

## PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development's (the "Ministry's") September 25, 2012 reconsideration denying the Appellant, who is a Person with Disabilities, a monthly nutritional supplement for vitamins/minerals and for nutritional items because the Ministry determined that she did not meet the requirements for nutritional supplements as provided for in section 67 of the Employment and Assistance for Persons with Disabilities Regulation. Specifically the Ministry determined that a medical practitioner did not confirm that:

1. The Appellant displayed two or more of the symptoms listed in section 67(1.1)(b);
2. The Appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent an imminent danger to her life as required by section 67(1.1)(c) and (d), and Schedule C section 7; and,
3. The Appellant requires vitamin/mineral supplements to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life as required by section 67(1.1)(c) and (d).

## PART D – Relevant Legislation

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

## PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from its files that the Appellant is a Person with Disabilities ("PWD") receiving disability assistance.
2. Ministry's application form for supplements completed by the Appellant's doctor.
3. Appellant's request for reconsideration with a supplemental medical opinion completed and signed by same doctor on September 11, 2012.
4. Letter from a psychiatrist dated February 28, 2012 indicating that the Appellant suffers from major affective disorder, depression, generalized anxiety disorder with panic attacks and agoraphobia, possible bipolar disorder type II and post traumatic stress disorder. The Appellant also has diabetes and recently had surgery. The psychiatrist wrote that the Appellant requires supplemental nutrition with Glucerna to help her control her diabetes. Also because of her mental conditions, the Appellant has difficulty preparing and eating a proper diet.
5. Cancer Agency report dated January 4, 2012 regarding surgery.
6. Letter from a consultant gastroenterologist dated November 7, 2011 indicating the Appellant suffers from GERD, intermittent dysphagia for further evaluation, tumor with partial colonic restriction, depression, anxiety, bipolar disorder, borderline personality disorder and diabetes.

In the Ministry's application form for supplements the Appellant's doctor provided the following information about the Appellant's medical conditions and need for supplements:

- Where the doctor is asked to list the Appellant's severe medical conditions, the doctor wrote under "diagnosis" - major affective disorder, diabetes, chronic diarrhea and GERD.
- In the section where the doctor is asked to provide details about treatments needed as a direct result of these severe medical conditions, the doctor wrote that the Appellant is diabetic, suffers from major affective disorder and thus is not in a position to prepare her own meals and eat a healthy diet.
- Specified the Appellant's height as 5'6" and weight as 214.
- In the section listing symptoms, which the Appellant displays as a direct result of the chronic, progressive deterioration of health, the doctor wrote beside the listed symptom of "malnutrition" - diabetes with chronic diarrhea.
- In the section for vitamins or mineral supplementation, the doctor identified no specific vitamin or mineral supplements needed by the Appellant.
- Wrote that in view of chronic diabetes, tolerates a liquid diet better and needs additional vitamins.
- In the section where the doctor is asked to describe how the item/items will prevent imminent danger to the Appellant's life, the doctor indicated that the Appellant will become dehydrated and in view of her co-morbid condition, she can develop metabolic imbalance.
- In the section for nutritional items, the doctor specified Glucerna as the additional nutritional item needed and the duration as ongoing.
- In response to the question whether she has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the doctor wrote that the Appellant has ongoing and chronic diarrhea.
- To describe how the nutritional item will alleviate the symptom described above of "malnutrition – diabetes with chronic diarrhea" and provide caloric supplementation to the regular diet, the doctor wrote "ensure that she maintains a diabetic diet".
- In response to the question how the required nutritional item will prevent imminent danger to the Appellant's life, the doctor wrote that the item will ensure that she receives the daily

requirements and that she does not become deficient in trace elements in view of her medical conditions.

- Added that the Appellant suffers from a history of major affective disorder with a lack of motivation and energy, disturbed sleep, lack of concentration and loss of appetite.

The doctor provided the additional information about the Appellant's medical conditions, symptoms and need for supplements in the September 2012 supplemental opinion form. The doctor wrote comments in the form next to the listed symptoms as follows:

- Malnutrition – "if she does not have a balanced diet".
- Significant weight loss – "can result if diabetic diet is not followed".
- Significant muscle mass loss – "can result in view of diabetes".
- Significant neurological degeneration – "can result if she will become vitamin deficient".
- Moderate to severe immune suppression – "can result if patient not able to afford her daily vitamin requirement.
- Significant deterioration of a vital organ – "can result if she develops fatty [illegible] liver".

The doctor also added the diagnosis of emphysema. The doctor answered "yes" to the question if in his personal opinion foods that provide additional caloric supplementation would be helpful in preventing further deterioration of the Appellant's health. The doctor added that the Appellant is a diabetic and as such requires a special diet. In view of her history of emphysema, the Appellant will be prone to weight loss. The doctor also answered yes to the question if in his professional opinion, the Appellant's failure to obtain vitamins and minerals will result in imminent danger to her life. The doctor added that because of her co-morbidity, the Appellant will need a daily component of vitamin and minerals for her physical well-being.

At the hearing, the Appellant's advocate reviewed the information provided by the Appellant's doctor in the nutritional supplement application form and in the supplemental opinion form, as well as the letter from the psychiatrist. The advocate also stated that the supplemental opinion form was provided to the doctor for him to fill in. The advocate reviewed all of the diagnoses from the doctor and the psychiatrist, listed all of the medications the Appellant takes for her various medical conditions and listed all of the foods the Appellant must avoid (for example, caffeine, fried/fatty/spicy foods, sodas, alcohol).

The Appellant confirmed that she receives \$35 monthly as a diabetic diet supplement. However, she submitted that this supplement will not cover the additional costs for other vitamin and nutritional items that she needs, specifically the Glucerna.

The Panel finds that the information provided by the Appellant at the hearing is related to information about her medical conditions and need for supplements, which the Ministry had at reconsideration. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the Appellant's testimony into evidence as being in support of the evidence the Ministry had at reconsideration.

At the hearing, the Ministry reviewed and relied on the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant, a Person with Disabilities, was not eligible for a monthly nutritional supplement for vitamins/minerals and for nutritional items under section 67 of the EAPWDR, because a medical practitioner did not confirm that:

1. The Appellant displayed two or more of the symptoms listed in section 67(1.1)(b);
2. The Appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent an imminent danger to her life as required by section 67(1.1)(d) and Schedule C section 7; and
3. The Appellant requires vitamin/mineral supplements to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life as required by section 67(1.1)(c) and (d).

The following sections of the EAPWDR apply to this appeal:

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.

#### Schedule C

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; (c) for vitamins and minerals, up to \$40 each month.

In its reconsideration decision, the Ministry reviewed all of the information provided by the Appellant's doctor in the application for nutritional supplements and in the additional supplemental medical opinion submitted with the request for reconsideration. The Ministry also considered the letters from the psychiatrist and the consultant gastroenterologist, as well as the report from the cancer agency. In the original application completed by the doctor, the Ministry noted that the doctor confirmed that as a result of the Appellant's chronic, progressive deterioration of health, she displayed one of the symptoms listed in section 67(1.1)(b); that is, symptoms of malnutrition due to diabetes and chronic diarrhea. The Ministry also reviewed the doctor's notes in the supplemental medical opinion and it determined that the doctor did not confirm that the Appellant displayed the symptoms of significant weight loss, significant muscle mass loss, significant neurological degeneration, moderate to severe immune suppression and significant deterioration of a vital organ. The doctor only wrote that these symptoms may happen. Therefore the Ministry determined that the Appellant does not display two or more of the symptoms required by the eligibility criteria in section 67(1.1)(b) of the EAPWDR.

The Ministry also was not satisfied that the Appellant requires nutritional items as part of a caloric supplementation to a regular diet to alleviate the symptoms of her chronic progressive deterioration of health and to prevent an imminent danger to her health as required by section 67(1.1)(c) and (d). The Ministry noted that the doctor reported ongoing diarrhea not yet diagnosed, but the doctor did not provide a diagnosis of a condition that result in the inability to absorb sufficient calories through a regular dietary intake. The doctor did indicate that the Appellant requires Glucerna on an ongoing basis to ensure she maintains a diabetic diet; however, the doctor did not indicate what symptoms would be alleviated by using this supplement. The doctor reported that Glucerna is to ensure that the Appellant receives daily requirements and that she does not become deficient in trace elements in view of her medical conditions. The doctor did not provide information that this supplement will prevent imminent danger to the Appellant's life. Therefore, the Ministry determined that the reports from the doctor did not establish that the Appellant needed additional caloric supplementation, only that she needs a regular dietary intake and that because she is a diabetic she requires a specialized diet. The doctor did not provide any information that the Appellant has symptoms of being underweight, of significant weight loss or of significant muscle mass loss, which would indicate a need for caloric supplements to the Appellant's diet. The Ministry found that the doctor also did not confirm that 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 doctor did not specify how the nutritional items required will alleviate her symptoms or prevent imminent danger to her life. Therefore the Ministry determined that the information provided did not establish that the Appellant requires the nutritional items to alleviate any symptoms and that failure to provide them will result in imminent danger to the Appellant's life.

The Ministry further noted that in the application form, the doctor did not answer the question regarding what vitamin/minerals the Appellant needs as required by section 67(1.1)(c) or what would be the expected duration of need. The doctor did state that the Appellant needs vitamins to support her nutrition, but the doctor did not indicate how the vitamins would alleviate the Appellant's symptoms or prevent imminent danger to her life. In the supplemental medical opinion, the doctor reported that the Appellant needs a daily component of vitamin/minerals, but provided no information about how the vitamin/minerals will alleviate her symptoms or prevent imminent danger to her life. Therefore, the Ministry was not satisfied that the information provided established that the Appellant requires vitamin/mineral supplementation to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life. The Ministry determined that the eligibility criteria in section 67(1.1)(c) had not been met.

The Appellant's position is that her doctor confirmed that she meets all of the requirements in section 67(1.1) for a monthly supplement for vitamins/minerals and for nutritional items. She submitted that she has been diagnosed with twelve different impairments and she takes thirteen different medications every day. The Appellant also submitted that because of her medical conditions it is too difficult for her to prepare and eat a proper meal, so she needs vitamin/mineral and nutritional supplements. She argued that her doctor specifically confirmed that she needs Glucerna, a caloric and nutritional supplement, to alleviate her symptoms. If she does not obtain the items, she faces imminent danger to her life.

Section 67(1.1) sets out the specific requirements the Appellant must satisfy to be eligible for nutritional supplements. The Panel finds that in its reconsideration, decision the Ministry reviewed all of those requirements and it considered all of the information from the Appellant's doctor provided in the supplement application form and in the supplemental medical opinion, as well as the other medical information in the record.

The Ministry first considered the requirements in section 67(1.1)(b); that is, that a medical practitioner must confirm that as a direct result of the chronic, progressive deterioration of health, the Appellant displays two or more of the symptoms listed in that regulation. The Panel finds that there is no dispute that the Appellant is being treated by her doctor for a chronic progressive deterioration of health because of severe medical conditions. However, the Panel also finds that the Appellant's doctor confirmed only one of the listed symptoms in the application form; that is, malnutrition. In the supplemental medical opinion, the doctor did not indicate that the Appellant has any other symptoms, only that they "can result" from her conditions. The Panel finds that the Ministry reasonably determined that the doctor did not confirm that any of the other symptoms in the regulation are displayed, only that they could occur at some point. Therefore, the Panel finds that the Ministry reasonably determined that the doctor confirmed only one of the symptoms in section 67(1.1)(b) and so the Appellant did not satisfy the requirements in this provision.

With respect to the Appellant's need for nutritional supplements, question 6 of the Ministry's application form states "Nutritional items are only available to an applicant to alleviate one or more of the symptoms specified in Question 3 [regulatory list of symptoms] if those symptoms are a direct result of a chronic, progressive deterioration of health and the nutritional items are medically essential, will provide caloric supplementation to a regular dietary intake and are required to prevent imminent danger to the applicant's life. Specify the additional nutritional items required and expected duration of need." The Panel finds that the doctor indicated malnutrition due to diabetes with chronic

diarrhea as a symptom in question 3 of that form. Then in response to question 6 about the needed nutritional supplement for caloric supplement to alleviate that symptom, the doctor specifically wrote "Glucerna ongoing". Although the doctor reported the Appellant's height as 5'6" and weight as 214, he also further responded that ongoing and chronic diarrhea is the medical condition that results in the Appellant's inability to absorb sufficient calories to satisfy the daily requirements through a regular dietary intake. Therefore, based on this evidence from the doctor, the Panel finds that the Ministry did not reasonably determine that the information provided did not establish that the Appellant needs an ongoing caloric supplement to her dietary intake and to relieve the symptom identified. The Ministry also did not reasonably determine that the doctor did not identify a medical condition that results in the Appellant's inability to absorb sufficient calories. The doctor specifically diagnosed the Appellant with diabetes and chronic diarrhea which he which he repeated for the listed symptom of malnutrition.

As to whether the doctor confirmed that the nutritional items are required to prevent imminent danger to the Appellant's life, in the application form the doctor wrote that the supplement will ensure that the Appellant receives the daily requirements and that she does not become deficient in trace elements in view of her medical conditions. The Panel finds that the doctor only reported that the Appellant needs the supplement to address daily needs and to prevent deficiencies in the future. The doctor did not describe any conditions or risks that pose an imminent danger to the Appellant's life or how any such conditions or risks would be alleviated by the supplement. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not satisfy the requirements in section 67(1.1)(d) of the EAPWDR for nutritional items.

The Appellant's doctor indicated that the Appellant needs vitamins to support her nutrition. In the application form, the doctor wrote that in view of the Appellant chronic diarrhea, she tolerates a liquid diet better and will need added vitamins. The Panel finds that although the doctor described a diet that the Appellant needs to address her symptom, the doctor did not specify what vitamins/minerals she needs, only that vitamins generally will be needed. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the requirements in section 67(1.1)(c) for a vitamin/mineral supplement.

As to how vitamin/mineral supplements will prevent imminent danger to the Appellant's life, the doctor wrote that the Appellant will become dehydrated and in view of her co-morbid conditions can develop metabolic imbalance. In the supplemental opinion, the doctor stated that because of her co-morbid conditions, the Appellant will need her daily components of vitamins and minerals for her physical wellbeing. The Panel finds that these responses by the doctor indicate that the Appellant needs vitamin/mineral supplements for ongoing physical wellbeing and to prevent future imbalances, but not for any imminent danger to her life. The doctor identified no medical conditions or risks that pose an imminent danger to the Appellant's life that would be alleviated by specific vitamins and/or minerals. Therefore, the Panel finds that the Ministry reasonably determined that the evidence from the doctor did not establish that the failure by the Appellant to obtain vitamin or mineral supplements will result in imminent danger to her life as required by section 67(1.1)(d).

The Panel confirms the Ministry's reconsideration decision because it was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances.