

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision of March 21, 2012 wherein the ministry decided that the appellant was not eligible for a monthly nutritional supplement (MNS) for nutritional items or vitamins/minerals. The basis for the decision was that the appellant did not satisfy the eligibility criteria set out in section 67(1.1) and Schedule C, section 7 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). In particular, the ministry found that the appellant's physician did not confirm that the appellant satisfied the following legislative criteria:

- That the appellant displayed two or more of the symptoms prescribed in EAPWDR section 67(1.1)(b);
- That the appellant required a MNS for the purpose of alleviating one or more of the prescribed symptoms as set out in EAPWDR section 67(1.1)(c); and
- That failure to obtain a MNS will result in imminent danger to the appellant's life as required by EAPWDR section 67(1.1)(d).

The ministry also held that the evidence did not demonstrate that the appellant required caloric supplementation to a regular dietary intake as required by EAPWDR Schedule C section 7(a).

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)  
Section 67 [*nutritional supplement*]  
Schedule C, section 7 [*monthly nutritional supplement*]

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the following:

- An Application for Monthly Nutritional Supplement form signed by the appellant on January 11, 2012 and by the appellant's physician on February 2, 2012 (the application form).
- The ministry's original decision denying the MNS, dated February 29, 2012.
- A list, in the form of a printout from his pharmacy, of the appellant's medications, dated March 10, 2012.
- A prescription form from the appellant's physician, dated March 9, 2012 and listing the appellant's diagnoses as osteoarthritis, COPD, hypertension, and coronary artery disease.
- A Request for Reconsideration form with a written submission from the appellant, signed by the appellant March 9, 2012.

The appellant is a person with disabilities in receipt of disability assistance.

In the application form, the physician confirmed that the appellant is being treated for a chronic, progressive deterioration of health, diagnosing him with CAD [coronary artery disease] and HPT [hypertension]. Section 3 of the application form lists the 7 symptoms prescribed in EAPWDR section 67(1.1)(b) and asks the physician "...does the applicant display two or more of the ... symptoms? If so, please describe in detail." The physician has identified one symptom - "malnutrition" - with no further detail. No other symptoms are indicated. The appellant's height and weight are given on the form for the stated purpose of assisting in determining his Body Mass Index (BMI). Section 5 of the application form, dealing with vitamin or mineral supplementation asks the physician to identify any necessary vitamin or mineral supplements required, how the supplements will alleviate the specific symptoms identified, and to describe how the supplements will prevent imminent danger to the [appellant's] life. The physician left all of section 5 blank. Section 6 of the application form, dealing with nutritional items, asks the physician to specify the additional nutritional items required and expected duration of need. The physician wrote that the appellant takes vitamins B12, C, D and E and that the appellant "...would like to take more fruits and salad to improve his cardiac diet." In response to the question as to whether the applicant has an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the physician has simply drawn a line through the space provided for an answer. He provided no response to the questions as to how the nutritional items required will alleviate one or more of the prescribed symptoms, and how the nutritional items will prevent imminent danger to the [appellant's] life. In the section for "Additional Comments", the physician wrote "Pt. would like healthier diet to reduce cardiac risk."

In his written submission made as part of the Request for Reconsideration, the appellant stated that he had lost 15 pounds of muscle mass. His previous physician, in another community, had advised the appellant to take vitamins B12, C, D and E. The appellant now also has to take pills costing approximately \$15/month to alleviate constipation, and he takes Echinacea for his COPD as it helps prevent him from catching pneumonia. The appellant wrote that he needs to buy more roughage for his diet and that he needs to eat properly because of his bad heart. The appellant stated that he is also diabetic and attached a list of his medications.

The appellant also provided a brief written submission in his Notice of Appeal. He wrote that in December he weighed 187 pounds and now weighs 171 pounds. He also stated that he was diagnosed as a diabetic by a specialist over 4 years ago. The appellant had to take a glucose monitoring class for which he holds a certificate, and had to see a diabetic nurse every 3 months for counselling. He has been instructed by a physician to take vitamins B12, D and E, and has now been prescribed with medication to help with constipation.

Along with the Notice of Appeal, the appellant submitted documentation in the form of photocopies of a Diabetes Identification Card and a Certificate of Training in Self Blood Glucose Monitoring issued by the Ministry of Health. Neither document is dated, though the term of the Certificate is shown as "indefinite".

At the hearing before this panel the appellant said that his current physician, whom the appellant has only known since last August, did not go through the appellant's file when he filled out the application form. Previous physicians had advised the appellant to take B12, and D, and now the current physician has prescribed a stool softener at a cost of \$34.01 per month. The appellant says he doesn't have the funds for this and so he is paying for the medication with funds that should be going towards paying for groceries. He takes Echinacea for his COPD. The appellant stated he needs approximately \$80-100 per month for vitamins and stool softener.

On being questioned by the panel, the appellant responded that he was with his physician when the physician filled out the application form, and that the physician relied on asking questions of the appellant rather than checking the appellant's medical history file. He said that the physician did not ask him about weight loss or loss of muscle mass. The appellant said that diabetes runs in his family, that his older brother recently died of diabetes, and that he doesn't know why the physician didn't include diabetes as a diagnosis.

The panel assessed the appellant's submission in his Notice of Appeal - including the documents relating to diabetes - and his evidence at the hearing as being respectively written and oral testimony in support of the information that was before the ministry at the time of its reconsideration decision, and admitted them as evidence in accordance with section 22(4) of the *Employment and Assistance Act*.

The ministry representative relied on the reconsideration decision. She pointed out that section 3 of the application form only listed 1 symptom, and that section 5 was left entirely blank while section 6 was only partially completed.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which held that the appellant is not eligible for a MNS, is reasonably supported by the evidence or whether it is a reasonable application of the applicable enactment in the circumstances of the appellant.

The applicable legislation is as follows:

### EAPWDR

#### Nutritional supplement

67 (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 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.

## Schedule C

### 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. [B.C. Reg. 68/2010, s. 3 (b).]
- (c) for vitamins and minerals, up to \$40 each month.

The appellant's position is that he satisfies the legislative criteria for MNS in that he has symptoms of weight loss and loss of muscle mass. He says that various physicians have directed him to take vitamins B12, C, D, and E to alleviate symptoms of his medical conditions, and that he doesn't think he has "too long left". The appellant contended that the physician, with whom he has a relatively new relationship, was in too much of a hurry and failed to review the appellant's medical history file when he completed the application form, as evidenced by the physician's failure to include diabetes and COPD as diagnoses in the application form. He says the physician also failed to ask the appellant

pertinent questions with respect to weight loss and loss of muscle mass.

The ministry's position is that the ministry's decision should be confirmed. The ministry representative said that sections 3 and 5 of the application form are vital for the ministry to make a decision to provide a MNS, but that section 3 did not satisfy the legislative criteria, and that section 5 was simply not completed by the physician as required. She said that with respect to diabetes, there is a different supplement – the diet supplement – available for persons with diabetes.

Regarding the prescribed symptoms in EAPWDR section 67(1.1)(b), the evidence is that the physician confirmed only 1 of the symptoms on the application form rather than the required 2 or more symptoms. The list of diagnoses on the physician's prescription form does not confirm any of the rest of the prescribed symptoms, nor does the appellant's evidence that he is diabetic. The appellant's evidence is that he does display symptoms of weight loss and loss of muscle mass. Section 67(1.1) is clear that in order for a person to receive a MNS, 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..." that the person displays 2 or more of the symptoms listed in section 67(1.1)(b). Despite the appellant's testimony that he displays at least 2 more of the requisite symptoms, the fact remains that the physician has confirmed only 1 symptom. This is not to say that the appellant isn't right about his symptoms, but the legislation requires confirmation by a medical practitioner or nurse practitioner. Accordingly, the panel concludes that the ministry reasonably found that the legislative criterion in section 67(1.1)(b) is not satisfied.

Regarding the criterion in section 67(1.1)(c) that the practitioner must confirm that the requested MNS will alleviate at least one of the confirmed symptoms, the application form contains spaces labeled specifically for the physician to describe how the requested items will alleviate symptoms. The appellant's physician has left the relevant sections of the form blank with respect to both vitamin or mineral supplementation and nutritional items. By doing so the physician has not made any reference to alleviation of the one identified symptom of "malnutrition". Accordingly, the panel concludes that the ministry reasonably found that the legislative criterion in section 67(1.1)(c) is not satisfied.

Regarding the criterion in section 67(1.1)(d), that the practitioner must confirm that failure to receive the requested MNS will result in imminent danger to the person's life, the appellant's physician has left the relevant sections of the form blank with respect to both vitamin or mineral supplementation and nutritional items. The physician has not made any reference to imminent danger to the appellant's life. Accordingly, the panel concludes that the ministry reasonably found that the legislative criterion in section 67(1.1)(d) is not satisfied.

Finally, regarding the criterion in Schedule C, section 7(a), that the nutritional items must be part of a caloric supplementation to a regular dietary intake, the application form asks the specific question as to whether the applicant (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 has not provided an answer to this question other than striking a line through the space on the form. The appellant has testified that he suffers from weight loss. The panel has been provided with no evidence that the appellant's weight loss necessarily leads to the conclusion that dietary supplementation is needed to a regular dietary intake. Accordingly, the panel concludes that the ministry reasonably found that the legislative criterion in Schedule C, section 7(a) has not been met.

Given the lack of confirmation by the physician regarding symptoms, alleviation of symptoms, and imminent danger to life; the deficiencies in the evidence with respect to the need for caloric supplementation to a regular dietary intake; and the panel's conclusions with respect to the reasonableness of the ministry's findings detailed above, the panel finds that the ministry's decision that the appellant is ineligible for MNS was reasonably supported by the evidence.

Accordingly, the ministry's reconsideration decision is confirmed.