

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated April 27, 2012 which held that the Appellant was denied a request for a monthly nutritional supplement (MNS), specifically nutritional items and vitamin/mineral supplements. The ministry concluded that the Appellant did not meet the requirements for a MNS as per the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation subsection 67 and Schedule C, subsection 7. Specifically the appellant did not meet the legislative requirements of EAPWD Regulation subsection 67(1.1)(c)(d) and Schedule C, subsection 7(a). The ministry determined that the Appellant's medical practitioner has not indicated that the appellant's medical practitioner makes diet recommendations as opposed to dietary caloric supplementation as per EAPWD Regulation subsection 67(1.1)(c) and Schedule C, subsection 7(a). The minister was not satisfied that the Appellant requires vitamin/mineral supplementation to alleviate symptoms of a chronic, progressive deterioration of health and to prevent imminent danger to life as per EAPWD Regulation subsection 67(1.1). The minister also was not satisfied that the Appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of chronic progressive deterioration of health and to prevent an imminent danger to life as set out in section 67(1.1) and Schedule C, subsection 7(a) of the EAPWD Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation subsection 67
EAPWD Regulation Schedule C subsection 7

PART E – Summary of Facts

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

1. A letter from the Appellant's physician dated April 27, 2012 specifying a need for multivitamin and mineral supplementation as well as the need to increase daily fresh fruit and vegetable intake.
2. A letter from the Appellant's second physician dated April 11, 2012 providing the diagnosis of diabetes, schizophrenia, fatty liver, chronic respiratory infections and dermatitis and stating that the Appellant needs dietary supplement in order to improve his declining health condition.
3. Monthly Nutritional supplement Decision Summary dated March 22, 2012 completed by the Adjudicator.
4. Application for Monthly Nutritional Supplement dated February 6, 2012 completed by the appellant's first medical practitioner.
5. Dental Claims History of the Appellant from January 1, 2011 to April 17, 2012.

In the Appellant's application for a nutritional supplement dated February 6, 2012 prepared by a medical practitioner, he outlines the Appellant's health issues, namely chronic schizophrenia and has indicated that this is a chronic progressive deterioration of health as a direct result of a severe medical condition. The adjudicator comments that the physician has indicated a) the symptoms of "underweight status," however the height and weight provided indicate that the Appellant has a body mass index of 23.3 which is well within the normal weight range; and b) the symptom of "significant weight loss, (a description of this symptom where requested states only 20 lbs.); and c) the Appellant is displaying the symptom of "malnutrition," however no accompanying description has been provided where requested.

A letter from the second medical practitioner dated April 11, 2012 diagnoses the Appellant with diabetes, schizophrenia, fatty liver, chronic respiratory infections (due to immune suppression) and dermatitis. This letter states that a dietary supplement is needed to improve health, which is declining.

The following additional information is provided subsequent to reconsideration:

1. A Release of Information form dated May 23, 2012.
2. A letter from the Appellant's second medical practitioner dated May 23, 2012 outlining the general health condition and requirements of the Appellant. The letter comments a) the Appellant has an intellectual impairment due to a head injury, and Schizophrenia which makes it difficult to manage his self-care and specifically his nutritional needs; b) that the Appellant lost 20 pounds in the past year; c) his aging mother, with difficulty, provides him two meals per day; d) due to poverty and psychiatric issues the Appellant cannot wear his dentures and all his food must be very soft which makes it difficult to eat fruits, vegetables and whole grains; e) the Appellant's health is at immediate risk if he does not supplement with a multivitamin and mineral supplement; f) to maintain his weight, it would be ideal for the Appellant to consume Ensure and Boost on a daily process; g) the physician feels strongly that the Appellant's health is at significant and immediate risk if he does not supplement his diet; h) the Appellant must have a balanced diet due to his Diabetes, liver disease, and respiratory impairment, and if he cannot manage this on his own, he must take vitamin and mineral supplements.
3. Notice of Appeal filed by the Appellant dated May 9, 2012

The panel admits these documents as evidence under s.22(4) of the Employment and Assistance Act.

The Ministry decision finds the Appellant: 1) has PWD designation, 2) is in receipt of monthly disability assistance, and 3) has been diagnosed by a medical practitioner with paranoid schizophrenia, diabetes, fatty liver, chronic respiratory infections (due to immune suppression) and dermatitis and is treated for a chronic progressive deterioration of health on account of a severe medical condition.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated April 27, 2012 which held that the Appellant was denied a request for a monthly nutritional supplement specifically nutritional items and vitamin/mineral supplements. The minister was not satisfied that the Appellant requires vitamin/mineral supplementation to alleviate symptoms of a chronic, progressive deterioration of health and to prevent imminent danger to life as per EAPWD Regulation subsection 67(1.1). The minister also was not satisfied that the Appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of chronic progressive deterioration of health and to prevent an imminent danger to life as set out in section 67(1.1) and Schedule C, subsection 7(a) of the EAPWD Regulation.

The following legislation applies:

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 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

- (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. (B.C. Reg. 68/2010)
- (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). (B.C. Reg. 68/2010)

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

The Appellant (through his doctor) argues that without the additional diet supplement there is significant and immediate risk to health. The Appellant has intellectual challenges from a head injury and his associated cognitive impairment from Schizophrenia, he cannot care for himself and manage his nutritional status. Further, he must have a balanced diet due to his Diabetes, liver disease and respiratory impairments.

The Ministry argues that, for MNS of nutritional items, the Appellant's medical practitioner makes diet recommendations rather than caloric supplementation to his diet and it is not possible to make a direct link between the Appellant's symptoms and the medical diagnosis provided which is not in compliance with the legislative criteria set out in EAPWD Regulation subsection 67(1.1)(c) and Schedule C subsection 7(a). The ministry also finds that, for vitamin/mineral supplements, a medical practitioner does not confirm that the Appellant requires MNS to alleviate symptoms of a progressive deterioration of health or that a failure to provide MNS will result in imminent danger to the Appellant's life as per EAPWD Regulation subsection 67(1.1)(d).

The panel has reviewed all of the evidence and makes the following findings:

- A. In the Application for Monthly Nutritional Supplement completed by the Appellant's first physician on February 6, 2012, there was no request made for Vitamin or Mineral Supplementation and in the area of Nutritional Items, the physician states that there is a requirement for protein which indicates a specific dietary regime rather than calories above a

normal dietary intake due to malabsorption problems.

- B. The second physician provided clarification of the type of dietary/nutritional supplement being requested, advising the need for multivitamin and mineral supplementation along with an increase in fresh fruit and vegetable intake. However, the panel finds that the ministry was reasonable in concluding that the physician did not comment on how vitamin and mineral supplementation and nutritional items would alleviate the symptoms of a progressive deterioration of health as set out in EAPWD Regulation subsection 67 (1.1).
- C. In the Notice of Appeal, the Appellant states "I need vitamins" as the reason for appeal.
- D. EAPWD Regulation subsection 67(1.1)(d) requires that the medical practitioner confirm that failure to obtain the nutritional items that are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the person's life. In the Application for Monthly Nutritional Supplement (application) dated February 6, 2012, when asked how the nutritional items will prevent imminent danger to the appellant's life, the first medical practitioner provided no answer. The second medical practitioner comments that the Appellant must have a balanced diet due to diabetes, liver disease and respiratory impairment and if he cannot manage this on his own, he must take a vitamin and mineral supplements, and ideally a nutritionally sound liquid meal replacement on a daily basis (Ensure/Boost). The panel notes that there is no evidence to substantiate if the Appellant can or cannot manage a balanced diet on his own. In the application the first medical practitioner indicated that the Appellant is displaying the symptom of "underweight status" with a weight loss of 20 lbs. but did not state the time period over which this weight loss occurred. The second medical practitioner stated that the 20 lb. weight loss occurred over the past year. The panel cannot determine the significance of this 20 lb. weight loss over the one year time period, and has relied on the statement that the Appellant's body mass index is 23.3 which is well within the normal weight range. The panel further notes that the evidence provided does not confirm that the failure to provide nutritional items will result in an imminent danger to the Appellant's life as per EAPWD Regulation subsection 67(1.1)(d).

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for nutritional items and vitamin/mineral supplements because the requirements of Subsection 67(1.1) of the EAPWDR were not met, was reasonably supported by the evidence and the panel confirms the ministry's decision.