

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 9, 2013, 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 obesity, osteoarthritis, and osteoporosis), 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 immanent danger to her , 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:

- Physician's note dated October 10, 2012.
- Physician's prescription note dated August 23, 2012.
- Application for a Monthly Nutritional Supplement dated September 5, 2012.
- Monthly Nutritional Supplement Decision Summary dated January 9, 2013.
- Ministry denial letter for Monthly Nutritional Supplement dated November 23, 2012.
- Letter from the appellant's physician, To Whom It May Concern, dated December 13, 2012.
- Request for Reconsideration signed by the appellant signed December 5, 2012.

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

Chronic Progressive Deterioration of Health:

In response to questions 1 and 2 of the MNS application, completed by the appellant's physician dated September 5, 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, obesity, osteoarthritis, and osteoporosis.

Symptoms:

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.

In response to question 4 the physician reports that the appellant is 5 feet 6 inches tall and weighs 247 pounds.

Vitamin or Mineral Supplementation:

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 Vitamin C, Vitamin B Complex, and Calcium, however the physician does not specify the expected 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 with bones". When asked to describe how the specified items will prevent imminent danger to the appellant's life the physician provided no additional information.

Nutritional Items:

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 high protein and more vegetables, 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, "see the above chronic conditions". 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, "the patient needs a better diet". 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, "will help with her chronic problems". No further comment is provided to this question and no additional comment is provided on the MNS application.

In a letter addressed To Whom It May Concern, dated September 11, 2012, written by the same physician who completed the MNS application, he states that the appellant has been a patient in his clinic since May 17, 2007, for malnutrition and obesity class 2. The physician further states that the appellant needs financial support in order to be able to buy high quality foods with high protein content and lower carbohydrate content. He also states that because of the appellant's obesity she has also suffered from muscle mass loss and she is in chronic pain. The physician concludes by stating that the appellant's malnutrition is mainly based on poor quality foods because of financial problems and she needs financial support in order to buy higher quality foods.

A physician's prescription note dated August 23, 2012, completed by the same doctor who completed the MNS application, indicates that the appellant has obesity class 111, osteoarthritis and osteoporosis and that she requires a high protein diet and more vegetables.

A physician's prescription note dated October 10, 2012, completed by the same doctor who completed the MNS application indicating that the appellant requires vitamins for her medical problems (osteoporosis and osteoarthritis).

In section 3 of the appellant's Request for Reconsideration the appellant states that she is "requesting reconsideration for a nutritional supplement monthly amount due to the disability henceforth of osteoarthritis, osteoporosis, and obesity etc. Due to severe pain and limitations not getting proper nutritional value in my diet causes the disability to worsen, malnutrition and secondary infections lower my immune system and lower the quality of life. Lack of protein causes brain degeneration in time".

In the Reasons section of the Appellant's Notice of Appeal she writes the following:

"Due to the massive pain inflicting osteoporosis and osteoarthritis and obesity which have progressed chronic deterioration of health causing malnutrition (when obese malnutrition is caused not just losing weight fast) and muscle mass loss the bone deterioration (also disc deterioration) is osteoporotic and the need of the nutritional supplement and vitamins/minerals is a must to help alleviate the chronic progression of my disabilities and cannot afford much on disability that is obvious and Dr. S is stressing the need for financial help so I have a chance at a better quality of life. He can be phoned for clarification of all information".

The appellant did not attend the hearing. The panel received confirmation from the Tribunal that the appellant had been duly notified of the date, time, and call in instructions for the hearing held on February 9, 2013. Accordingly, under 86(b) of the Employment and Assistance Regulation, the panel heard the appeal in the appellant's absence.

At the hearing the ministry stood by the record.

The panel makes the following findings of fact:

- The appellant is a person with disabilities 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, obesity, osteoarthritis, and osteoporosis.
- The appellant displays the symptom of muscle mass loss.

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 obesity, osteoarthritis and osteoporosis), 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 immanent 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 obesity, osteoarthritis and osteoporosis, 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 and that getting proper nutritional value in her diet causes the disability to worsen, malnutrition and secondary infections lower my immune system and that lack of protein causes brain degeneration in time. Further she argues that "due to the massive pain inflicting osteoporosis and osteoarthritis and obesity which have progressed chronic deterioration of health causing malnutrition (when obese malnutrition is caused not just losing weight fast) and muscle mass loss the bone deterioration (also disc deterioration) is osteoporotic".

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(a) 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 symptoms listed above as a direct result of a chronic, progressive deterioration of health. The ministry acknowledges that based on the evidence presented in a letter dated September 13, 2012, written To Whom It May Concern, by the same physician who completed the MNS application, it is clearly established that because of the

appellant's obesity she suffered from muscle mass loss and therefore displays one of the symptoms listed above. However the ministry argues that the same physician has not related the appellant's symptom of malnutrition to her chronic, progressive deterioration of health as he reports in his September 13, 2012, letter that "the appellant's malnutrition is mainly based on poor quality foods because of financial problems, and she needs financial support in order to buy higher quality foods". The ministry further argued that as the physician has related the symptom of malnutrition to the appellant's financial situation, rather than her medical conditions of osteoporosis, osteoarthritis and obesity, she only displays one of the symptoms listed above, that of significant muscle mass loss, and has therefore not met the legislative requirements set out above in section 67 (1.1)(b).

The physician writes in his letter of December 13, 2012 that "the appellant's malnutrition is mainly based on poor quality foods because of financial problems and she needs financial support in order to buy higher quality foods." The panel finds that the legislation listed above requires that the symptom must be as a direct result of the appellant's medical conditions, not her financial circumstances. The panel further finds that while the appellant argues in section 3 of her Request for Reconsideration that she displays the symptoms of significant neurological degeneration and moderate to severe immune suppression, it is the medical practitioner and not the appellant who must diagnosis such conditions and related symptoms. As he has not provided this kind of documental evidence these conditions can not be considered in the appellant's MNS application process. Based on the evidence presented the panel finds the ministry reasonably determined that as a direct result of a chronic, progressive deterioration of health, the appellant displays one symptom only, that of significant muscle mass loss, and therefore does not meet the legislative requirements set out above in section 67 (1.1)(b) of the EAPWD Regulation.

Vitamin/Mineral Supplements

The ministry argued that bone loss is not one of the symptoms identified in the EAPWD Regulation subsection 67(1.1)(b). Furthermore the ministry argued that the physician does not confirm that the appellant displays the symptom of malnutrition due to a chronic, progressive deterioration of health, resulting from her medical conditions, which would demonstrate that she requires vitamin/mineral supplementation. The ministry further argued that the physician did not describe how the items requested will prevent imminent danger to life. For these reasons the ministry argued that she has therefore not met the requirements set out in section 67 (1.1)(c) and(d) of the EAPWD Regulation.

In the appellant's Notice of Appeal she argues that vitamins/minerals are a must to help alleviate the chronic progression of her disabilities and she cannot afford much on disability, which is obvious. Her physician is stressing the need for financial help so she can have a chance at a better quality of 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 a symptom found under 67 (1.1)(b) of EAPWD Regulation. The panel finds that in the MNS application form, the appellant's physician indicates that she requires Vitamin C, Vitamin B Complex, and Calcium and that these items will help her medical problems (osteoporosis and osteoarthritis). In describing how the items specified will alleviate specific symptoms identified and prevent imminent danger to life, the physician writes, "they will help with bones". The panel finds that bone loss is not one of the symptoms identified in the EAPWD Regulation subsection 67(1.1)(b) and that the physician does not confirm that the appellant displays the symptom of malnutrition due to a chronic, progressive deterioration of health, resulting from her medical conditions, osteoarthritis and osteoporosis, demonstrating that she requires vitamin/mineral supplementation. The panel further finds that the physician did not describe how the items requested will prevent imminent danger to 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 requirements set out in section 67 (1.1)(c) and(d) of the EAPWD Regulation for the provision of requested nutritional items, the appellant argued that the ministry has failed to consider all of the information provided by both her and her physician regarding her need for nutritional supplements. Specifically, the appellant argued that severe pain and not getting proper nutritional value in my diet causes the disability to worsen, malnutrition and secondary infections lower my immune system and that lack of protein causes brain degeneration in time.

The ministry argued that the information provided by the medical practitioner in the MNS application and in his letter of September 11, 2012 does not confirm that the appellant requires additional nutritional items as part of a caloric

supplementation to a regular dietary intake to alleviate the listed symptom and to prevent imminent danger to life. Furthermore, the ministry argued that the symptom of malnutrition has not been established. The physician has not confirmed that the appellant displays the symptoms of underweight status, or significant weight loss, which would demonstrate that the appellant is not able to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, and as a result require caloric supplementation to a regular dietary intake. The ministry further argued that the MNS application indicates that the appellant's height is 5 feet 6 inches and her weight is 247 pounds giving her a body mass index (BMI) of 39.9, which is above the normal range, and the medical practitioner confirms a diagnosis of obesity class 2. While the ministry acknowledges that the physician has recommended that the appellant's diet include (high protein, low carbohydrate, more vegetables) this involves appropriate choices within the appellant's regular dietary intake, rather than caloric supplementation to her dietary intake. Finally the ministry argued that the physician has not provided sufficient information to establish that failure to provide the items requested will result in immanent danger to life.

Under section 67 (1.1)(c) and (d) of EAPWD Regulation the appellant's physician must confirm that she requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms found under 67 (1.1)(b) of EAPWD Regulation and to prevent imminent danger to life.. The panel finds that while the physician reports that the in the MNS application form that the appellant requires a diet with high protein and more vegetables, obtaining these items involves appropriate choices within the appellant's regular dietary intake, rather than caloric supplementation to her dietary intake. 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 "see the above chronic conditions". No further comment is provided by the physician. Based on the information provided the panel finds that the physician has not confirmed that the appellant displays the symptoms of underweight status, or significant weight loss, which would demonstrate that she is not able to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, and as a result, require caloric supplementation to a regular dietary intake. The panel further finds that the physician reports in the MNS application that the appellant is 5 feet 6 inches tall, weighs 247 pounds and has been diagnosed with obesity class 2. The panel further finds that based on the information provided the physician has not provided sufficient information to establish that failure to provide the items requested will result in immanent danger to life. The panel therefore finds that the ministry reasonably determined that the appellant has not met the requirements set out in section 67 (1.1)(c) and (d) of EAPWD Regulation.

The panel therefore finds that, based on the whole of the evidence, that the eligibility criteria set out in EAPWD Regulation, subsection 67 (1.1)(b)(c) and (d) and Schedule C subsection 7(a) have not been met, and that the ministry's reconsideration decision was reasonably supported by the evidence. The panel therefore confirms the ministry decision.