

PART C – Decision under Appeal

In a reconsideration decision dated 17 July 2012, the Ministry denied the Appellant's request for the Monthly Supplement Nutritional Supplement (MNS) because it determined she did not meet the criteria as set out in the Employment and Assistance Persons with Disabilities Regulation, Section 67(1.1)(d) and Schedule C, Section 7(a).

PART D – Relevant Legislation

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

PART E – Summary of Facts

Preliminary Matter: The Appellant submitted a letter dated August 26, 2012 to the Tribunal. In it she explains that due to her medical issues she relies almost totally on gluten free non dairy protein and plant based protein supplements. She includes a cost breakdown of the supplements that she uses as breakfast ingredients that total to a cost of \$206 per month. At the hearing the Appellant submitted an additional 3 pages of more detail pertaining to the costs and nutritional benefits of the nutritional supplements. The Ministry did not object to the submitted information. The Panel finds the letter and submitted details contain information regarding the Appellant's difficulty with digestion and food allergies and her prescribed use of nutritional supplements was before and is in support of information that was before the Ministry at the time of the Reconsideration Decision and admits the submitted information as set out in the Employment and Assistance Act, Section 22(4).

The evidence before the Ministry at the time of the reconsideration decision and pertinent to the matter under appeal included:

- A medical certificate dated June 29, 2012 from the Appellant's medical practitioner (MP).
- A two page letter dated June 28, 2012 from the Appellant.
- An Application for Monthly Nutritional Supplement dated March 21, 2012.
- A list of doctor recommended supplements dated March 20, 2012.
- A medical History Summary dated March 21, 2012.
- A letter dated October 21, 2011 from a gastroenterology and hepatology specialist.
- A letter dated June 18, 2012 from the Ministry to the Appellant advising approval of her request for vitamin supplements.

In the Notice of Appeal the Appellant submitted a letter dated July 25, 2012 stating that she has previously explained how her illnesses interact and that her doctor has signed her explanatory letters in support of her request for nutritional supplements. She concludes that most days she has no caloric intake except the meal replacement supplement. The MP signs the letter and states "I agree". The Ministry acknowledged it had received the letter and did not object to its submission. The Panel finds the letter dated July 25, 2012 does not contain any new information and is in support of information that was before the Ministry at the time of the reconsideration decision and admits the letter as set out in the Employment and Assistance Act, Section 22(4).

In the letter dated June 28, 2012 the Appellant explains how her anxiety, pain and illnesses require many dietary supplements. She says that every day she experiences pain, sickness and depression. She states the medications and supplements give her the most relief and without them she won't eat because of the pain and sickness it causes her. She states her major illnesses are acid reflux disorder, irritable bowel syndrome, an overactive bladder and insomnia/ sleep deprivation and that all these illnesses contribute to her depression. She states that after a consultation with a nutritionist, her MP prescribed more protein and plant based meal replacements.

In the Application for Monthly Nutritional Supplements the MP confirms that as a result of the Appellant's chronic progressive deterioration of health, she displays symptoms of malnutrition and significant neurological degeneration. The MP specifies the Appellant's height is 5 feet 5 inches and her weight is 175 pounds. In the Medical Certificate, the MP supports the Appellant's request for additional supplements relating to her nutritional needs and agrees with the content of the letter from the Appellant dated June 28, 2012 that documents her need for nutritional supplements.

The MP confirms the Appellant's submitted list of doctor recommended supplements. The Medical Summary and the letter from the specialist dated October 21, 2011 confirm the Appellant has been diagnosed with acid reflux disorder, irritable bowel syndrome, gluten and lactose intolerance and neurodegenerative disorder.

In the Reconsideration Decision, the Ministry states the information provided does not establish the Appellant requires caloric supplementation to her dietary intake. The Ministry submits the Appellant lacks symptoms such as underweight status, significant weight loss, or significant muscle mass loss that would indicate a need for caloric supplementation to a regular dietary intake. Furthermore the MP does not indicate the Appellant's medical condition results in her inability to absorb sufficient calories to satisfy her daily requirements. The Ministry states the Appellant's body mass index is above normal based on her height and weight.

At the hearing, the Appellant stated her digestive system and metabolism is more or less stopped and that she is eating less, that she has to force herself to eat and that most days she is almost totally reliant on her morning drink of supplements for nutrition. She stated the nutritionist told her she needed more protein and fatty essentials in her diet. She concluded that her MP has signed to acknowledge and agree with the content of every letter that she has submitted to explain her need for supplements and she cannot understand why the Ministry cannot accept her need and dependency on nutritional supplements.

At the hearing the Ministry stated in the Application for Monthly Nutritional Supplements the MP did not answer how the required supplements will alleviate the Appellant's specific symptoms or describe how they will prevent imminent danger to the Appellant's life. Furthermore the MP did not answer if the Appellant has a medical condition that results in her inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The Ministry concluded the Application for Monthly Nutritional Supplements was sufficient to establish the Appellant's eligibility for vitamins and mineral supplements but not for nutritional supplements.

The Panel finds from the evidence presented that:

- The Appellant is designated as a Person with Disabilities and is receiving disability assistance.
- The Appellant has been diagnosed with severe medical conditions that include gluten and lactose intolerance, irritable bowel syndrome, gastroesophageal reflux disorder, and neurodegenerative disorder.
- The MP confirms the Appellant has a chronic, progressive deterioration of health and displays symptoms of malnutrition and significant neurological degeneration.
- The Appellant has a body mass index above the normal range.
- The MP has prescribed vitamin, mineral and nutritional supplements for the Appellant.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry's determination to deny the Appellant's request for the Monthly Supplement Nutritional Supplement (MNS) because it determined she did not meet the criteria as set out in the Employment and Assistance Persons with Disabilities Regulation, Section 67(1.1)(d) and Schedule C, Section 7(a).

The specific legislation in this appeal is:

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.

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 Ministry argues in the Application for Monthly Nutritional Supplement that the MP has not confirmed that failure to obtain the supplements will result in an imminent danger to the Appellant's life or that the nutritional supplements are part of a caloric supplementation to a regular dietary intake.

The Appellant argues the MP has confirmed her need for these supplements and the reasons why are explained in her letters, each of which the MP has signed in agreement.

The Panel acknowledges the Application for Monthly Nutritional Supplement as completed by the MP to be incomplete, lacking in detail and illegible in areas. The Appellant's letter of June 28, 2012 details her chronic and progressively worsening problems with digestion, her inability to eat most foods, and her dependency on the nutrition supplements for her morning drink. The MP has written a medical certificate supporting her request for supplements and acknowledging the letter as documenting her need for the supplements. The Appellant has also testified orally and in the letter dated July 25, 2012 that it is becoming harder for her to force herself to eat because of the pain and nausea associated with eating and often the only thing she manages to eat some days is her morning nutritionally supplemented drink. The MP has noted he agrees to this explanation of the Appellant's struggle with the inability to eat a regular diet and with digestion. The Panel finds the Appellant's written and oral testimony indicates the Appellant's difficulties with digestion and eating, however neither it or the Application for Monthly Nutritional Supplement as completed by the MP specify that failure to obtain the supplements will result in an imminent danger to the Appellant's life.

The Panel finds the Ministry was reasonable in determining that the evidence did not indicate that a failure to obtain the nutritional supplements would prevent an imminent danger to the Appellant's life. The Panel finds the Ministry was reasonable to determine that EAPWDR, Section 67(1.1)(d) was not met.

In the letter dated July 25, 2012 the Appellant states that most days she has no caloric intake except her morning meal replacement supplement and that the nutritional supplements are more necessary than ever. The MP has noted he agrees with the content of this letter. In the letter of June 28, 2012 the Appellant states her MP prescribed (among other items) more protein and plant based meal replacements after consultation with a nutritionist. The Panel notes the MP did not answer the

question specifically regarding the Appellant's caloric intake in the Application for Monthly Nutritional Supplement and, also did not identify the Appellant as having symptoms of significant weight loss, muscle mass loss or underweight status. The Appellant's higher than normal body mass index and her admission that her metabolism and digestion are "more or less stopped" indicate the need for a specialized diet but not a need for additional calories to a regular diet. The Panel finds the Ministry was reasonable to determine that EAPWDR, Schedule C, Section 7(a) was not met.

The Panel finds the Ministry's determination to deny the request for nutritional supplements was reasonably supported by the evidence and confirms the decision.