

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development (Ministry) dated August 21, 2012, which denied her request for Monthly Nutritional Supplement ("MNS") on the basis that she did not meet the criteria set out in the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) section 67(1.1) and Schedule C, section 7(a). The Ministry determined that the appellant's medical practitioner did not confirm that the appellant met the following required criteria: that she is being treated by the medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition (as required by subs. 67(1.1)(a)); that the appellant displays two or more of the symptoms set out in subs. 67(1.1)(b); that the appellant requires vitamin/mineral supplements to alleviate the symptoms of her chronic, progressive deterioration of health (as required by subs. 67(1.1)(c)); and that failure to obtain the supplements will result in imminent danger to the appellant's life (as required by subs. 67(1.1)(d)). The Ministry further determined that the appellant's medical practitioner did not confirm that the appellant requires the requested additional nutritional items as part of a caloric supplementation to a regular dietary intake, as set out in s. 7(a).

PART D – Relevant Legislation

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

PART E – Summary of Facts

At the reconsideration, the Ministry had its MNS decision summary dated June 27, 2012, and the appellant's application for MNS signed by the appellant on March 27, 2012, with the portion completed by the appellant's physician dated October 28, 2011, described below. The Ministry also had before it two notes signed by the appellant's physician on December 22, 2011 (advising that the delay in completing the appellant's MNS application arose in the physician's office) and on August 8, 2012 (requesting that the appellant's special diet allowance "to continue as in past", that she is diagnosed with "Colitis (Chronic Inflammatory Bowel Disease)" and the duration of need is 2 years).

On the first page of the MNS application form, the appellant's physician indicated that the appellant's severe medical conditions (question #1) are chronic fatigue syndrome and Porphyria, which the appellant's physician described as "cognitive & mechanical fatigue with persistence beyond activity, exacerbation of fatigue if carbohydrate intake not consistent." In response to question #2, "As a result of the severe medical condition(s) ... is the applicant being treated for a chronic, progressive deterioration of health? If so, please provide details ...", the appellant's physician wrote:

Patient attempts strict dietary avoidance of preservatives and small frequent carbohydrate rich meals.
Judicious budgeting of activity with regular confined aerobic exercise is only management known.
Balancing diet with vitamin supplements has been helpful.

On page 2 of the MNS form, in response to question #3 ("As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms?"), the appellant's physician indicated that the appellant displayed the symptom of malnutrition, writing, "carbohydrate weighted diet has resulted in protein deficiency." The appellant's physician did not indicate that the appellant displayed any other listed symptoms in the MNS form, although the appellant and her advocate told the panel that her Porphyria has resulted in the listed symptom of "significant deterioration of a vital organ" – her liver. In response to question #4, the appellant's physician provided the appellant's height and weight (64" and 141 lbs).

In response to question 5, which has 3 bullets (sub-questions), the appellant's physician wrote in answer to the question "specify the vitamin or mineral supplement(s) required and expected duration of need", "using "unprescribed" VitB12 im B6 PD. Vit D. "protein meal replacements". The appellant's physician indicated that these vitamin or mineral supplements "stabilizes blood sugar levels thus enhancing expendable energy and mood through day" to alleviate the appellant's specific symptoms (bullet 2). The appellant's physician responded to the question "describe how this item or items will prevent imminent danger to the applicant's life" (bullet 3) with "N/A."

In response to question 6, which has 2 bullets on page 2 and 2 bullets on page 3, the appellant's physician indicated that the appellant required the additional nutritional items of "protein supplements" but did not write anything else in response to the expected duration of need (bullet 1). In the note of August 8, 2012, the appellant's physician wrote, "special diet allowance – to continue as in past" and "duration of need: 2 years." The appellant's physician wrote, "Irritable bowel syndrome often limits daily intake as many food choices trigger abdominal pain and bloating" in response to the question on the MNS form, "Does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy the daily requirements through a regular dietary intake? If yes, please describe"(bullet 2). On the third page of the form, question #6 cont'd, the appellant's physician wrote, "Vit. B supplementation has benefitted bowel regularity" in response to the question, "Describe how the nutritional items required will alleviate one or more of the symptoms specified in question 3 and provide caloric supplementation to the regular diet" (bullet 1). The appellant's physician again wrote, "N/A" in response to the second bulleted question, "Describe how the nutritional items requested will prevent imminent danger to the applicant's life." The appellant's physician also wrote the following in

additional comments:

[The appellant] has been symptomatic with abdominal pain, bloating, muscular pain and undulating and incapacitating fatigue since 1988.

Life style management and dietary management have allowed her to remain independent, however the cost of supplementation has been overwhelming as has the mounting cost of fresh foods.

The appellant is a person with disabilities in receipt of disability assistance. The appellant told the panel about her Porphyria, which is a blood condition for which there is no known medical treatment to cure it - she cannot get enough oxygen to her cells (her body doesn't make the enzyme required to produce adequate red blood cells) - and the condition affects her liver and causes Chronic Fatigue Syndrome (CFS). Both the appellant and her advocate described her conditions, the Porphyria and the CFS, as severe conditions. The appellant told the panel that she has taken medication to treat some of the symptoms of her Porphyria, but that the side effects were much worse than the symptoms and she ceased taking the medications. The appellant told the panel that she can only treat her conditions through a very disciplined diet and vitamin supplements, in particular vitamins B6 and B12.

The Ministry directed the panel to the MNS form completed by the appellant's physician, noting that the appellant's physician had not indicated in the form the required information that the appellant's conditions of CFS and Porphyria are severe conditions (the appellant's physician did not provide any specific information about the severity of the condition) and result in the chronic, progressive deterioration of her health. The Ministry noted that the appellant's physician only indicated the one symptom of malnutrition on the MNS form.

The Ministry noted that, under the heading "Vitamin/Mineral Supplementation", the appellant's physician did not indicate that the vitamin/mineral supplementation is required to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to the appellant's life (the appellant's physician answered "N/A" to the specific question as noted above).

The Ministry noted further that, under the heading "Nutritional Items", the appellant's physician requested "protein supplements" which, as stated in the reconsideration decision, "suggests a specific dietary component rather than a need for caloric supplementation." The Ministry also said that the appellant's physician based the rationale for the nutritional items on the cost of supplements and mounting costs of fresh food (as noted above) and that this does not confirm that the requested protein supplements are required to prevent imminent danger to the appellant's life.

The Panel makes the following findings of fact:

- the appellant is a person with disabilities in receipt of disability assistance.
- the appellant's medical practitioner confirmed that the appellant is being treated for Porphyria and CFS.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's decision to deny the appellant's request for the MNS on the following bases is reasonably supported by the evidence: 1) that the appellant's medical practitioner did not confirm that the appellant is being treated by her medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition (as required by subs. 67(1.1)(a)); that the appellant's medical practitioner did not confirm that she displays two or more of the symptoms set out in subs. 67(1.1)(b); that the appellant's medical practitioner did not confirm that she requires vitamin/mineral supplements to alleviate the symptoms of her chronic, progressive deterioration of health, as required by subs. 67(1.1)(c) and to prevent imminent danger to life as required by subs. 67(1.1)(d); and 2) that the appellant's medical practitioner did not confirm that the appellant requires the requested additional nutritional items to alleviate the symptoms of her chronic, progressive deterioration of health, as required by subs. 67(1.1)(c), as part of a caloric supplementation to a regular dietary intake, as set out in s. 7(a) of Schedule C, and to prevent imminent danger to life, as required by subs. 67(1.1)(d).

Legislation

EAPWDR

67. Nutritional Supplement

- (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).

Schedule C – Health Supplements

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
- (c) For vitamins and minerals, up to \$40 each month.

The appellant and her advocate told the panel that her medical practitioner had indicated in response to question #1 on the MNS form that she suffers from the "severe" conditions of Porphyrria and CFS. However, the appellant agreed that her medical practitioner had not indicated more than one symptom in answer to question #3 of the MNS form (that her medical practitioner had not completed the form to show that her liver is deteriorating). The appellant also agreed that her medical practitioner had indicated "N/A" (or not applicable) in response to the questions on the MNS form asking how the requested vitamin/mineral supplements and nutritional items will prevent imminent danger to the appellant's life (questions #5 and #6).

The Ministry says that, in order to qualify for MNS, the EAPWDR requires that the appellant's medical practitioner must confirm that the appellant suffers from a severe medical condition, which causes chronic progressive deterioration of health, and that the requested vitamin/mineral supplements are required to alleviate two or more of the listed symptoms. The Ministry says that the answers of the appellant's physician to questions #1 and #2 on the MNS form did not describe the severity of the appellant's medical conditions and did not provide details and information about the appellant's chronic progressive deterioration of health (the responses of the appellant's physician focus on maintaining healthy diet). The Ministry noted that the appellant's physician only indicated she suffered one of the listed symptoms, where two or more are required by the legislation. The Ministry says further that the appellant's physician did not confirm that the requested vitamin/mineral supplements are required to prevent imminent danger to the appellant's life.

The Ministry says that the appellant's physician indicated that the appellant requires protein supplements, but did not indicate the expected duration of need and that the appellant's physician did not confirm that the appellant has a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, or that she has a need for caloric supplementation (the answers to the first part of question #6). The Ministry says that the appellant's physician did not confirm that the requested additional nutritional items are required to prevent imminent danger to the appellant's life.

Under subs. 67(1)(c) of the *EAPWDR*, in order to qualify for the MNS, the appellant's medical practitioner must confirm that the appellant meets *all* of the requirements set out in subs. 67(1.1)(a) through (d). Under s. 7(a)

of Schedule C of the *EAPWDR*, additional nutritional items may be provided if they "are part of a caloric supplementation to a regular dietary intake."

The panel finds that the Ministry's determination that the appellant's physician did not confirm that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition (or conditions) is reasonable based on the evidence in the MNS form completed by the appellant's physician (as noted previously, the answers to question #1 and #2 describe the appellant's condition by referring to the need for attention to her diet "exacerbation of fatigue if carbohydrate intake not consistent" and to "patient attempts strict dietary avoidance of preservatives and small carbohydrate rich meals"). The panel finds that the Ministry's determination that the appellant's physician has not confirmed that the appellant suffers from two or more of the listed symptoms set out in subs. 67(1.1)(b) is reasonable based on the response by the appellant's physician to question #3 on the MNS form only indicating malnutrition.

Vitamin/Mineral Supplements

Under subs. 67(1.1)(c) of the *EAPWDR*, the appellant's physician must confirm that the appellant requires vitamin/mineral supplements to alleviate the symptoms found under subs. 67(1.1)(b). In the MNS application form, the appellant's physician indicated that the appellant required "using 'unprescribed' VitB12 im B6 pD. Vit D. 'protein meal replacements'" and that these items will "stabilize blood sugar levels thus enhancing expendable energy and mood through the day." In response to the question "describe how this item or items will prevent imminent danger to the applicant's life," the panel notes that the appellant's physician wrote "N/A." The panel finds reasonable the Ministry's determination that there is no evidence provided by the appellant's physician on the MNS application that confirms that the requested vitamin/mineral supplements will alleviate her symptoms and will prevent imminent danger to the appellant's life, as required by subs. 67(1.1)(c) and (d).

Additional Nutritional Items

The panel finds reasonable the Ministry's determination that the appellant's physician's recommendation of "protein supplements" does not meet the criteria of caloric supplementation to a regular dietary intake, as set out in s. 7(a) of Schedule C of the *EAPWDR*. Given the appellant's physician's answer of "Irritable bowel syndrome often limits daily intake as many food choices trigger abdominal pain and bloating" in response to 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? If yes, please describe" on the MNS application form, the panel finds that the appellant's physician has not confirmed that the requested additional nutritional items are part of a caloric supplementation to a regular dietary intake as set out in s. 7(a) of Schedule C of the *EAPWDR*. The panel notes that the appellant's physician did not indicate the appellant was underweight, suffering significant weight or muscle mass loss (in answer to question #3) and did not indicate that the appellant was underweight for her height (64") in answer to question #4 (the physician indicated the appellant's weight is 141 lbs). The panel finds reasonable the ministry's determination that the appellant's physician did not confirm that the requested nutritional items will prevent imminent danger to the appellant's life as required by subs. 67(1.1)(d), given the appellant's physician's response of "N/A" to the question,

Accordingly, the panel finds that the Ministry's denial of the appellant's request for MNS is reasonably supported by the evidence set out in the MNS form completed by the appellant's physician. The panel confirms the ministry's reconsideration decision.