "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";
- Doctor E. further stated that a high protein diet assists to gain muscle strength for reflex sympathetic dystrophy and kidney dialysis diet for glucose control;
- Doctor E. stated that the nutritional items will prevent imminent danger to the appellant's life by building muscle mass and preventing falls. Doctor E. further stated that the appellant sustained an injury to his left little finger in 2006. The infection spread throughout the upper left limb, his left hand and left arm.

The appellant submitted documents on February 22, 2012 which include:

- A Release of Information form regarding attendance of an interpreter in the appeal hearing;
- 6 pages of a laboratory blood and urine tests dated September 9, 2011 and November 17, 2010;
- A document indicating purchases of Glucerna, Boost and Resource for diabetic.

The panel reviewed the information. The panel admits the laboratory test results as they are in support of the information before the ministry at reconsideration pursuant to Section 24 (4) of the *Employment and Assistance Act EAA*. However, the panel notes that these documents are the result of the appellant's blood/urine tests and do not provide any other information as to the medical conditions of the appellant or a diagnosis.

The ministry did not attend the hearing; the panel determined that proper notification was provided to the ministry in accordance with Section 85(2) of the *Employment and Assistance Regulation (EAR)*.

At the hearing, the appellant stated that he has diabetes and as a result of an old work injury he has nerves and muscle problems. The appellant stated that he has disc degeneration and problems with his hip and knees. The appellant further stated that all of his medical conditions are permanent and they would never get better. The appellant submitted that he is taking many medications for pain and needs the monthly nutritional supplements. The appellant further submitted that he has muscle loss and needs the nutritional items to prevent further injuries and falls.

The panel finds that:

- The appellant is diagnosed with a severe medical condition by a medical practitioner;
- The appellant, as a direct result of the severe medical condition is being treated for a chronic progressive deterioration of health;
- The appellant, as a direct result of a chronic progressive, deterioration of health displays significant neurological degeneration of left upper and lower extremities and due to poor DM control displays moderate to severe immune suppression;
- The appellant does not have resources available to him to pay for the MNS;
- The appellant is in receipt of the monthly nutritional supplement of vitamins and minerals.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry reasonably concluded that the appellant is not eligible for the monthly nutritional supplement (MNS). The ministry concluded that the appellant does not require additional nutritional items as part of caloric supplementation to a regular dietary intake to alleviate the symptoms of a chronic, progressive deterioration of health. The ministry further concluded that the requested nutritional items do not prevent an imminent danger to the appellant's life pursuant to Section 67 (1.1) of the Employment and Assistance for Persons with Disabilities Regulation EAPWDR and Section 7 of Schedule C of the EAPWDR.

Section 67 (1) of the *EAPWDR* – Nutritional Supplement- states:

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). (B.C. Reg. 68/2010)

(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

(B.C. Reg. 317/2008)

- (i) surgery,
- (ii) a severe injury,
- (iii) a serious disease, or
- (iv) side effects of medical treatment.

Pursuant to Section 7 of Schedule C of the *EAPWDR – Health Supplements* - 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;

(c) for vitamins and minerals, up to \$40 each month.

The appellant argued that although the medical practitioner in the MNS application indicated that he does not have malnutrition, underweight status, significant weight loss and or significant muscle mass loss, he needs the requested nutritional items in order to assist him with his immune suppression. He agreed that the doctor indicated that he is able to absorb sufficient calories to satisfy daily requirements through a regular dietary intake; however, the appellant argued that his doctor did not complete the application for MNS properly and clearly. The appellant argued that he needs the requested items to prevent further medical problems.

The appellant confirmed that currently he is receiving assistance for purchasing vitamins and minerals. The appellant said he has many diseases and his life is very difficult. The appellant argued that although the doctor did not complete the application clearly, the panel should take into the consideration the medical reports that he had submitted to the ministry.

Section 67 (1.1) of the *EAPWDR* sets out specific criteria that must 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) and (b) of the *EAPWDR*. A medical practitioner confirmed that the appellant is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition and the medical practitioner confirmed that the appellant displays two symptoms, significant neurological degeneration and moderate to severe immune suppression.

Section 67(1.1) (c) of the *EAPWDR* states that 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. The doctor in completing the application for MNS did not provide any information as to whether the nutritional items are required to alleviate one or more of the specified symptoms, significant neurological degeneration and moderate to severe immune suppression. In answer to the question "how the nutritional items would alleviate one or more of the symptoms described and provide caloric supplementation to the regular diet", the physician indicates "high protein diet to gain muscle strength for reflex sympathetic dystrophy, and kidney dialysis diet for weight control and glucose control". The doctor did not specify any items that are medically essential to alleviate one or more of the specified symptoms.

The panel finds the ministry reasonably determined the nutritional items were not required to alleviate one or more of the specified symptoms.

The doctor responded "no" to the question "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?" The panel notes that the doctor stated that the appellant has severe medical conditions and requires high protein diet to gain muscle strength; however, the doctor did not provide sufficient evidence to indicate that the appellant

requires extra caloric supplementation over and above that found in a regular diet. Therefore, the panel finds that the ministry reasonably denied additional nutritional items as part of a caloric supplementation to a regular dietary intake as required by Section 7 of Schedule C of the EAPWDR or that the nutritional items were required to alleviate the symptoms of a chronic, progressive deterioration of health pursuant to Section 67 (1.1) (c).

Respecting Section 67 (1.1) (d), the panel notes that the doctor stated; "build muscle mass and prevent falls" to address the question "failure to obtain the items will result in imminent danger to the appellant's life". The doctor further specified "Boost – Diabetic and Glucerna – provide better dietary control and prevent further renal problems". However, the doctor failed to state how these items would prevent imminent danger to the appellant's life.

The panel finds that the ministry reasonably determined that there was not sufficient information to support that, if the ministry did not provide the appellant with the requested items, it would result in imminent danger to the appellant's life as required under Section 67 (1.1) (d).

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 and Section 7 of Schedule C of the EAPWDR.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms that decision.