

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated June 25, 2012, which denied the appellant's request for Monthly Nutritional Supplements (MNS) for nutritional items and vitamins/minerals pursuant to Section 67 (1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and Section 7 of the Schedule C of the EAPWDR. The ministry held that the information provided by the appellant's physician did not establish that:

- The appellant is being treated for a chronic progressive deterioration of health due to a severe medical condition;
- The appellant, as a result of a chronic progressive deterioration of health, displays the symptoms of malnutrition, significant weight loss, significant muscle mass loss, and significant neurological degeneration, moderate to severe immune suppression or a significant deterioration of a vital organ;
- The requested nutritional items are part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of the appellant's chronic, progressive deterioration of health;
- Failure to obtain additional nutritional items and vitamins/minerals would result in imminent danger to his life.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the ministry at the reconsideration decision included:

- Application for Monthly Nutritional Supplement completed and signed by the appellant's physician on February 29, 2012. The application consists of a 3-page form of which there are two somewhat different versions of page 2, both completed by the physician, with comments written by the appellant;
- A letter from the appellant to the ministry dated March 9, 2012 stating that he would be mailing an application for MNS;
- A copy of the appellant's list of medications, vitamins and supplements, prepared by the appellant, stating that the appellant is on Tylenol 3 for pain, Neurontin, for nerve regeneration, Lorazepam for muscle relax, vitamins B3 for cardiovascular circulation, B6 & B12, protein supplement, and A for optic nerve regenerator. The note states that the appellant is on the following supplements: Melatonin for sleeping, Coenzyme Q 10 for nerve restorer, Folic Acid, Omega 2, Iron, Gelatin, ALA and Glycerin;
- A letter from the appellant stating his medical conditions dated April 5, 2012;
- A letter from the appellant stating additional distress in conjunction with his head injury dated April 20, 2012;
- Ministry's decision dated June 1, 2012 denying the appellant MNS based on the information provided by his physician;
- Request for reconsideration dated June 19, 2012.

The appellant's physician in the application for MNS noted that the appellant stated that he has a "hole in head" (scalp, skull), his right shoulder is dropped and his spine is somewhat "scoliotic" with twisted pelvis. The physician further stated "problem remains psychiatric" respecting the question "as a result of the chronic, progressive deterioration of health is the applicant being treated for a chronic progressive deterioration of health"? The physician did not state that the appellant displays malnutrition nor that he was underweight nor that he had experienced significant weight loss. Furthermore, the physician said "no" to whether the appellant displays the following symptoms: significant neurological degeneration, moderate to severe immune suppression, and significant deterioration of a vital organ. The physician specified the appellant's height 70 inch and weight 203/4 lbs. The physician answered "no" specifying the vitamins or mineral supplements required for the appellant. The physician stated "not at all" respecting how the requested items would alleviate one or more symptoms identified. Respecting the question "how the requested items would prevent imminent danger to the applicant's life", the physician said "not at all". The physician specified "0" as the additional nutritional items required and stated "no" in response to whether 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 physician stated that according to the appellant he is suffering from a brain and spinal deterioration. The physician stated that he completed the form on the request of the appellant. The physician did not indicate that the appellant is being treated for a chronic progressive deterioration of health. The physician indicated "no obvious nutrition deficiency; however, I don't have his dietary list". Furthermore, the physician said "yes, according to the appellant, he has brain deterioration, spinal cord deterioration according to the appellant's chiropractor", respecting 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 appellant in the request for reconsideration submitted that he prepared the list of vitamins and supplements later at the request of his friend who he met in the hospital because his physician did not have the list of his nutritional supplements and that the physician was no longer available. The appellant stated that the physical and mental complaints are real and that he suffers from migraine and chronic pain from 1984, due to a car crash.

At the hearing the appellant provided a history of his medical conditions including being a patient of several physicians. The appellant stated that he added the comments on page two of the application. The appellant stated the he searched the web and also his friend provided some information about the nutritional items he needs to stay healthy. The appellant further stated that his financial situation does not allow him to purchase

the supplements and vitamins.

The ministry submitted that the physician did not diagnose the appellant with medical conditions that requires him to take nutritional supplements and vitamins. The ministry stated that the appellant is a person with disability and there is no issue that he does not have resources available to pay the cost of the items requested; however, the ministry submitted that the ministry heavily relies on the physician's assessments and make decisions based on the physician's opinion. In this case, the physician did not confirm that the appellant is suffering of malnutrition or has had a major weight lost. In summing up, the physician stated that there is no need for vitamins and nutritional supplements.

The panel finds that:

- The appellant is a person with disabilities;
- The appellant is not receiving supplements under Section 2 and 3 of the Schedule C;
- The appellant does not have any resources available to pay the cost or to obtain the items requested;
- The appellant's request is completed by a medical practitioner; however,
- The appellant, as a result of the chronic, progressive deterioration of health does not display malnutrition, underweight status, significant weight loss, muscle mass loss or neurological degeneration;
- The appellant does not have a significant deterioration of a vital organ nor has moderate to severe immune suppression.
- The appellant does not have an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from surgery, a severe injury, a serious disease or side effects of medical treatment.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's determination that the appellant is not eligible for MNS was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry held that the information provided by the appellant's physician did not establish that:

- The appellant is being treated for a chronic progressive deterioration of health due to a severe medical condition;
- The appellant, as a result of a chronic progressive deterioration of health, displays the symptoms of malnutrition, significant weight loss, significant muscle mass loss, and significant neurological degeneration, moderate to severe immune suppression or a significant deterioration of a vital organ;
- The requested nutritional items are part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of the appellant's chronic, progressive deterioration of health;
- Failure to obtain additional nutritional items and vitamins/minerals would result in imminent danger to his life.

The applicable legislation, Section 67 and Schedule C, Section 7 of the EAPWDR set out the criteria that must be met for the approval of a request for the Monthly Nutritional Supplements.

Pursuant to Section 67 (1) of the EAPWDR - Nutritional supplement - 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.

Section 7 of the schedule C of the EAPWDR states: 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 ministry submitted that based on the physician report, the appellant does not display the symptom of malnutrition nor has any history of significant muscle mass loss or significant weight loss. The ministry submitted that based on the information provided by the physician, the ministry's decision is reasonable.

The appellant argued that he has had weight loss in the past, the supplements and vitamins he is taking are helping him to maintain his health and that the physician did not have the list of his vitamins and nutritional supplements at the time he completed the application. The appellant agreed with the ministry that his main diagnosis is psychiatric and his physician told him that he did not need any vitamins and nutritional supplements. However, the appellant argued that he needs the requested items and can't afford to pay for the costs. The appellant further argued that his physician did not have all the information required prior to completing the application.

The ministry relies on Section 67 of the EAPWDR and Section 7 of the Schedule C of the EAPWDR and submitted that based on the information before the ministry at the reconsideration the appellant is not eligible to receive MNS.

Section 67 (1.1) of the EAPWDR sets out specific criteria that must all be confirmed by a medical practitioner or nurse practitioner in order for a person with disabilities to receive a nutritional supplement under this section.

Respecting Section 67 (1.1) (b) the panel notes that the physician stated that the appellant does not display any of the following symptoms: Malnutrition; underweight status; significant weight loss; significant muscle mass loss; significant neurological degeneration; significant deterioration of a vital organ; and moderate to severe immune suppression;

Respecting subsection 67(1.1) (c), the physician stated "not at all" in response to how the supplements will prevent imminent danger to the appellant's life listed in 67(1.1) (b).

Respecting subsection 67 (1.1) (d), "failure to obtain the items will result in imminent danger to the appellant's life", the physician stated "not at all".

The panel finds that the physician did not specify any vitamins, minerals, or nutritional supplements were required. Therefore, the panel finds that vitamins, minerals, or nutritional supplements were not requested by a medical or nurse practitioner.

Based on all available information and the oral evidence of the appellant and the ministry at the hearing, the panel finds that the ministry reasonably determined that the appellant did not meet all the requirements in Section 67 (1.1) of the EAPWDR.

The panel finds that the ministry's reconsideration decision in the appellant's circumstances was reasonably supported by the evidence and applicable legislation and confirms that decision.