

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated May 29, 2012 that held that the appellant was not eligible for a Monthly Nutritional Supplement (MNS) of nutritional items – high protein diet and vitamin/ mineral supplements as all of the criteria of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) were not met. Specifically, the ministry determined that:

- the criterion of section 67(1.1)(b) was not met respecting either supplement because the medical practitioner has not provided information to establish that as a direct result of McArdel's disease and hypothyroid disorder, the appellant displays 2 or more of the listed symptoms;
- the criteria of section 67(1.1)(c) and section 7 in Schedule C for nutritional items were not met because a medical practitioner has not provided information to confirm that the nutritional items supplement was required for the purpose of alleviating one of the listed symptoms and because the medical practitioner did not explain how nutritional items, 'a high protein diet' as part of a caloric supplementation to a regular dietary intake would alleviate the symptoms of the appellant's chronic, progressive deterioration of health; and
- the criterion of section 67(1.1)(d) was not met regarding either supplement because the ministry found that the information did not indicate that due to the appellant's severe medical condition that failure to provide the supplement will result in imminent danger to the appellant's life.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the ministry at reconsideration was comprised of: (a) a Monthly Nutritional Supplement (MNS) Application dated February 24, 2012; (b) a Request for Reconsideration dated April 18, 2012; and (c) a letter to the ministry from the appellant's medical practitioner (MP) dated May 3, 2012.

In the MNS Application completed by a medical practitioner on February 24, 2012, the appellant is diagnosed with McArdel's disease and hypothyroid disorder. Regarding the severity of the appellant's medical condition, the MP indicates "mobilizing exercises, protein & mineral supplements". When asked if, as a direct result of the chronic, progressive deterioration of health does the applicant display two or more of the listed symptoms, the physician indicates that the appellant displays the symptom of significant muscle mass loss. The physician reports that the appellant is 5 feet 4 inches in height and weighs 165 lbs. Regarding required vitamin or mineral supplements; the MP specifies calcium, magnesium and co-enzyme Q10 with duration of need-lifetime. When asked to describe how this item or items will alleviate the specific symptoms identified, the MP writes "should improve muscle weakness". When asked to describe how this item or items will prevent imminent danger to the applicant's life, the MP indicates "muscle deterioration because of an inherited disease, replaces calcium loss".

In the application section respecting Nutritional Items, there was no comment by the MP when asked to specify the additional nutritional items required and the expected duration of need. When asked if the applicant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the MP makes no comment. When asked to describe how the nutritional items required will alleviate one or more of the listed symptoms and provide caloric supplementation to the regular diet, the MP indicates "high protein diet". When requested to describe how the nutritional items required will prevent imminent danger to the applicant's life, the MP writes to "need to maintain muscle mass + strength". The MP adds that the appellant has a rare, inherited, muscle disease and hypothyroid.

In the Request for Reconsideration dated April 18, 2012, there are no comments or signature from the appellant.

In the letter to the ministry from the appellant's MP dated May 3, 2012, it is reported that the appellant has McArdel's disease which is a hereditary disorder that results in chronic muscle inflammation. It is indicated that in some circumstances this disease is fatal because the progressive muscle weakness results in impairment of function. The breakdown of muscle results in loss of protein and therefore there is a requirement for increased protein in the appellant's diet. Additionally this results in decreased resistance to infection and also mineral loss. Based on these facts the MP indicates that the appellant requires mineral replacement, vitamins and a high protein diet. The MP indicates that the potential for serious illness is greatly increased in the absence of adequate dietary supplement and that nutritional impairment could result in serious medical consequences.

At the hearing, the appellant explained that she did not have enough minutes on her cell phone and did not want to miss the hearing so she was using a telephone in a telecommunications store. The appellant stated that she disagreed with the ministry's decision because she is not well and went by what her doctor had said she needed and believed that it was all reported in the forms he had filled out and the letter he had written. The appellant also stated that she felt that there was a misunderstanding by the ministry about McArdel's disease.

There was no new evidence introduced by the ministry at the hearing.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's reconsideration decision which determined that the appellant was not eligible for a MNS for nutritional items – a high protein diet and/or vitamins and minerals, as all of the criteria of the Employment and Assistance for Persons with Disabilities Regulation were not met, is reasonably supported by the evidence or whether it is a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation, section 67 and section 7 of Schedule C of the EAR provides as follows.

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 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).

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.

It is the appellant's position that her doctor knew what she needed and that she believed that it was all reported in the forms he had filled out and the letter he had written. The appellant also felt that there was a misunderstanding by the ministry about McArdel's disease.

It is the ministry's position that the appellant was not eligible for a Monthly Nutritional Supplement (MNS), nutritional items and vitamin/ mineral supplements as all of the required legislative criteria were not met as follows:

The criterion of section 67(1.1)(b) was not met respecting either supplement because the medical practitioner has not provided information to establish that as a direct result of McArdel's disease and hypothyroid disorder, the appellant displays 2 or more of the listed symptoms. The appellant's MP has indicated that only one of the listed symptoms; 'significant muscle mass loss' is displayed. Also, the MP indicates that the appellant's muscle breakdown results in decreased resistance to infection; however, the MP does not indicate that the appellant's impairments result in moderate to severe immune suppression.

The criteria of section 67(1.1)(c) and section 7 of Schedule C were not met for nutritional items because a medical practitioner has not provided information to confirm that the nutritional items supplement, 'a high protein diet' was required for the purpose of alleviating one of the listed symptoms. The appellant's MP does not specify the additional nutritional items the appellant requires or their expected duration of need. Also, the medical practitioner does not explain how as part of a caloric supplementation to a regular dietary intake these nutritional items would alleviate the symptoms of the appellant's chronic, progressive deterioration of health. As the appellant's BMI is 28.3 which is in the normal to above normal range; there is no information to establish that she suffers from the other symptoms of malnutrition, underweight status or significant weight loss. Additionally, the appellant's MP does not confirm that she has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

The MP does indicate that the appellant requires calcium, magnesium and co-enzyme Q10 for her lifetime and reports that these vitamins and minerals should improve muscle weakness. The ministry does accept that these vitamins and minerals will alleviate one of the listed symptoms specifically; 'significant muscle

mass loss'.

The criterion of section 67(1.1)(d) was not met regarding either supplement because the ministry found that the information did not indicate that due to the appellant's severe medical condition, that failure to provide either supplement will result in imminent danger to the appellant's life. Although, the MP states that a high protein diet is needed to maintain muscle mass and strength; it's not reported that a high protein diet will prevent imminent danger to the appellant's life. The MP does indicate that the appellant requires calcium, magnesium and co-enzyme Q10 for her lifetime and reports that these vitamins and minerals should improve muscle weakness however the MP does not indicate that these vitamins and minerals will prevent imminent danger to the appellant's life.

Regarding the criterion that the medical practitioner must confirm that as a direct result of the appellant's chronic, progressive deterioration of health, she must display two or more of the listed symptoms; the panel finds that the evidence provided in the MNS application indicates only one listed symptom namely, 'significant muscle mass loss'. The MP reports that in some circumstances McArdel's disease is fatal because the progressive muscle weakness results in impairment of function and the breakdown of muscle results in loss of protein and therefore, there is a requirement for increased protein in the appellant's diet. Additionally, this results in decreased resistance to infection and also mineral loss. However, the MP does not address the symptom of 'moderate to severe immune suppression' or report any other listed symptoms. The panel also finds that the medical practitioner does not confirm that the appellant has difficulty with absorbing sufficient calories through a regular dietary intake to satisfy daily requirements. Therefore, the panel finds that the ministry reasonably determined that the criterion of section 67(1.1)(b) of the EAPWDR was not met as the evidence did not establish that two or more of the listed symptoms were displayed as a direct result of the appellant's chronic, progressive deterioration of health.

Regarding the criterion, that a failure to provide MNS for vitamins / minerals will result in imminent danger to the appellant's life, the medical practitioner in the MNS application indicates only that the appellant has "muscle deterioration because of an inherited disease", and these items would replace calcium loss. Although, the MP reports that in some circumstances McArdel's disease is fatal because the progressive muscle weakness results in impairment of function and the breakdown of muscle results in loss of protein; the MP does not indicate that based on the appellant's circumstances a 'high protein diet' would prevent imminent danger to her life. Therefore, the panel finds that there is no evidence to establish that failure to provide either MNS will result in imminent danger to the appellant's life and that the ministry reasonably determined that the criterion of section 67(1.1)(d) of the EAPWDR was not met.

Regarding a MNS for nutritional items, when asked if the applicant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the medical practitioner makes no comment. When asked to describe how the nutritional items required will alleviate one or more of the listed symptoms and provide caloric supplementation to the regular diet, the MP only indicates a "high protein diet". When requested to describe how the nutritional items required will prevent imminent danger to the applicant's life, the practitioner writes "need to maintain muscle mass and strength". Also, it is reported by the ministry that given the height and weight of the appellant, she has a BMI of 28.3 which is in the normal to above normal range and that there is no information to establish that she suffers from the other symptoms of malnutrition, underweight status or significant weight loss. Therefore, the panel finds that the ministry reasonably determined that the criterion of section 67 of the EAPWDR and section 7 of Schedule C were not met because the medical practitioner did not confirm that the appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to her life.

Therefore, the panel finds that the ministry reasonably determined that, as all of the criteria for a MNS for nutritional items and/or vitamins and minerals were not met, the appellant is not eligible for the supplement.

APPEAL #

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