

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") January 16, 2013 reconsideration decision in which the Ministry denied the Appellant, a Person with Disabilities ("PWD"), a monthly nutritional supplement for nutritional items because it was not satisfied that a medical practitioner confirmed 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 an imminent danger to her life based on the criteria in section 67(1.1)(c) and (d) of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") and Schedule C section 7. The Ministry did determine that the Appellant is eligible for a monthly nutritional supplement for vitamins and minerals pursuant to section 67(1.1) of the EAPWDR.

PART D – Relevant Legislation

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

PART E – Summary of Facts

With the Appellant's consent, a Ministry observer attended but did not participate in the hearing.

Because the Ministry determined that the Appellant is eligible for a vitamin/mineral supplement, the Panel will summarize only the evidence related to the issue of whether the Appellant is eligible for a monthly nutritional supplement for nutritional items that are part of a caloric supplement to a regular dietary intake.

For its reconsideration decision the Ministry had the following evidence:

1. Information from its records that the Appellant is a PWD receiving disability assistance.
2. Monthly nutritional supplement applications completed by the Appellant's doctor on August 24, 2012 and on December 28, 2012.

The doctor provided the following information about the Appellant in those applications:

Diagnoses:

August 24, 2012 - lactose intolerance (diarrhea), arthritis (chronic pain), irritable bowel syndrome (diarrhea) and fibromyalgia (chronic pain).

December 28, 2012 – lactose intolerance (diarrhea – weight loss), arthritis (chronic pain), irritable bowel syndrome (diarrhea – weight loss), fibromyalgia (chronic pain).

Treated for chronic progressive deterioration of health:

August 24, 2012 - diarrhea and weight loss, bloating, malabsorption, and chronic joint ache.

December 28, 2012 – fibromyalgia, chronic arthritis, malabsorption, bloating, diarrhea, weight loss – can't eat.

Height and weight:

August 24, 2012 - height 5'3" and weight 140 lbs.

December 28, 2012 – height 5'5" and weight 130 lbs.

Nutritional items required and duration:

August 24, 2012 - for 1 year requires high protein, high calorie, and high calcium.

December 28, 2012 – for 1 year requires high protein, high calorie diet.

Medical condition resulting in inability to absorb sufficient calories for daily requirements:

August 24, 2012 – IBS (irritable bowel syndrome) and arthritis.

December 28, 2012 – diarrhea, weight loss, IBS and abdominal pain.

Symptoms as a result of chronic progressive deterioration of health:

August 24, 2012 – malnutrition, significant weight loss and significant muscle mass loss.

December 28, 2012 – malnutrition, significant weight loss, significant muscle mass loss and significant neurological degeneration.

How nutritional items will alleviate one or more of these symptoms:

August 24, 2012 – improve diarrhea and bloating, help with weight gain and (illegible).

December 28, 2012 – improve diarrhea, improve health, increase weight gain and improve immune system.

How nutritional items will prevent imminent danger to Appellant's life:

August 24, 2012 – decrease infection and help with weight gain.

December 28, 2012 – severe infection, help with weight gain, improve diarrhea and improve weight gain.

Additional comments provided by the doctor:

August 24, 2012 – IBS – severe bloating and pain, lactose intolerant – bloating and diarrhea – can't take dairy products, chronic arthritis, fibromyalgia and iron deficiency (fatigue).

December 28, 2012 – IBS – bloating (illegible) weight loss, lactose intolerance – diarrhea, weight loss, chronic arthritis – chronic pain, fibromyalgia – chronic pain, weight loss (illegible) and diarrhea – decrease.

At the hearing, the Appellant read from a note her doctor provided on a prescription pad about 10 days before the hearing. The Appellant said the doctor wrote, "requires Boost or nutritional supplement due to health reasons." The Appellant also provided the cost of different nutritional supplements. The Appellant said she had bowel surgery about 12 years ago and she now has irritable bowel syndrome, she cannot digest meat and is allergic to milk. She throws up and has diarrhea. The Appellant stated that she lost about 14-16 lbs. in the last 2 months because of her conditions and because she does not eat properly. She said that now she weighs 126 lbs. She is 5'5" tall and that weight is light for her.

The Appellant also stated that she takes vitamins, but the supplement she receives from the Ministry does not pay for all of them. She has started to take nutritional supplements because they help her health and that way she does not have to buy other expensive foods. She cannot afford to buy foods like soy products. She also cannot use the food bank because she cannot eat the food provided there. The Appellant said that with her budget she cannot afford all of the foods and supplements she needs. She explained that what the doctor meant by a high protein/high calorie diet was a product like Boost or a protein powder, which she now uses for her health but can't afford.

The Panel finds that the Appellant's testimony provided more details about her medical conditions and nutritional needs. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the testimony as being in support of the evidence that was before the Ministry at reconsideration.

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

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant, a PWD, a monthly nutritional supplement because it was not satisfied that a medical practitioner confirmed 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 an imminent danger to her life based on the criteria in section 67(1.1)(c) and (d) of the EAPWDR.

The following sections of the EAPWDR apply to the Appellant's circumstances and the issue in this appeal:

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,

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 Health Supplements

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

Because the Ministry determined that the Appellant is eligible for a monthly nutritional supplement for vitamins and minerals, the Panel will address only the issue of whether the Ministry reasonably determined that the Appellant is not eligible for a monthly supplement for additional nutritional items that are part of a caloric supplement to a regular dietary intake.

The Parties' Positions

The Ministry's position is that it considered the requirements in section 67 of the EAPWDR and all of the information provided by the Appellant's doctor in the two nutritional supplement applications. The Ministry found that the doctor confirmed that the Appellant has medical conditions that result in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The doctor also noted symptoms related to the Appellant's medical conditions. However, the Ministry was not satisfied that the doctor provided enough information about the indicated symptoms of significant weight loss or significant muscle mass loss to establish the need for a caloric supplement. The Ministry also noted that the doctor recommended a high protein, high calcium and high calorie diet, but the Ministry found that protein and calcium represent recommended components of a regular diet, rather than a caloric supplement to a regular dietary intake. Based on the information it had, the Ministry was not satisfied that the Appellant requires additional caloric supplementation to alleviate a symptom referred to in the monthly supplement applications. The Ministry also was not satisfied that there was sufficient information to establish that the failure to obtain the nutritional items would result in imminent danger to the Appellant's life. Therefore the requirements in section 67(1.1) (c) and (d) had not been met.

The Appellant's position is that she needs the nutritional supplements as part of her daily diet because she cannot eat dairy and meat products. Because of her medical conditions, she experiences symptoms such as diarrhea, bloating and weight loss. She needs the nutritional items to maintain her health. The Appellant also submitted that she cannot afford to buy the supplements, such as Boost, and she cannot afford to buy foods, such as soy products, which would be better for her medical conditions.

The Panel's Findings

Section 67(1.1) of the EAPWDR and Schedule C section 7(a) set out the criteria which the Ministry must consider to provide a monthly nutritional supplement for a caloric nutritional item. The Panel will first consider the requirement in EAPWDR section 67(1.1)(c); that is, the Appellant requires the nutritional items as a caloric supplement to alleviate a symptom listed in section 67(1.1)(b). The Panel finds that the doctor did identify four of the symptoms listed in that regulation and in the Ministry's application form; that is, malnutrition, significant weight loss, significant muscle mass loss and significant neurological degeneration. However, the doctor provided no comments regarding these symptoms and no additional details regarding these symptoms. In fact, the Panel notes that between August 2012 and December 2012 the doctor reported only a 10 lb. weight loss.

The Panel notes that the doctor specified a high protein, high calorie and high calcium supplement in August 2012 and then a high calorie and high protein supplement in December 2012. However, there is no information about how caloric supplements to the Appellant's regular diet will address the identified symptoms of malnutrition, significant weight loss, significant muscle mass loss and

significant neurological degeneration. The doctor only wrote that the requested items would improve diarrhea and bloating, help with weight gain, and improve the Appellant's health and her immune system. Therefore, based on the evidence from the doctor, the Panel finds that the Ministry reasonably determined that the requirements in EAPWDR section 67(1.1)(c) have not been met.

As to whether the doctor confirmed that supplemental caloric nutritional items are required to prevent imminent danger to the Appellant's life, in the two application forms the doctor wrote that nutritional items would decrease infection and severe infection, help with and improve weight gain, and improve diarrhea. However, the doctor did not describe how any of the Appellant's medical conditions pose an imminent danger to her life or if there are any risks to her life arising from her conditions. The doctor also did not describe how any caloric nutritional items would alleviate any imminent danger to the Appellant's life. Therefore, the Panel finds that the Ministry reasonably determined that the information from the Appellant's doctor did not satisfy the requirements in section 67(1.1)(d) of the EAPWDR for nutritional items.

Conclusion

The Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. For the reasons stated above, the Panel confirms the Ministry's decision determining that the Appellant is not eligible for a monthly nutritional supplement for nutritional items.