

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated May 2, 2012 that held that the appellant was not eligible for a Monthly Nutritional Supplement (MNS), nutritional items 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 the appellant's diabetes, anemia and coronary artery disease, she displays 2 or more of the listed symptoms;
- the criteria of section 67(1.1)(c) was not met because a medical practitioner has not provided information to confirm that the nutritional items and/or the vitamins/ minerals supplement were required for the purpose of alleviating one of the listed symptoms;
- 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 and
- the criteria of section 67 and section 7 in Schedule C for nutritional items were not met because the medical practitioner did not explain how nutritional items as part of a caloric supplementation to a regular dietary intake would alleviate the symptoms of the appellant's chronic, progressive deterioration of health.

PART D – Relevant Legislation

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

[REDACTED]

PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that she had been notified the hearing proceeded under section 86(b) of the EAR.

The evidence before the ministry at reconsideration was comprised of: (a) a Monthly Nutritional Supplement (MNS) Application dated February 2, 2012; (b) the Request for Reconsideration dated April 12, 2012; (c) a copy of a request for clarification from the ministry to the appellant's medical practitioner dated May 1, 2012; and (d) a response letter to the ministry from the appellant's medical practitioner (MP) dated May 1, 2012.

In the MNS Application completed by a medical practitioner on February 2, 2012, the appellant is diagnosed with diabetes and coronary artery disease. Regarding the severity of the appellant's medical condition, the MP makes no comment. 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 moderate to severe immune suppression with the comment that she is an "Insulin, dependent diabetic". The physician reports that the appellant is 5 feet 8 inches in height and weighs 260 lbs. Regarding vitamin or mineral supplements, the MP specifies only that multivitamins are required. When asked to describe how this item or items will alleviate the specific symptoms identified, the MP writes to "avoid malnutrition". When asked to describe how this item or items will prevent imminent danger to the applicant's life, there is no comment.

In the application section respecting Nutritional Items, it was indicated by the MP under specifies additional nutritional items required and the expected duration of need as "high protein diet, 2 Boost per day indefinitely". 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 indicates "No". 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 will help stabilize blood sugar levels". When requested to describe how the nutritional items required will prevent imminent danger to the applicant's life, the MP writes to "avoid complications of diabetes and coronary artery disease".

In the Request for Reconsideration dated April 12, 2012, the appellant indicates that the nutritional supplements, vitamins and minerals were recommended by two (2) physicians. She states that she has had diabetes since she was 17 years old and is insulin resistant. The appellant states that she has polycystic, ovarian disease which causes heavy bleeding and has chronic anemia which has caused two (2) heart attacks, due to low hemoglobin. She states that she also has high blood pressure and high cholesterol as well as COPD which cause her to have very hard time breathing and make her dizzy, when she tries to stand. For these reasons, the appellant states that she needs a high protein/low fat diet. She states that the Boost drinks are in addition to her regular diet and help her to get the protein she needs. She adds that she cannot have milk or cheese due to her cholesterol. The appellant indicates that she really needs this product in order to keep her sugars in control and fight anemia and not have another heart attack. In closing the appellant indicates that the supplements and vitamins and minerals are a life saving measure and that without these products her life is definitely in imminent danger.

In the request for clarification to the appellant's medical practitioner dated May 1, 2012, the ministry asks for a copy of a note that the appellant has referred to with her request for reconsideration and of which she did not retain a copy.

In the letter to the ministry from the appellant's MP dated May 1, 2012, he indicates that the appellant has been under his care for several years and that she is a diabetic, anemic and in the past has had open heart surgery. The MP indicates that the appellant requires a high protein, low fat diet and recommends that she take Boost as a nutritional supplement.

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 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 she really needs this product, "Boost" in order to keep her sugars in control and fight anemia and not have another heart attack. The appellant argues that the supplements and vitamins and minerals are a life saving measure and that without these items her life is definitely in imminent danger.

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 the appellant's diabetes, anemia and coronary artery disease, she displays 2 or more of the listed symptoms. The appellant's MP has only indicated that one of the listed symptoms; 'moderate to severe immune suppression' is displayed.

The criterion of section 67(1.1)(c) was not met because a medical practitioner has not provided information to confirm that the nutritional items and/or the vitamins/ minerals supplement were required for the purpose of alleviating one of the listed symptoms. The appellant's MP states that a high protein diet will help stabilize blood sugar levels however; the ministry finds that these diet recommendations involve appropriate food choices within a regular dietary intake, rather than caloric supplementation to a dietary intake. Also, the appellant's MP specifies that the appellant requires multivitamins to avoid malnutrition however; there is no information to establish that the appellant is displaying the symptoms of malnutrition such as under weight status, significant weight loss or significant muscle mass loss which would indicate a need for caloric supplementation to regular dietary intake. In fact, the ministry states that by the indicated height and weight of the appellant, she has a BMI of 39.5 which is above the normal range. 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 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 appellant's MP indicates that the nutritional items would "avoid complications of diabetes and coronary artery disease", the information does not establish that the appellant requires caloric supplementation to prevent imminent

danger to life.

The criteria of section 67 and Schedule C for nutritional items were not met because the medical practitioner did not explain how nutritional items as part of a caloric supplementation to a regular dietary intake would alleviate the symptoms of the appellant's chronic, progressive deterioration of health.

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 reports only one symptom namely, "moderate to severe immune suppression" with the comment that she is an "Insulin, dependent diabetic". The panel also finds that the medical practitioner confirms that the appellant does not have 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.

The panel relies on the medical practitioner's opinion that the vitamins and minerals required are multivitamins which will alleviate the specified symptoms identified. The medical practitioner indicates however only to "avoid malnutrition" yet, there is no information to establish that the appellant is displaying the symptoms of malnutrition. Therefore, the panel finds that the ministry reasonably determined that this supplementation is not required for the purpose of alleviating a symptom listed in section 67(1.1) (b) of the EAPWDR. Thus, the panel finds that the ministry reasonably determined that the criterion of section 67(1.1)(c) of the EAPWDR was not met for the vitamins/ minerals supplement.

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 fails to provide comment. The panel finds that there is no evidence to establish that failure to provide the MNS will result in imminent danger to the appellant's life. Therefore, the panel finds that the ministry reasonably determined that failure to obtain the vitamins/ minerals supplement will not 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 indicates "No". 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 practitioner indicates that a "High protein diet will help stabilize blood sugar levels". When requested to describe how the nutritional items required will prevent imminent danger to the applicant's life, the practitioner writes only to, "avoid complications of diabetes and coronary artery disease". Also, it is reported by the ministry that given the height and weight of the appellant, she has a BMI of 39.5 which is above the normal range. 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.

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