

PART C – Decision under Appeal

The appellant appeals the ministry's reconsideration decision dated February 1, 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 requires vitamin/mineral supplements to alleviate the symptoms of his chronic, progressive deterioration of health, as required by subs. 67(1.1)(c), 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

On March 1, 2012, the appellant requested an adjournment and provided additional material to the panel which consisted of a copy of the third page of the MNS application dated May 9, 2011 (described below), with the appellant's handwritten note on the page indicating that his physician had referred him to specialists, with the list of the names of these specialists. This page was date-stamped by the appellant's physician's office on February 27, 2012. The panel granted the adjournment as this was the first time the appellant asked for an adjournment from the Tribunal and the appellant advised the panel that his physician was providing additional information about his medical condition that had been available at the time of his MNS application. The appellant did not provide additional material prior to the hearing. The panel admits the additional document as the information in it is written testimony in support of the information and records before the minister when the reconsideration decision was made, as per s. 22(4)(b) of the *Employment and Assistance Act*.

The appellant did not attend the hearing. The panel received confirmation from the Tribunal that the appellant had been notified of the date, time and location of the hearing. Accordingly, under s. 86(b) of the *Employment Assistance Regulation*, the panel heard the appeal in the appellant's absence.

At the reconsideration, the ministry had its MNS decision summary dated December 6, 2011, and the appellant's application for MNS signed by the appellant on May 9, 2011, with the portion completed by the appellant's physician dated May 9, 2011, described below.

On the first page of the MNS application form, the appellant's physician indicated that the appellant's severe medical conditions (question #1) are "chronic bacterial infection, brain injury, neurological." 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, "[Illegible] – chronic bacterial infection – using cream."

On page 2 of the form, in response to question #3 ("As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms?"), the appellant's physician indicated that the appellant displayed more than two of the listed symptoms. In response to question #4, the appellant's physician provided the appellant's height and weight (5'9" and 140 lb) and Body Mass Index of 20.

In response to question 5, which has 3 bullets (sub-questions), the appellant's physician wrote in answer to the question "specify the vitamin or mineral supplement(s) required and expected duration of need", "Boost/Ensure + specialist direction." The appellant's physician indicated that these vitamin or mineral supplements will "help gain weight/muscle mass" to alleviate the appellant's specific symptoms (bullet 2). The appellant's physician responded to the question "describe how this item or items will prevent imminent danger to the applicant's life" (bullet 3) with "boost immune system."

In response to question 6, which has 2 bullets on page 2 and 2 bullets on page 3, the appellant's physician indicated that the appellant required the additional nutritional items of "lean meat/fish/ legumes" but did not write anything else in response to the expected duration of need (bullet 1). The appellant's physician wrote, "No 'maintain as present'," in response to the question "Does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy the daily requirements through a regular dietary intake? If yes, please describe" (bullet 2). On the third page of the form, question #6 cont'd, the appellant's physician wrote, "provide increase bulk and immunity" in response to the question, "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" (bullet 1). The appellant's physician wrote, "boost immune system" in response to the second bulleted question, "Describe how the nutritional items requested will prevent imminent danger to the applicant's life."

The appellant did not attend the hearing. The reconsideration decision states that the appellant is a person with disabilities in receipt of disability assistance. As noted in the reconsideration decision, on the appellant's request form for MNS, a medical practitioner confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically that he has a "brain injury neurological" and a "chronic bacteria infection."

The ministry representative acknowledged the error in the reconsideration decision under the heading "Symptoms", where it states that the appellant's physician "does not confirm" that as a result of his chronic, progressive deterioration of health, the appellant displays two or more of the symptoms set out in legislation. The reconsideration decision then notes that the appellant has three symptoms, as follows: significant neurological degeneration (brain injury, neurological), moderate to severe immune suppression (chronic bacterial infection) and significant deterioration of a vital organ (brain). The reconsideration decision then states, "You do display two or more of the above noted symptoms. The information in your original application and request for reconsideration does establish that you are displaying two or more symptoms as a direct result of a chronic, progressive deterioration of health." The ministry agrees that, as a result of his chronic, progressive deterioration of health, the appellant displays two or more of the symptoms required by the legislation.

The ministry representative noted that, under the heading "Vitamin/Mineral Supplementation", the reconsideration decision stated that the appellant's physician did not report the expected duration of the need for the supplements of Boost/Ensure. The ministry also noted, as stated in the reconsideration decision, that the appellant's physician did not indicate or list the vitamins and/or minerals required to alleviate the appellant's symptoms and that, although the appellant's physician indicated the appellant needs vitamins and minerals to boost his immune system, the physician did not confirm that vitamin/mineral supplementation is required to prevent imminent danger to the appellant's life.

The ministry representative noted further that, under the heading "Nutritional Items", that the reconsideration decision stated that the appellant's physician's diet recommendation involves appropriate food choices, rather than caloric supplementation to the appellant's dietary intake. The ministry notes that the appellant's physician did not indicate that the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake (the appellant's physician answered "No 'maintain as present'" in answer to this specific question on the MNS application form). The ministry also referred to the reconsideration decision's determination that the "minister is not satisfied that [the appellant's] physician has confirmed that failure to obtain nutritional supplements will result in an 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 brain injury and chronic bacterial infection.
- the appellant's medical practitioner confirmed that, as a result of his chronic, progressive deterioration of health, the appellant displays two or more of the listed symptoms.

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 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) and to prevent imminent danger to life as required by subs. 67(1.1)(d); and 2) 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 February 7, 2012, the appellant wrote: "I feel that I have met all the criteria and without this supplement my health will continue to deteriorate. I have documents from my surgeon expressing the need for improved health after surgical procedures."

The ministry says that, in order to qualify for MNS, a medical practitioner must confirm that the requested vitamin/mineral supplements are required to alleviate the appellant's listed symptoms. The ministry says that the appellant's physician did not indicate the expected duration of the appellant's need for Boost/Ensure and that the appellant's physician did not indicate what vitamins and/or minerals are required to alleviate the appellant's symptoms. The ministry says further that the appellant's physician did not confirm that the requested vitamin/mineral supplements are required to prevent imminent danger to the appellant's life (only that they are required to boost the appellant's immune system).

The ministry says that the appellant's physician indicated that the appellant requires lean meat, fish and legumes, but that this is not part of a caloric supplementation to the appellant's regular dietary intake. The ministry says that the appellant's physician did not confirm that the appellant has a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, or that he has a need for caloric supplementation. The ministry says that the appellant's physician did not confirm 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 ministry found that the appellant's physician confirmed 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 brain injury and chronic bacterial infection, meeting the criteria set out in subs. 67(1.1)(a) of the *EAPWDR*. The ministry also found that the appellant's physician has confirmed that, as a result of his chronic, progressive deterioration of health, the appellant displays the symptoms of significant neurological degeneration (brain injury), moderate to severe immune suppression (chronic bacterial infection) and

significant deterioration of a vital organ (brain), meeting the requirements set out in subs. 67(1.1)(b) of the *EAPWDR*.

Vitamin/Mineral Supplements

Under subs. 67(1.1)(c) of the *EAPWDR*, the appellant's physician must confirm that the appellant requires vitamin/mineral supplements to alleviate the symptoms found under subs. 67(1.1)(b) (as set out above, significant neurological degeneration, moderate to severe immune suppression, and significant deterioration of a vital organ). In the MNS application form, the appellant's physician indicated that the appellant required "Boost/Ensure + specialist direction" and that these items will "help [the appellant] gain weight/muscle mass" and "boost [the appellant's immune system." However, the panel finds that the appellant's physician did not expressly confirm that requested vitamin/mineral supplements of "Boost/Ensure" will alleviate the appellant's symptoms of significant neurological degeneration, moderate to severe immune suppression and significant deterioration of a vital organ, as required under subs. 67(1.1)(c). In response to the question "describe how this item or items will prevent imminent danger to the applicant's life," the panel notes that the appellant's physician wrote "boost immune system." The panel finds reasonable the ministry's determination that there is no evidence provided by the appellant's physician on the MNS application that confirms that the requested "Boost/ Ensure" will prevent imminent danger to the appellant's life, as required by subs. 67(1.1)(d).

Accordingly, the panel finds that the portion of the reconsideration decision denying the appellant's application for vitamin/mineral supplements on the basis that the appellant's physician did not confirm he met the required criteria set out in subs. 67(1.1)(c) and (d) of the *EAPWDR* is reasonably supported by the evidence.

Additional Nutritional Items

The panel finds reasonable the ministry's determination that the appellant's physician's recommendation of "lean meat, fish and legumes" involves food choices, as opposed to caloric supplementation to a regular dietary intake, as set out in s. 7(a) of Schedule C of the *EAPWDR*. Given the appellant's physician's answer of "No "maintain as present"" in response 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? If yes, please describe" on the MNS application form, the panel finds that the appellant's physician has not confirmed that the requested additional nutritional items are part of a caloric supplementation to a regular dietary intake as set out in s. 7(a) of Schedule C of the *EAPWDR*. The panel finds reasonable the ministry's determination that, based on the information from the appellant's physician, the appellant's BMI is normal with very low risk. Further, in response to the question "describe how the nutritional items requested will prevent imminent danger to the applicant's life," the panel notes that the appellant's physician again wrote "boost immune system." However, the panel finds that this response does not confirm that the requested nutritional items of "lean meat/fish/legumes" will prevent imminent danger to the appellant's life as required by subs. 67(1.1)(d). 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 finds that the 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 requirements set out in s. 7(a) of Schedule C and subs. 67(1.1)(d) of the *EAPWDR* is reasonably supported by the evidence.

The panel confirms the ministry's reconsideration decision.