

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry")'s Reconsideration Decision dated August 9, 2012 which denied the appellant's request for the Monthly Nutritional Supplement (MNS) as he did not meet the requirements of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67(1.1) and Schedule C, section 7.

The Ministry was satisfied that the appellant is a person with disabilities who is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition as set out in Section 67(1.1)(a) of the EAPWD Regulation. However, the Reconsideration Decision states that the minister is not satisfied that the information provided by the appellant's physician establishes that:

- the appellant displays two or more symptoms that are a direct result of a chronic, progressive deterioration of health as required by Section 67(1.1)(b) of the EAPWDR;
- the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating one or more of the symptoms that are a direct result of a chronic, progressive deterioration of health as required by Section 67(1.1)(c) and Schedule C, section 7(a) of the EAPWDR;
- the appellant requires vitamins and minerals to alleviate the symptoms of a chronic, progressive deterioration of health as required by Section 67(1.1)(c) and Schedule C, section 7(c) of the EAPWDR; and
- failure to obtain the vitamins and minerals supplements or additional nutritional items would result in imminent danger to his life as required by Section 67(1.1)(d) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67(1.1)
Employment and Assistance for Persons with Disabilities Regulation(EAPWDR) Schedule C section
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PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- 1) Request for Reconsideration dated July 26, 2012 in which the appellant states that due to his diabetic condition it is essential to have a high protein diet and nutritional supplements to manage his health and glucose numbers. The appellant also states that he has permanent nerve damage in his legs and his Hepatitis C condition complicates his health and contributes to high anxiety which all contribute to his significant weight loss;
- 2) Application for MNS dated March 20, 2012 completed by the appellant's physician (the "Application") indicating the appellant has been diagnosed with HCV+, chronic back pain, anxiety, substance abuse and diabetes and suffers from weight loss, malnutrition and muscle mass loss. The physician notes that as a direct result of the chronic, progressive deterioration of health the appellant displays the following symptoms: malnutrition from poor diet as no funds; significant weight loss of 20 pounds loss over five weeks; moderate to severe immune suppression due to HCV+/Diabetes; and significant deterioration of a vital organ in that the appellant has abnormal liver function tests. The physician also notes that the appellant needs vitamin or mineral supplements to improve his immunity and nutrition. The physician notes that the appellant's HCV+ and diabetes result in the appellant being unable to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The physician also notes that the appellant needs a high protein diet, vitamins, minerals and supplements to improve his health, nutrition, and immunity to prevent infections and illness.
- 3) Letter from the ministry to the appellant dated June 11, 2012 advising the appellant that he did not meet the eligibility requirements for a monthly nutritional supplement; and
- 4) Ministry of Social Development Health Assistance Branch monthly nutritional supplement decision summary dated June 11, 2012.

In the Notice of Appeal dated August 23, 2012, the appellant notes that in the Reconsideration Decision, the ministry states that the minister is satisfied that the appellant requires nutritional supplements to treat a chronic, progressive deterioration of health on account of a severe medical condition but then denies his request for MNS. The appellant also states that due to MSD clawbacks, he does not get the \$40 diet supplement as indicated in the Reconsideration Decision.

The appeal proceeded by way of written hearing. The appellant did not provide any further submissions.

The ministry provided an email submission dated September 25, 2012 responding to the inconsistency raised by the appellant in his Notice of Appeal. The Ministry notes that on page one, paragraph 7 of the Reconsideration Decision there was a typographical error and that the paragraph should have read that the minister was satisfied that the appellant is a person with disabilities who is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition as set out in section 67(1.1)(a) of the EAPWDR. The ministry states that they stand by their Reconsideration Decision.

Based on the evidence, the panel's findings of facts are as follows:

- The appellant is a Person with Disabilities in receipt of disability assistance; and
- The appellant has the following medical conditions: Hepatitis C, chronic back pain, anxiety, substance abuse and diabetes.

PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry's decision that the appellant did not meet the requirements for the MNS as set out in Section 67(1.1)(c) and (d) and Schedule C, Section 7 of the EAPWDR was reasonably supported by the evidence, or whether the ministry's decision was a reasonable application of the legislation in the appellant's circumstances.

The Ministry was satisfied that the appellant is a person with disabilities who is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition as set out in Section 67(1.1)(a) of the EAPWD Regulation. However, the Ministry held that the information provided by the appellant's physician did not establish that:

- the appellant displays two or more symptoms that are a direct result of a chronic, progressive deterioration of health as required by Section 67(1.1)(b) of the EAPWDR;
- the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating one or more of the symptoms that are a direct result of a chronic, progressive deterioration of health as required by Section 67(1.1)(c) and Schedule C, section 7(a) of the EAPWDR;
- the appellant requires vitamins and minerals to alleviate the symptoms of a chronic, progressive deterioration of health as required by Section 67(1.1)(c) and Schedule C, section 7(c) of the EAPWDR; and
- failure to obtain the vitamins and minerals supplements or additional nutritional items would result in imminent danger to his life as required by Section 67(1.1)(d) of the EAPWDR

The relevant sections of the EAPWDR are as follows:

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 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)...

Schedule C - 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)

Section 67 (1.1)(b) EAPWDR – Two or more symptoms as a direct result of a chronic, progressive, deterioration of health

The appellant's position is that all of his health factors contribute to his significant weight loss and the

Ministry's decision is unfair.

The Ministry's position is that the physician's information does not established that as a direct result of the chronic, progressive deterioration of health, the appellant displayed two or more of the symptoms listed in Section 67(1.1)(b) of the EAPWDR, namely malnutrition, underweight status, significant weight loss, significant muscle mass loss, significant neurological degeneration, moderate to severe immune suppression or significant deterioration of a vital organ.

The Ministry's position is that lack of funds is not due to a medical condition, and that the physician does not provide evidence that the loss of 20 pounds is due to lack of funds or a medical condition. The Ministry's position is that while the liver function tests were abnormal, the physician did not describe the severity of the liver disease.

In response to question three on the Application which asks whether as a direct result of the chronic, progressive deterioration of health the applicant displays two or more of the following symptoms, the appellant's physician indicates that the appellant displays four of the noted symptoms, namely: malnutrition (poor diet as no funds), significant weight loss of 20 pounds over five weeks, moderate to severe immune suppression due to HCV+ and diabetes and significant deterioration of a vital organ displayed by abnormal liver function tests.

The panel notes that while the physician did not specify which of the diagnoses the 20 pound loss was directly related to, the physician's response indicates that the weight loss was due to one of the noted health conditions, so the panel finds that the Ministry's decision that the loss of 20 pounds cannot be verified to be due to a medical condition was not reasonable.

The panel notes that question three of the Application does not require the severity of the disease to be identified, only whether there is significant deterioration of a vital organ and whether the noted symptoms are displayed. As the physician has indicated that the appellant displays four of the required criterion, the panel finds that the Ministry's decision that the evidence does not establish that two or more of the legislative criterion required by Section 67(1.1)(b) were met was not reasonable and was not a reasonable application of the legislation in the appellant's circumstances.

Vitamin/Mineral Supplementation

The appellant's position is that due to his diabetic condition it is essential to have nutritional supplements to manage his current health and ongoing glucose numbers. In addition, the appellant's position is that his Hepatitis C complicates his health and contributes to high anxiety, and that all of those factors contribute to his significant weight loss.

The Ministry's position is that they are not satisfied that the appellant requires vitamin/mineral supplementation to alleviate the symptoms of his chronic, progressive deterioration of health and to prevent imminent danger to life, as required by Section 67(1.1)(c) and (d) of the EAPWDR.

The Ministry's position is that although the physician states that the vitamin/mineral supplementation will "*improve immunity & nutrition*" the physician does describe the specific vitamin/mineral supplement required or the expected duration, so the medical evidence is not sufficient to establish

eligibility for vitamin/mineral supplementation.

The Ministry's position is that the physician describes alleviation of symptoms as "*help control diabetes & deal with abnormal liver function tests*", but as no specific supplement is identified, it is not possible to determine eligibility on the basis of alleviation of symptoms.

The Ministry's position is that although the physician states that vitamin/mineral supplementation will "*improve health/nutrition/immunity to fight off infection/illness*" this does not establish that the appellant faces an imminent danger to life.

Schedule 67(1.1)(c) of the EAPWDR requires that a request for a nutritional supplement be completed by a medical or nurse practitioner and must specify in the request that the person requires one or more of the items set out in Schedule C, Section 7. In response to question 5 of the Application which asks the physician to specify the vitamin or mineral supplement(s) required and expected duration of need the appellant's physician did not provide any information about the type of vitamin or mineral supplement required or any information as to the expected duration as required. Although the physician states that the items will alleviate the symptoms identified by helping to control diabetes and deal with abnormal liver function tests, section 67(1.1) of the EAPWDR makes it clear that there must be a direct link between the required vitamin/mineral items and the alleviation of symptoms of the appellant's chronic, progressive deterioration of health. As the evidence from the appellant's physician does not establish this link, the panel finds that the Ministry's decision that the legislated criteria were not met was reasonable.

Section 67(1.1)(d) of the EAPWDR requires that the medical practitioner confirm that failure to obtain the requested items will result in imminent danger to the person's life. In response to the section of question 5 of the Application requesting a description of how the items will prevent imminent danger to the applicant's life, the appellant's physician states "*improve health/nutrition/immunity to fight off infection/illness*". Although the physician's response indicates that vitamin/mineral supplements would be beneficial to the appellant's health the information provided does not identify that the appellant faces an imminent danger to health if the requested items are not provided or how the requested items will prevent imminent danger to life.

Therefore, the panel finds that the Ministry's decision which denied the appellant's request for vitamin or mineral supplementation as the criteria of Section 67(1.1)(c) and (d) were not met was reasonable.

Nutritional items

Section 67(1.1)(c) of the EAPWDR requires that a request for supplements must specify in the request that the person requires one or more of the items set out in Schedule C, Section 7(a) being additional nutritional items that are part of a caloric supplementation to a regular dietary intake. Section 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.

The appellant's position is that due to his diabetic condition it is essential to have a high protein diet and nutritional supplements to manage his health and glucose numbers. He also states that his Hepatitis C complicates his health and contributes to high anxiety which contributes to his significant

weight loss.

The Ministry's position is that although the appellant's physician states that the appellant requires a "*high protein diet, vitamins and mineral supplements*", the physician does not provide information on how the nutritional items will alleviate one or more symptoms and provide caloric supplementation to the regular diet as required by Section 67(1.1)(c) of the EAPWDR.

The Ministry's position is that although the appellant's physician states that the nutritional items will "*improve health, nutrition, immunity to prevent infections and illness*", the information provided does not establish that a nutrition item will prevent imminent danger to life as required by Section 67(1.1)(d) of the EAPWDR.

In responding to the question six on the Application, which asks for a description of the additional nutritional items required and expected duration of need, the appellant's physician does not specifically indicate what nutritional items are required. The physician's response is somewhat illegible but it appears to say "*life long, need improving vitamins and nutritional*". The physician states that HCV+ and Diabetes result in the appellant's inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. In response to the request for a description as to how the nutritional items will alleviate one or more of the specified symptoms and provide caloric supplementation to the regular diet, the physician states "*high protein diet, vitamins, mineral supplements*".

Section 67(1.1) of the EAPWDR makes it clear that there must be a direct link between the requested nutritional items, namely caloric supplementation, and the alleviation of the symptoms of the appellant's chronic, progressive deterioration of health, but the evidence provided by the medical practitioner does not make such a link. The panel finds that the Ministry's decision that the requirements of Section 67(1.1)(c) were not met was reasonable.

In terms of imminent danger to the appellant's life, the appellant's physician wrote "*improve health, nutrition, immunity to prevent infections and illness*". While the physician's response indicates that the nutritional items may be beneficial to the appellant's health and prevent future infections and illness, the information provided does not establish that failure to obtain the nutritional items will result in imminent danger to the appellant's life as required by Section 67(1.1)(d) of the EAPWDR. The panel finds that the Ministry's decision that the physician's information did not establish that failure to obtain the requested nutritional items would result in imminent danger to the appellant's life was reasonable and was a reasonable application of the legislation in the appellant's circumstances.

Based on the above, the panel finds that the Ministry's decision to deny the appellant's MNS request was reasonable and was a reasonable application of the legislation in the appellant's circumstances. Therefore, the panel confirms the Ministry's decision.