

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry")'s Reconsideration Decision dated February 21, 2013 which denied the appellant's request for the Monthly Nutritional Supplement (MNS) as the appellant did not meet the requirements of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) section 67(1) and Schedule C, section 7.

In particular, the Reconsideration Decision states that the minister is not satisfied that the information provided by the appellant's physician establishes that:

- The appellant is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition as required by EAPWDR Section 67(1.1)(a)
- the appellant displays two or more symptoms that are a direct result of a chronic, progressive deterioration of health as required by EAPWDR Section 67(1.1)(b);
- the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating one or more of the symptoms that are a direct result of a chronic, progressive deterioration of health as required by Section 67(1.1)(c) and Schedule C, section 7(a) of the EAPWDR;
- the appellant requires vitamins and minerals to alleviate the symptoms of a chronic, progressive deterioration of health as required by Section 67(1.1)(c) and Schedule C, section 7(c) of the EAPWDR; and
- failure to obtain the vitamins and minerals supplements or additional nutritional items would result in imminent danger to his life as required by Section 67(1.1)(d) of the EAPWDR.

PART D – Relevant Legislation

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

PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- 1) Request for Reconsideration dated February 18, 2013 in which the appellant states that he is undergoing investigation for cancer, is severely weak, listless and has chronic headaches. The appellant also states that due to his eyes and migraines, he is home bound as he does not feel strong enough to go out. The appellant also states that he had a stroke three years ago which does not help and he cannot afford the food he needs to build himself up. He also states that he has muscle breakdown and is malnourished and desperately needs vitamins and other things to strengthen his condition.
- 2) Application for MNS dated February 4, 2013 completed by the appellant's physician (the "Application") indicating the appellant likely has lung cancer or a possible respiratory condition other than lung cancer and is currently under investigation. In the "additional comments" the physician notes that the appellant is understandably having emotional and physical issues. The physician reports that as a direct result of the chronic, progressive deterioration of health the appellant displays the following symptoms: underweight status (lost 40 lbs over 4 years), significant weight loss and significant muscle mass loss. The physician reports that the appellant is 5'10" and weighs 140 lbs. The physician also notes that the appellant needs vitamin B complex to help resolve poor nutrition and that he is unable to purchase sufficient food for one month on his current allowance.
- 3) Letter from the ministry to the appellant dated February 7, 2013 advising the appellant that he did not meet the eligibility requirements for a monthly nutritional supplement; and
- 4) Ministry of Social Development Health Assistance Branch monthly nutritional supplement decision summary dated February 7, 2013.

In the Notice of Appeal dated March 4, 2013, the appellant questions why the Ministry is overriding his physician's diagnoses and investigations into his health situation (i.e. cancer and malnutrition).

The appeal proceeded by way of tele-conference. The appellant did not attend.

Having confirmed that the appellant was notified of the hearing by tele-conference, the panel proceeded with the appeal in the absence of the appellant as per section 86(b) of the EAPWDR.

The ministry relied on the Reconsideration Decision. The ministry representative stated that the appellant's physician indicates that the appellant's condition is under investigation but does not provide a medical diagnosis of any severe medical condition. The ministry also states that the appellant does not display two or more of the prescribed symptoms listed in Section 67(1.1)(b) of the EAPWDR as required to qualify for a MNS and that there is no evidence that failure to obtain the requested items will result in imminent danger to the appellant's life.

Based on the evidence, the panel's findings of facts are as follows:

- The appellant is a Person with Disabilities in receipt of disability assistance; and

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The appellant's condition is being investigated for possible lung cancer or other respiratory condition but no medical condition has yet been diagnosed.

PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry's Reconsideration Decision that the appellant did not meet the requirements for the MNS as set out in Section 67(1.1)(c) and (d) and Schedule C, Section 7 of the EAPWDR was reasonably supported by the evidence, or whether the Reconsideration Decision was a reasonable application of the legislation in the appellant's circumstances.

The Ministry confirms that the appellant is a person with disabilities, but the Ministry held that the information provided by the appellant's physician did not establish that:

- The appellant is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition as required by Section 67(1.1)(a) of the EAPWDR;
- the appellant displays two or more symptoms that are a direct result of a chronic, progressive deterioration of health as required by Section 67(1.1)(b) of the EAPWDR;
- the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating one or more of the symptoms that are a direct result of a chronic, progressive deterioration of health as required by Section 67(1.1)(c) and Schedule C, section 7(a) of the EAPWDR;
- the appellant requires vitamins and minerals to alleviate the symptoms of a chronic, progressive deterioration of health as required by Section 67(1.1)(c) and Schedule C, section 7(c) of the EAPWDR; and
- failure to obtain the vitamins and minerals supplements or additional nutritional items would result in imminent danger to his life as required by Section 67(1.1)(d) of the EAPWDR.

The relevant sections of the EAPWDR are as follows:

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, 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 - 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; (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)

Section 67 (1.1)(a) EAPWDR – chronic, progressive, deterioration of health

The appellant's evidence is that he is undergoing investigation for cancer, is being treated by his

doctor and specialist and as a result of his conditions has chronic headaches, weakness, fatigue, difficulty with his eyes and is home bound. The appellant's evidence also indicates that he had a stroke three years ago which does not help his condition, that he cannot afford the food he needs to build himself up and because of his ailments he has muscle breakdown.

The Ministry's position is that as the physician reports that the appellant likely has lung cancer, which is under investigation, or that he possibly suffers from a chronic respiratory condition other than lung cancer, the physician's information does not establish that a severe medical condition has been diagnosed. The Ministry's position is that the physician describes some symptoms that are under investigation but that no diagnosis has been made of a severe illness or medical condition.

As the physician indicates that the appellant is undergoing investigation for lung cancer or other respiratory condition and has not made a diagnosis of a severe medical condition, the panel finds that the Ministry's decision that the evidence does not establish that the appellant is being treated by a practitioner for a chronic, progressive deterioration of health on account of a severe medical condition as required by EAPWDR Section 67(1.1)(a) was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances.

Section 67 (1.1)(b) EAPWDR – Two or more symptoms as a direct result of a chronic, progressive, deterioration of health

The appellant's evidence is that he is severely weak, listless, has chronic headaches, migraines, eye problems, muscle breakdown and is malnourished.

The Ministry's position is that although the physician reports that the appellant has three of the symptoms listed in Section 67(1.1)(b) of the EAPWDR, namely underweight status, significant weight loss and significant muscle mass loss, the height and weight recorded indicate that the appellant has a Body Mass Index (BMI) of 20.5, which is within the normal range. As no other information was provided and the appellant's BMI is within the normal range, the Ministry's position is that although the physician has notes beside the symptoms of underweight status, there is nothing to indicate that the appellant is actually underweight. In addition, the Ministry's position is that the physician has not provided information to relate the appellant's weight loss or muscle mass loss to a severe medical condition.

The panel finds that although the appellant's physician indicates on the Application that the appellant displays two or more of the following symptoms, namely underweight status, significant weight loss and significant muscle mass loss, the physician did not provide any information as to why the appellant lost 40 pounds over the last 4 years, or that the weight loss was due to one of the noted health conditions. The only information provided by the physician indicates that the appellant has poor nutrition and cannot afford sufficient food for one month on his current monthly income. In addition, the panel notes that although the appellant states that he is malnourished, the appellant's physician does not indicate that the appellant is malnourished on the Application.

As the physician has not provided any further information regarding the reason for the appellant's underweight status, significant weight loss or significant muscle mass loss and has not provided information to indicate that these symptoms are a direct result of a chronic, progressive deterioration of health on account of a severe medical condition, the panel finds that the Ministry's decision that the

evidence does not establish that two or more of the legislative criterion required by Section 67(1.1)(b) were met was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances.

Vitamin/Mineral Supplementation

The appellant's position is that he requires "vitamins and other things" to strengthen his condition and help with his malnourishment and fatigue.

The Ministry's position is that they are not satisfied that the appellant requires vitamin/mineral supplementation to alleviate the symptoms of his chronic, progressive deterioration of health and to prevent imminent danger to life, as required by Section 67(1.1)(c) and (d) of the EAPWDR.

The Ministry's position is that although the physician states that the appellant requires Vitamin B complex to alleviate the symptoms identified as it will help resolve poor nutrition, the physician does not confirm that the appellant is displaying the symptom of malnutrition. In addition, the Ministry's position is that the physician has not confirmed that failure to obtain the vitamin/mineral supplementation will result in imminent danger to the appellant's life.

Schedule 67(1.1)(c) of the EAPWDR requires that a request for a vitamin/mineral supplement be completed by a medical practitioner and must specify in the request that the person requires one or more of the items set out in Schedule C, Section 7. In response to question 5 of the Application which asks the physician to specify the vitamin or mineral supplement(s) required and expected duration of need the appellant's physician indicates that Vitamin B complex is required but he did not include any information about the expected duration as required. Although the physician states that the items will alleviate the symptoms identified by helping to resolve poor nutrition, section 67(1.1) of the EAPWDR makes it clear that there must be a direct link between the required vitamin/mineral supplement and the alleviation of symptoms of the appellant's chronic, progressive deterioration of health. As the evidence from the appellant's physician does not establish this link, the panel finds that the Ministry's decision that the legislated criteria were not met was reasonable.

Section 67(1.1)(d) of the EAPWDR requires that the medical practitioner confirm that failure to obtain the requested items will result in imminent danger to the person's life. In response to the section of question 5 of the Application requesting a description of how the items will prevent imminent danger to the applicant's life, the appellant's physician states "NA" (not applicable). The panel finds that the information provided does not identify that the appellant faces an imminent danger to health if the requested items are not provided or how the requested items will prevent imminent danger to life.

Therefore, the panel finds that the Ministry's decision which denied the appellant's request for vitamin or mineral supplementation as the criteria of Section 67(1.1)(c) and (d) were not met was reasonable.

Nutritional items

Section 67(1.1)(c) of the EAPWDR requires that a request for supplements must specify in the request that the person requires one or more of the items set out in Schedule C, Section 7(a) being additional nutritional items that are part of a caloric supplementation to a regular dietary intake. Section 67(1.1)(d) requires that the medical practitioner confirm that failure to obtain the nutritional

items that are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the person's life.

The appellant's position is that due to his health condition he requires additional nutritional supplements to build himself up and strengthen his condition. He states that he is malnourished and feels fatigue because he cannot afford these products on his monthly income.

The Ministry's position is that although the appellant's physician states that the appellant is unable to purchase sufficient food for one month on the allowance he receives, the physician has not specified the additional nutritional items required and the expected duration of need as required by Section 67(1.1)(c) of the EAPWDR. In addition, the physician reports that the appellant does not have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

The Ministry notes that in response to the request for a description as to how the nutritional items will alleviate one or more of the specified symptoms and provide caloric supplementation to the regular diet, the physician states that it "*will provide a correct balance and limit cheap junk food*".

The Ministry's position is that the information provided in the Application does not establish that the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating one of the listed symptoms or that failure to obtain the items requested would result in imminent danger to his life.

Section 67(1.1) of the EAPWDR makes it clear that there must be a direct link between the requested nutritional items, namely caloric supplementation, and the alleviation of the symptoms of the appellant's chronic, progressive deterioration of health. However, the panel finds that the evidence provided by the medical practitioner does not identify what nutritional items are required, the expected duration of the nutritional items, or establish the required link between the nutritional items required and the chronic, progressive deterioration of health. The panel finds that the Ministry's decision that the requirements of Section 67(1.1)(c) were not met was reasonable.

In response to the section of question 6 of the Application requesting a description of how the items will prevent imminent danger to the applicant's life, the appellant's physician states "NA" (not applicable). Under additional comments, the physician notes that the appellant is being investigated for possible lung cancer and is understandably having emotional and physical issues. The panel finds that the information provided does not identify that the appellant faces an imminent danger to health if the requested items are not provided or how the requested items will prevent imminent danger to life as required by Section 67(1.1)(d) of the EAPWDR.

The panel finds that the Ministry's decision that the physician's information did not establish that failure to obtain the requested nutritional items would result in imminent danger to the appellant's life was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances.

Based on the above, the panel finds that the Ministry's decision to deny the appellant's MNS request was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances. Therefore, the panel confirms the Ministry's decision.