

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (ministry's) reconsideration decision of February 13th, 2013 wherein the ministry determined the appellant was not eligible for a monthly nutritional supplement for vitamins and minerals or additional nutritional items under Section 67 and Schedule C Section 7 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Specifically, the ministry was not satisfied:

- that vitamin/mineral supplementation will alleviate the appellant's symptoms of a chronic, progressive deterioration of health, as required under section 67(1.1)(c) EAPWDR; and
- that failure to obtain the vitamins and minerals will result in imminent danger to the person's life - section 67(1.1)(d) EAPWDR;
- that additional nutritional items as part of caloric supplementation to regular dietary intake will alleviate a symptoms of a chronic, progressive deterioration of health symptoms of a chronic, progressive deterioration of health referred to in section 67(1.1)(b) EAPWDR;
- that failure to obtain additional nutritional items referred to in section 67(1.1)(c) EAPWDR will result in imminent danger to a person's life – section 67(1.1)(d) EAPWDR.

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 67, Schedule C section 7

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Health Assistance Branch report dated January 22nd, 2013
- Application for Monthly Nutritional Supplement (MNS) completed by a medical practitioner (MP) on October 12th, 2012 and signed by the appellant on October 16th, 2012
- Amended copy of MNS – the MP attached comments to area 3 of the application describing the significant muscle loss; the significant neurological degeneration; the moderate to severe immune suppression; and the significant deterioration of a vital organ.
- Request for Reconsideration signed on January 31st, 2013 by the MP who wrote - "Nutritional supplement necessary. Eating diet that he can afford is not a healthy diabetic diet but rather a high carbohydrate diet. This has caused his T2-DM to be out of control with HbA1c 8.4 significantly elevated. This has the potential to cause visual loss, peripheral vascular disease and neuropathy as well as nephropathy. Proteinuria evident, early retinopathy on examination".

The appellant requested a MNS and had a MP complete Part C of his application. In the application the MP confirmed that due to the appellant's severe medical condition, the appellant is being treated for a chronic, progressive deterioration of health and, as a result, is displaying symptoms of significant muscle mass loss due to poor nutritional status causing proteinuria with muscle mass loss and immune suppression; significant neurological degeneration – early DM retinopathy [and] peripheral vascular disease; moderate to severe immune suppression and significant deterioration of a vital organ (renal – diabetic neuropathy ophthalmic – early DM retinopathy [and] peripheral vascular disease).

The MP has prescribed a multivitamin supplementation to alleviate the symptoms of the appellant's chronic, progressive deterioration of health, and to prevent imminent danger to the appellant's life. The MP does not comment on the expected duration of the need for the supplement and writes "prevent cramps" in response to describing how the item (multivitamin supplementation) will alleviate the specific symptoms identified. The MP writes "above" in his response to how the multivitamin would prevent imminent danger to life.

The MP writes that the additional nutritional items the appellant requires are to alleviate one or more his symptoms is a "specific diabetic diet". There is no comment on duration of need. The MP writes the appellant does not have a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

Prior to the hearing commencing the appellant submitted the following for the panel consideration:

- A one page Health Authority assistance form completed by a registered dietitian (RD) outlining the financial assistance needed by the appellant to assist him with certain medical conditions.

The ministry advised they had not received this document and, in general, did not object to it being admitted. The ministry observed there was no signature on the form and for the ministry to accept this document it needs to be completed by a MP and not a RD.

The panel finds this document does not bear a signature of the author although it does have an ink stamp of a RD. The document is dated March 11th, 2013. The document is an application/request form for monetary assistance that the ministry may provide for certain medical conditions. The panel finds the document does not contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is not admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

The ministry relied on the facts as stated in the reconsideration decision.

At the hearing the appellant testified that he needs monetary assistance from the MNS to help him with his overall monthly expenses so that he can purchase the necessary food to maintain a healthy diet. The appellant testified he does not need the supplement all the time; that the minerals and supplements are needed to assist him in "bridging the gap" if he doesn't have the proper food. The appellant testified the MNS is considered by himself and his MP as a preventative measure to counter his diabetes (sugar levels) and that at this present time he is not in any imminent danger.

In response to a question from the panel, the appellant stated that the supplements would eliminate "the cramps" he experiences but he did not know how eliminating "the cramps" would alleviate any of the symptoms, i.e. significant muscle mass loss, significant deterioration of a vital organ, that results from his medical condition(s).

The Panel finds the appellant's testimony is admissible as evidence as the testimony contains information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible under section 22(4) Employment and Assistance Act (EAA).

The panel makes the following finding of fact:

1. The appellant does not have a medical condition that results in his inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of February 13th, 2013 wherein the ministry determined the appellant was not eligible for a monthly nutritional supplement for vitamins and minerals or additional nutritional items under Section 67 and Schedule C Section 7 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The legislation considered: EAPWDR

Nutritional supplement

Section 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.

Monthly nutritional supplement

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) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]

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

The ministry, at reconsideration, agreed the appellant is being treated by a MP for a chronic, progressive deterioration of health on account of a severe medical condition and that as a direct result of this condition the appellant displays two or more symptoms set out in section 67(1.1)(b) EAPWDR, i.e significant muscle mass loss, significant neurological degeneration, moderate to severe immune suppression and significant deterioration of a vital organ.

Therefore the panel will address the requirement that vitamins and minerals and nutritional supplements are needed to alleviate the symptoms which result from the appellant being diagnosed with chronic, progressive deterioration of health and that failure to obtain these items will result in imminent danger to the appellant's life.

Vitamin/Mineral Supplement

The position of the ministry is that a vitamin/mineral supplement, as stated in section 67(1.1) EAPWDR, must be needed to alleviate the symptoms from the appellant's chronic, progressive deterioration of health; that in the appellant's application the MP has described that the vitamin/mineral supplement will prevent cramps but the MP does not describe how preventing the cramps will alleviate these symptoms. The appellant's position is the supplement is needed as a preventative measure and for monetary support to assist him in purchasing the proper foods necessary to maintain a healthy diet.

The panel finds the MP did request the vitamin/mineral supplement and did state, in the application, that they are required to prevent cramps but there is no evidence before the panel on how a multivitamin in preventing cramps would alleviate the specific symptoms listed in section 67(1.1)(b) EAPWDR as required by the legislation.

The panel finds the ministry reasonably determined that there is insufficient information that a multivitamin will alleviate one or more of the symptoms stated in section 67(1.1)(b) EAPWDR and therefore the ministry's decision, that the criterion of section 67(1.1)(c) EAPWDR was not met, was reasonable.

Nutritional Items

The position of the ministry is that the MP does not describe the appellant showing signs of being underweight or having significant weight loss; two symptoms listed under section 67(1.1)(b) EAPWDR. Additionally, the appellant does not require additional nutritional items as part of a caloric supplementation to a regular dietary intake and that the appellant's medical condition of diabetes does not result in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The ministry argued their position is supported by the MP in the appellant's application when he responded with "needs CDA (Canadian Diabetes Association) diet to be followed" and with the response "No" in responding to "does this applicant have a medical condition that results in an inability to absorb sufficient calories to satisfy his daily requirement". The appellant's position on nutritional supplements is that he needs the monetary support.

Schedule C, section 7(a) EAPWDR states that a nutritional supplement may be provided for additional nutritional items that are part of a caloric supplementation to a regular dietary intake.

The panel finds the evidence supports the ministry's position and does not establish that the appellant needs caloric supplementation to a regular dietary intake. Rather, the evidence of the MP is that the appellant requires a specific diet, a diabetic diet, as his regular diet and not caloric supplementation in addition to his regular diet.

The panel finds the ministry reasonably determined that appellant does not need additional nutritional items that are part of a caloric supplementation to a regular dietary intake to alleviate a symptom listed in section 67(1.1)(b) EAPWDR and therefore the ministry's decision, that the criteria of section 67(1.1)(c) EAPWDR was not met, was reasonable.

Imminent Danger to Life

The ministry's position is that there is no information that the appellant's life is or will be in imminent danger if the vitamin/mineral supplement and/or the nutritional items are not provided. The appellant testified at the hearing that his life is not in imminent danger and will not be in imminent danger should the supplements not be provided as requested in his application.

The panel finds the ministry reasonably determined that information provided respecting the prevention of cramps does not establish that the appellant's life would be in imminent danger if the ministry failed to provide the vitamin/mineral supplement and/or the nutritional items under Schedule C section 7 and therefore the ministry's decision, that the criterion of section 67(1.1)(d) EAPWDR was not met, was reasonable.

The panel finds that the ministry's reconsideration decision to deny the appellant's request for a MNS for vitamins and minerals and/or additional nutritional items under section 67 and schedule C, section 7 EAPWDR is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant, and accordingly confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.