

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated August 15, 2012 that held that the appellant was not eligible for a Monthly Nutritional Supplement (MNS), for either nutritional items or vitamin/mineral supplements as all of the criteria of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) were not met. Specifically, the ministry determined that:

- the criteria of section 67(1.1)(c) was not met because a medical practitioner has not provided information to confirm that the nutritional items and/or the vitamins/ minerals supplement were required for the purpose of alleviating one of the listed symptoms;
- the criterion of section 67(1.1)(d) was not met regarding either supplement because the ministry found that the information did not indicate that due to the appellant's severe medical condition that failure to provide the supplement will result in imminent danger to the appellant's life and
- the criteria of section 67 and section 7 in Schedule C for nutritional items were not met because the medical practitioner did not explain how nutritional items as part of a caloric supplementation to a regular dietary intake would alleviate the symptoms of the appellant's chronic, progressive deterioration of health.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 67 and Section 7 of Schedule C, Health Supplements.

PART E – Summary of Facts

The evidence before the ministry at reconsideration was comprised of: (a) a Monthly Nutritional Supplement (MNS) Application dated April 2, 2012; and (b) the Request for Reconsideration dated August 3, 2012.

In the MNS Application completed by a medical practitioner (MP) on April 2, 2012, the appellant is diagnosed with autoimmune, osteomalacia, lupus and kidney disease. Regarding the description of the severity of the appellant's medical condition, the MP makes no comment. When asked if, as a direct result of the severe medical conditions, the appellant is being treated for a chronic, progressive deterioration of health, the physician indicates yes. When asked if, as a direct result of the noted chronic, progressive deterioration of health does the applicant display two or more of the listed symptoms, the physician indicates that the appellant displays the symptoms of moderate to severe immune suppression and significant deterioration of a vital organ. The physician reports that the appellant is 5 feet 4 inches in height and weighs 254 lbs.

Regarding vitamin or mineral supplementation; the MP specifies that the following vitamin or mineral supplements are required by the appellant to alleviate one or more of the listed symptoms; calcium, vitamin D, vitamins A, D, E and B16 for lupus, however; does not indicate expected duration of need. The MP does not describe how these items will alleviate the specific symptoms identified or how they will prevent imminent danger to the appellant's life.

Regarding nutritional items; the MP specifies that low sodium, high protein and no packaged foods are required by the appellant to alleviate one or more of the listed symptoms, however; does not indicate expected duration of need. When asked if the applicant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the MP does not comment. When asked to describe how the nutritional items required will alleviate one or more of the listed symptoms and provide caloric supplementation to the regular diet, the MP makes no comment.

In the Request for Reconsideration dated August 3, 2012, the appellant reports that she has chronic kidney disease - nephritic syndrome, in which the kidney leaks an excessive amount of protein into the urine and the lack of protein in the blood allows fluid to leak in to the tissues, causing swelling throughout the body. Other medical conditions noted by the appellant include lupus, asthma, osteochondritis, glaucoma and psoriasis. The appellant indicates that having a chronic kidney disease makes it important for her to eat healthy, take care of her body, manage the amount of protein to replace the lost protein, have a balanced diet of 1-2 grams per kilogram of body weight, as well as maintain a low sodium and fat diet. Additionally, she needs to have a healthy and balanced diet and take a number of vitamins including calcium and vitamin D. She also indicates that she has been on "Predispose" for a number of years and has lower bone density than average.

In the Request for Reconsideration the appellant's medical practitioner adds that the appellant has nephritic syndrome and lupus and requires nutritional management. The MP states that she requires a low sodium, low fat diet and cannot have prepackaged food. Additionally, the MP reports that the appellant requires a specific level of protein and regular vitamins to support her nutrition.

On appeal, the appellant submits the following documentation dated September 21, 2012:

1. a letter from the appellant,
2. a copy of a confirmation for an appointment at the Kidney Care Clinic on November 13, 2012,
3. a copy of a prescription dated August 29, 2012, and
4. a letter of support from the appellant's pharmacist.

In the letter from the appellant, she adds that she requires a low sodium diet to help reduce the amount of

edema in her feet, arms, leg and face. She states that with having a renal disease, her kidneys are unable to eliminate excess sodium and fluid from her body and that having too much sodium can cause high blood pressure, which results in further damage to the kidneys, heart and can cause shortness of breath. She reports that the cost of food is very high and that the cost of low sodium food is a lot higher; giving the example of a can of tomatoes with low sodium for 4.25 whereas a regular can of tomatoes is \$2.00. The appellant adds that foods that are high in protein and low in fat such as fish and chicken are also expensive. The appellant states that it is important that she has a healthy balanced diet and take a number of vitamins, including calcium and vitamin D which are important for her bone health.

In the copy of a prescription dated August 29, 2012 from the appellant's MP, he indicates that the appellant needs calcium and vitamin D for prevention of bone deterioration, that she is on prednisone regularly and that she needs sodium control because of kidney function.

The letter of support from the appellant's pharmacist also defines the purpose of the letter - to justify the need for vitamin, over-the-counter medication and nutrition supplementation necessary for improving the health of the appellant. The pharmacist then lists the appellant's health conditions as follows: lupus, osteoporosis, reduced kidney function, psoriasis, asthma, glaucoma, urinary incontinence, hypertension and acid reflux. The pharmacist states the following:

- the appellant's recent blood work shows that she is low in potassium, although, the severity does not justify a prescription, an over-the-counter supplementation in the form of a multi-vitamin could boost potassium levels to maintain healthy kidneys;
- the appellant takes a medication called furosemide which can reduce potassium levels, therefore supplementation with a multivitamin could improve the appellant's health
- the appellant is diagnosed with degenerative bone disease, secondary to osteoporosis and because she cannot tolerate bone medications, it is absolutely necessary that she be supplemented with calcium;
- the appellant's chronic course of prednisone although keeping lupus symptoms at bay, causes bone loss as a side effect;
- a Vitamin D supplementation is required for calcium absorption into the bone;
- the incidence of low vitamin 12 levels is high with lupus patients and the appellant is on omeprazole acid suppression therapy which lowers the absorption of vitamin B12 making it beneficial for the appellant to take vitamin b12 supplementation;
- the appellant gets leg cramps during the night which makes it difficult for her to sleep while there is some evidence for magnesium supplementation at bedtime to reduce the intensity and frequency of leg cramping; and
- the appellant has breakthrough acid reflux symptoms which require antacid therapy in addition to her prescription therapy, she would benefit from antacids and magnesium at bedtime.

The panel admitted the above noted documents that were submitted on appeal as evidence under section 22(4) of the Employment and Assistance Act as they were found to be directly in support of the information and records before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's reconsideration decision which determined that the appellant was not eligible for a MNS either for nutritional items or vitamins and minerals, as all of the criteria of the Employment and Assistance for Persons with Disabilities Regulation were not met, is reasonably supported by the evidence or whether it is a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation, section 67 and section 7 of Schedule C of the EAPWDR provides as follows.

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.

(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).

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.

It is the appellant's position that she meets the criteria for the monthly nutritional supplement due to her health conditions and the medication that she is on to manage them.

It is the ministry's position that the appellant was not eligible for a Monthly Nutritional Supplement (MNS), nutritional items and vitamin/ mineral supplements as all of the required legislative criteria were not met as follows:

The criterion of section 67(1.1)(c) was not met because a medical practitioner has not provided information to confirm that the nutritional items and/or the vitamins/ minerals supplement were required for the purpose of alleviating one of the listed symptoms. While the appellant's MP indicates that a low sodium, low fat, high protein diet with no packaged foods are required by the appellant to alleviate one or more of the listed symptoms, he does not indicate that the appellant requires caloric supplementation to a dietary intake. There is no information to establish that the appellant is displaying the symptoms of malnutrition such as under weight status, significant weight loss or significant muscle mass loss which would indicate a need for caloric supplementation to regular dietary intake. In fact, the ministry states that by the indicated height and weight of the appellant, she has a BMI of 43.6 which is above the normal range. Additionally, the appellant's MP does not confirm that she has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

The criterion of section 67(1.1)(d) was not met regarding either supplement because the ministry found that the information did not indicate that due to the appellant's severe medical condition, that failure to provide either supplement will result in imminent danger to the appellant's life. Although the appellant's MP indicates that the nutritional items would support her nutrition, the information does not establish that the appellant requires caloric supplementation to prevent imminent danger to life.

The criteria of section 67 and Schedule C for nutritional items were not met because the medical practitioner did not explain how nutritional items as part of a caloric supplementation to a regular dietary intake would alleviate the symptoms of the appellant's chronic, progressive deterioration of health.

As the legislation under section 67(1.1) of the EAPWDR requires that in order for a person with disabilities to receive a nutritional supplement, the minister must receive a request completed by a medical practitioner or nurse practitioner; the panel has therefore relied on the information provided by the appellant's physician.

Regarding a MNS for vitamins and minerals, the panel finds that a medical practitioner does indicate that the appellant requires calcium, vitamin D, vitamins A, D, E and B 16 for lupus, however; he does not specify how the supplementation is required to alleviate the appellant's symptom of a chronic progressive deterioration of health. Therefore, the panel finds that the ministry reasonably determined that the criterion of section 67(1.1)(c) of the EAPWDR was not met.

Regarding the criterion, that a failure to provide MNS for vitamins / minerals will result in imminent danger to the appellant's life, the medical practitioner in the MNS Application fails to provide comment. The panel finds that there is no evidence to establish that failure to provide the MNS will result in imminent danger to the appellant's life. Therefore, the panel finds that the ministry reasonably determined that failure to obtain the vitamins/ minerals supplement will not result in imminent danger to the appellant's life and that the ministry reasonably determined that the criterion of section 67(1.1)(d) of the EAPWDR was not met.

Regarding a MNS for nutritional items, when asked if the applicant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the medical practitioner provides no comment. When asked to describe how the nutritional items required will alleviate one or more of the listed symptoms and provide caloric supplementation to the regular diet, the practitioner once again makes no comment. When requested to describe how the nutritional items required will prevent imminent danger to the applicant's life, the practitioner provides no comment. Also, the panel finds that there were no symptoms identified by the appellant's medical practitioner such as underweight status, significant weight loss or significant muscle mass loss that would indicate a need for caloric supplementation to regular dietary intake. Thus, the panel finds that the ministry reasonably determined that the criterion of section 67 of the EAPWDR and section 7 of Schedule C were not met because the medical practitioner did not confirm that 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 imminent danger to her life.

Therefore, the panel finds that the ministry reasonably determined that, as all of the criteria for a MNS for either nutritional items or vitamins and minerals were not met, the appellant is not eligible for the supplement.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and confirms the decision.