

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated September 25, 2012, which held that the appellant was not eligible to receive a Monthly Nutritional Supplement (MNS), nutritional items and vitamin/mineral supplements as all of the eligibility requirements set out in section 67 (1.1) of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, and Schedule C section 7 were not met. Specifically, the ministry determined that:

- 1) A medical practitioner did not confirm that as a direct result of the appellant's chronic, progressive deterioration of health, (diagnosis asthma and gastritis), she displays two or more of the listed symptoms (as required in section 67 (1.1)(b)); that the appellant requires vitamin/mineral supplements to alleviate the symptoms of her chronic, progressive deterioration of health (as required in section 67 (1.1)(c)); and that failure to obtain the requested vitamins and minerals would result in imminent danger to the appellant's life (as required in section 67 (1.1)(d));
- 2) that the appellant's medical practitioner did not confirm that she requires the requested additional nutritional items to alleviate the symptoms of a chronic, progressive deterioration of health (as required in section 67 (1.1)(c), or as part of a caloric supplementation to a regular dietary intake, and to prevent imminent danger to her life, as required in section 67 (1.1)(d) and in section 7 of Schedule C.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67 (1), (1.1) and Schedule C section 7.

PART E – Summary of Facts

Information and records which were before the ministry at the time of reconsideration include the following:

- Ministry denial letter for Monthly Nutritional Supplement dated September 25, 2012.
- Application for Monthly Nutritional Supplement dated May 11, 2012.
- Letter to the ministry from the Appellant dated May 29, 2012.
- Ministry MNS denial letter to the appellant dated August 16, 2012.
- Monthly Nutritional Supplement Decision Summary dated August 18, 2012.
- Authorization for the appellant's physician to release medical information to the appellant's advocate signed by the appellant and dated September 7, 2012.
- Supplemental Medical Opinion completed by the appellant's physician dated September 11, 2012.
- A copy of a faxed cover sheet sent to the ministry by the appellant's advocate, requesting that an attached revised Supplemental Medical Opinion be included in the appellant's request for reconsideration.
- A copy of a Supplemental Medical Opinion completed by the appellant's physician, September 11, 2012, and amended and initialed by the physician September 17, 2012, which was faxed to the ministry by the appellant's advocate September 17, 2012.
- A letter from an advocacy group to the appellant's physician, dated September 10, 2012, requesting completion of a Supplemental Medical Opinion form.
- Request for Reconsideration signed by the appellant August 30, 2012.

Ministry records indicate that the appellant is a person with a disability in receipt of disability assistance, and that she is eligible to be considered for MNS under the EAPWD Regulation.

In response to questions 1 and 2 of the MNS application, completed by the appellant's physician dated May 11, 2012, the physician confirms that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically asthma and gastritis. The physician reports that the appellant's asthma is poorly controlled because of allergies to most of the common drugs used to treat asthma.

Question 3 of the MNS application asks the physician; (As a direct result of the appellant's chronic, progressive deterioration of health noted above, does the appellant display two or more of the following symptoms?)

(i) Malnutrition; (ii) under weight 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.

The physician reported that the appellant displayed the symptoms of Malnutrition – poor ill health, and moderate to severe immune suppression – reduced immunity because of poor health. In response to question 4 the physician reports that the appellant is 5 feet 3 inches tall and weighs 103 pounds.

In response to question 5, which has three subsections the appellant's physician was asked to specify the vitamins and mineral supplements required and the expected duration of need. The physician reported that the appellant requires a full spectrum of multi-enzymes but did not specify the duration of the need. When asked to describe how the specified items will alleviate the specific symptoms previously identified the physician reports that they will help the appellant's asthma symptoms. When asked to describe how the specified items will prevent imminent danger to the appellant's life the physician reports that the specified items will help her to breath better as she is allergic to most common asthma medications. No additional information is provided.

In response to question 6, which has four subsections the physician was asked to specify the additional nutritional items required and the expected duration of the need. The physician reports that the appellant requires Respiramin, an antioxidant product, however the physician does not specify the expected duration of the need. When asked if the appellant has a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, and if so to explain, the physician reports, "will improve her asthma symptoms". No further comment is provided by the physician. When asked to describe how the nutritional items required by the appellant will alleviate one or more of the symptoms identified by the physician in question 3, and provide caloric supplementation to a regular diet, the physician reports, Respiramin, an antioxidant product and multi-enzymes. No further response is provided to this question. When asked to describe how the nutritional items required will prevent imminent danger to the appellant's life the physician reports that that they will help her to breathe better.

In the Supplemental Medical Opinion dated September 11, 2012, completed by the same physician who completed the

MNS application, the physician is asked the following questions:

1) In your professional opinion does the appellant have any (two or more) of the following symptoms that may be a direct result of her medical conditions? The physician reported that the appellant displayed two symptoms, malnutrition and significant muscle mass loss. 2) In your professional opinion, would foods that provide additional caloric supplementation, above a normal diet, be helpful in preventing further deterioration of the appellant's health? The physician's response was yes, and no further comment is provided. 3) In his or her professional opinion, will the appellant's failure to obtain vitamins and minerals result in imminent danger to her life. The physician's response to this was no, and no further comment was provided.

A second copy of the same Supplemental Medical Opinion dated September 11, 2012, was faxed to the ministry September 17, 2012, by the appellant's advocate requesting that it be included in her Request for Reconsideration. The copy of the Supplemental Medical Opinion dated September 11, 2012, had one revision made to it. In response to question 3 in which the physician is asked if in his or her professional opinion, will the appellant's failure to obtain vitamins and minerals result in imminent danger to the appellant's life. The physician crossed out NO and ticked the YES box, initialed the change and dated the change as September 17, 2012. No further comment was provided.

In the appellant's letter to the ministry dated May 29, 2012, she states that she suffers from a chronic severe asthmatic condition which is progressively getting worse. Her doctor has prescribed every kind of puffer used for this condition, however she is highly allergic to the steroids and other ingredients in these medical devices. All alternatives have been tried and there are no other medications available to alleviate her symptoms. She states that she suffered for over a year in order to get over the after effects of her allergic reactions to these medicines. The appellant states that there are several vitamin/mineral supplements and nutritional items available in the market place that would alleviate her symptoms and allow her airways and lungs to be less constricted and help her to breathe fully. She concludes by stating it would be a great relief to her, and improve the quality of her life if her application was approved, and would bring an end to her physical struggle.

In the reasons section of the appellant's Notice of Appeal, she writes that an important document was not included in deciding not to support her application for health supplements. The document she referred to was the Supplemental Medical Opinion originally completed by her physician September 11, 2012, which was later revised and resubmitted September 17, 2012, by the appellant's advocate.

The panel makes the following findings of fact:

- The appellant is a person with a disability in receipt of disability assistance and is eligible to be considered for MNS under the EAPWD regulation;
- A medical practitioner has confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition; specifically, asthma and gastritis;
- The appellant displays the symptom of malnutrition.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request for MNS is reasonably supported by the evidence, specifically that 1) A medical practitioner did not confirm that as a direct result of the appellant's chronic, progressive deterioration of health, (diagnosis asthma and gastritis), she displays two or more of the listed symptoms (as required in section 67 (1.1)(b)); that the appellant does not require vitamin/mineral supplements to alleviate the symptoms of her chronic, progressive deterioration of health (as required in section 67 (1.1)(c)); and that failure to obtain the requested vitamins and minerals would not result in imminent danger to the appellant's life (as required in section 67 (1.1)(d)); 2) that the appellant's medical practitioner did not confirm that she requires the requested additional nutritional items to alleviate the symptoms of a chronic, progressive deterioration of health (as required in section 67 (1.1)(c), or as part of a caloric supplementation to a regular dietary intake, and to prevent imminent danger to her life, as required in section 67 (1.1)(d) and in section 7 of Schedule C.

In arriving at its decision the ministry relied upon the following legislation:

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 section 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)

There is no dispute by either party that the appellant meets the following legislative criteria:

- The applicant is a person with disabilities and meets the requirements set out in EAPWD Regulation section 67 (1)
- The appellant is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition, specifically asthma and gastritis, there by meeting the requirements set out in the EAPWD Regulation section 67 (1.1)(a).

The appellant's position is that the ministry failed to consider all of the medical documentation submitted with her Request for Reconsideration when arriving at their Reconsideration Decision. The ministry's position is that the appellant was not eligible to receive a MNS, nutritional items, or vitamin/mineral supplements as all of the eligibility requirements set out in section 67 (1.1) of the EAPWD Regulation, and Schedule C section 7 were not met.

In order to meet the requirements set out in section 67 (1.1)(b) of the EAPWD Regulation the appellant must display two or more of the following symptoms (i) Malnutrition; (ii) under weight 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, as a direct result of a chronic, progressive deterioration of health. Based on the evidence presented, the ministry argued that the appellant displays only one symptom, that of malnutrition. In the appellant's MNS application dated May 11, 2012, her physician reports that as a direct result of the her chronic, progressive deterioration of health she displays two symptoms,

- Malnutrition – poor ill health,
- Moderate to severe Immune suppression – reduced immunity because of poor health.

The physician reports that the appellant's asthma is poorly controlled because of allergies to common drugs. "She reports allergies to most of the commonly used drugs for asthma." The physician also reports that the appellant's height is 5 foot

3 inches and that she weighs 103 pounds, giving her a BMI of 18.2, which the ministry states is underweight.

In the Supplemental Medical Opinion completed by the same physician dated September 11, 2012, the physician changed his opinion reporting that the appellant's symptoms are:

- Malnutrition,
- Significant muscle mass loss.

The ministry argued that that the physician has not provided any information that describes how this symptom of significant muscle mass loss is directly related to the appellant's medical conditions of asthma and gastritis. The ministry therefore argued that based on the evidence presented the appellant does not display two of the listed symptoms as a direct result of a chronic, progressive deterioration of health, and does not meet the legislative requirements set out above in section 67 (1.1)(b) of the EAPWD Regulation. Therefore the criteria set out in section 67 (1.1) of the EAPWD Regulation has not been met.

With the exception of one argument made in the appellant's Notice of Appeal, in which she argues that the ministry failed to consider all information contained in the Supplemental Medical Opinion, dated September 9, 2012, and amended by the same physician, September 17, 2012, the appellant stood by the record. The record shows that the appellant argues that she displays two symptoms, malnutrition and significant muscle mass loss for the reasons outlined previously by her physician in the MNS application and Supplemental Medical Reports.

In response to question 3 of the MNS application which asks the physician; (As a direct result of the appellant's chronic, progressive deterioration of health noted above, does the appellant display two or more of the following symptoms?) The physician reported that the appellant displayed the symptoms of Malnutrition – poor ill health, and moderate to severe immune suppression – reduced immunity because of poor health. In the Supplemental Medical Opinion dated September 11, 2012, completed by the same physician, he or she was asked the same question and reported that the appellant displays two symptoms, malnutrition and significant muscle mass loss. In a second copy of the same Supplemental Medical Opinion dated September 11, 2012, faxed to the ministry September 17, 2012, from the appellant's advocate requesting that it be included in her Request for Reconsideration, the physician again reports that the appellant displays symptoms of malnutrition and significant weight loss. As both the Supplemental Medical Opinion dated September 9, 2012, and the revised Supplemental Medical Opinion which was faxed to the ministry by the appellant's advocate September 17, 2012, are more recent than the MNS application, the panel has placed greater weight on them and their conclusion reporting that appellant's symptoms are malnutrition and significant muscle mass loss. The panel finds that while the physician has reported that the appellant displays the symptom of significant muscle mass loss there is no additional information provided by the physician in either the MNS application or in the Supplemental Medical Opinions that describes how this symptom is directly related to asthma or gastritis. The panel further finds that while the appellant is reported to have a BMI of 18.2 which is underweight, the physician has not listed this as a symptom, or attempted to described how it is directly related to the appellant's medical conditions of asthma and gastritis. The panel therefore finds based on the evidence presented, the ministry reasonably determined that as a direct result of a chronic, progressive deterioration of health, the appellant displays one symptom only, malnutrition, and therefore does not meet the legislative requirements set out above in section 67 (1.1)(b) of the EAPWD Regulation.

Vitamin/Mineral Supplements

As to the requirements set out in section 67 (1.1)(c) and(d) of the EAPWD Regulation for the provision of vitamins and minerals, in MNS application, the physician reports that the appellant requires a full spectrum of multi-enzymes however the ministry argued that the physician has not reported the duration of the need for the requested vitamins/minerals. The physician reports that these vitamins/minerals will help the appellant's asthma symptoms however, the ministry argued that it is unclear how these vitamins and enzymes will help the appellant's reported symptom of significant muscle mass loss. The physician reports that the items requested will help the appellant to breathe better as she is allergic to most common asthma medications, however the ministry argued that the physician also reports in his Supplementary Medical Opinion dated September 11, 2012, that failure to obtain these vitamins and minerals will not result in imminent danger to the appellant's health. In conclusion the ministry argued that as the appellant does not display two or more of the listed symptoms as a direct result of a chronic, progressive deterioration of health she has therefore not met the requirements set out in section 67 (1.1)(c) and(d) of the EAPWD Regulation.

The appellant argued that the ministry failed to consider the additional medical evidence which was included in the Record, and was comprised of the Supplemental Medical Opinion submitted to the ministry by the appellant September 17, 2012. In this document the physician reports that failure to obtain the vitamins and minerals requested will result in

imminent danger to the appellant's life.

Under section 67 (1.1)(c) of EAPWD Regulation the appellant's physician must confirm that the appellant requires vitamin/mineral supplements to alleviate the symptoms found under 67 (1.1)(b) of EAPWD Regulation. In the MNS application form, the appellant's physician indicates that she requires full spectrum multi enzymes and that these items will help her asthma symptoms. However the panel finds that the physician did not report the duration of the need for these items, nor was any information provided describing how these items will help the appellant's symptom of significant muscle mass loss. In the MNS application the physician reports that the items requested will help the appellant to breathe better, however in the Supplemental Medical Opinion dated September 11, 2012, it is reported that failure to provide the requested vitamins and minerals will not result in imminent danger to the appellant's life. The panel further finds that this opinion was reversed in an amended version of the same Supplemental Medical Opinion, submitted to the ministry by the appellant's advocate September 17, 2012, and that it is the appellant's position that this information was not considered by the ministry. The panel finds that as this appeal has been undertaken relying exclusively on written information, it is difficult to determine if the ministry considered this information or not; however, the panel does find that the physician reversed his or her professional opinion in less than a two week period, with no explanation being provided for the change. The panel also finds that the physician has not reported why in his or her professional opinion, failure to obtain the requested vitamins/minerals will result in imminent danger to the appellant's life. Based on the evidence presented the panel finds that the ministry reasonably determined that the appellant does not meet the legislative requirements set out above in section 67 (1.1)(c) and (d) of the EAPWD Regulation.

Additional Nutritional Items

As to the appellant's eligibility for requested nutritional items. The ministry argued that while the physician that completed the MNS application reports that the appellant requires Respiramin, an antioxidant product, and a multi enzyme to improve her asthma symptoms the physician has not reported how these items will alleviate her symptoms of significant muscle mass loss. The ministry also argued that the physician does not specify the expected duration of the need. The ministry further argued that the physician has not confirmed 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 failure to provide her with the requested items will result in immanent danger to her life. Therefore the ministry argued that the appellant has not met the requirements set out in section 67 (1.1)(c) or (d) of EAPWD Regulation. In conclusion the ministry also argued that the appellant is not eligible for MNS nutritional items as she does not display two or more symptoms as a direct result of a chronic, progressive deterioration of health.

The appellant submitted no additional argument in regards to her request for nutritional supplements, preferring instead to stand by the record.

The panel finds that the physician who completed the MNS application reports that the appellant requires Respiramin, an antioxidant product, and a multi enzyme to improve her asthma symptoms, but has not reported how these item will alleviate her symptoms of significant muscle mass loss. The panel also finds that the physician has also not specified the expected duration of the need. The panel also finds that the physician has not confirmed 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 failure to provide her with the requested items will result in immanent danger to her life. The panel therefore finds that the appellant has not met the requirements set out in section 67 (1.1)(c) or (d) of EAPWD Regulation .

The panel finds that, based on the whole of the evidence and the applicable enactments the ministry's reconsideration decision was reasonably supported by the evidence. Therefore the panel confirms the ministry decision.