



PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated June 21, 2013, which denied her request for Monthly Nutritional Supplement ("MNS") for nutritional items on the basis that she did not meet the criteria set out in the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) section 67(1.1) and Schedule C, section 7(a). The Ministry determined that the appellant's medical practitioner did not confirm that the appellant required the requested 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, as required under subsection 7(a) of Schedule C and subs. 67(1.1)(d) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67 and Schedule C – Health Supplements, s. 7.

PART E – Summary of Facts

At the reconsideration, the Ministry relied on the following:

- The Ministry's MNS decision summary dated May 31, 2013;
- The appellant's application for MNS signed by the appellant on January 11, 2013 and again on March 13, 2013 (there are 2 copies of the first page), with the portion completed by the appellant's physician dated March 13, 2013, described below;
- A letter from the appellant's physician dated June 17, 2013; and
- The appellant's written submission on reconsideration.

On the first page of the MNS application form, the appellant's physician indicated that the appellant's severe medical condition (question #1) is "severe anorexia and bulimia BMI 12.7% both restrictive and purging." In response to question #2, "As a direct result of the severe medical condition(s) ... is the applicant being treated for a chronic, progressive deterioration of health? If so, please provide details ...", the appellant's physician wrote, "followed by [a hospital] eating disorder clinic as well as dietician at [a medical clinic] and [a doctor] at the internal medical clinic. Current treatment is harm reduction."

On page 2 of the MNS form, in response to question #3 ("As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms?"), the appellant's physician indicated that the appellant displayed the symptoms of underweight status, significant weight loss and significant muscle mass loss and beside "significant deterioration of a vital organ" wrote, "irreg periods, constipation." In response to question #4, the appellant's physician provided the appellant's height and weight (5'3" and 38kg).

Question #5 of the MNS application form is for the request for vitamin or mineral supplementation, which the Ministry granted to the appellant and is not at issue on this appeal. In specifying the vitamin or mineral supplements required, the appellant's physician wrote "Boost/ensure" and "PEG" in addition to a list of vitamins and minerals. In response to the question "Describe how this item or items will prevent imminent danger to the applicant's life" the appellant's physician wrote, "chronic malnutrition purging resulting in electrolyte imbalance."

In response to question #6 (which has 3 questions on pages 2 and 3 of the MNS form), the appellant's physician indicated that the additional nutritional item required and expected duration of need is "PEG – needs long term". The appellant's physician also wrote "long term bowel regulation, long term electrolyte replacement, long term vitamin + mineral replacement." In response to the question, "Describe how the nutritional items required will alleviate one or more of the symptoms specified in question 3 and provide caloric supplementation to the regular diet", the appellant's physician wrote, "Boost/ensure will help maintain body weight". In response to the third question, "Describe how the nutritional items requested will prevent imminent danger to the applicant's life", the appellant's physician wrote, "↓ bowel dysfunction ↓ electrolyte imbalance."

In the letter of June 17, 2013, the appellant's physician wrote the appellant "suffers from severe anorexia and bulimia. She is malnourished and has had significant weight loss, muscle and tissue damage with a BMI of 12.7%. This is a chronic, life threatening, illness and nutritional supplements as well as a high calorie refeeding diet will be necessary life long."

In her written submission on reconsideration, the appellant wrote "I feel I meet the criteria for the monthly nutritional supplement. I require a high calorie diet lifelong."

With her notice of appeal dated July 1, 2013, the appellant provided a 4 page written submission dated June 29, 2013, together with copies of 5 receipts for purchases of "Peglyte" dated August 17, 2012, May 27, 2013, June 10, 2013, June 12, 2013, and June 20, 2013 (5 pages), a copy of a 1-page medical lab report dated June

19, 2013 showing hematology and general blood chemistry for the appellant, a 2-page print out of a meal plan for the appellant for June 2013, and a 1 page copy of recipes. The appellant's submissions will be addressed in the reasons section of this decision. In its submission on this appeal, the Ministry made no reference to the appellant's submission or the additional documents she attached to it.

This panel admits the appellant's 4 page written submission dated June 29, 2013 as written testimony in support of the information and records that were before the minister when the decision being appealed was made under subs. 22(4)(b) of the *Employment and Assistance Act*.

The panel notes that the following documents provided by the appellant were not before the minister when the decision being appealed was made:

- the medical lab report of June 19, 2013;
- the 5 receipts for Peglyte purchases;
- the appellant's meal plan for June 2013; and
- a copy of recipes.

The panel admits the medical lab report of June 19, 2013 as it contains written information which supports the appellant's physician's report on the MNS application form and her June 17, 2013 letter where she states that the appellant's electrolyte balance is low – in particular that her potassium and chloride levels are very low - as written evidence in support of information that was before the minister when the decision being appealed was made under subs. 22(4)(b) of the *Employment and Assistance Act*. The panel admits the receipts for the Peglyte for the same reason, as the appellant's physician referred to "PEG" and "electrolyte imbalance" in the MNS application form. The panel admits the appellant's meal plan and the recipes as written testimony in support of the information and records that were before the minister when the decision being appealed was made (the appellant's diet and use of nutritional supplements) under subs. 22(4)(b) of the Act.

The appellant is a person with disabilities in receipt of disability assistance. The appellant receives the monthly vitamin/mineral supplement.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's decision to deny the appellant's request for the MNS on the basis that the appellant's medical practitioner did not confirm that that the appellant requires the requested additional nutritional items as part of a caloric supplementation to a regular dietary intake, as set out in s. 7(a) of Schedule C, and to prevent imminent danger to life, as required by subs. 67(1.1)(d), was reasonable.

Legislation

EAPWDR

67. Nutritional Supplement

- (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: [emphasis added]
- (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;
- (b) Repealed
- (c) For vitamins and minerals, up to \$40 each month.

In her submission, the appellant expresses her frustration with the Ministry's denial of the requested MNS and responds to several sections of the reconsideration decision challenging the Ministry's determinations and findings (with the accompanying documents which she asserts provide further information and explanation). The appellant challenges the Ministry's determination that the appellant's physician has not provided evidence that the requested nutritional supplements will prevent imminent danger to her life and she writes,

I would like to address the first point, in which the Ministry states that while my physician notes that caloric supplementation will reduce the rate of further deterioration of health, this is not evidence of imminent danger to life. My physician clearly indicates on my application that in addition to decreased bowel function, I also have electrolyte imbalances. These electrolyte imbalances include low Potassium, and low Chloride. I have attached a copy of my recent lab results, which indicate that my Potassium levels are very low: 2.9 mmol/L when the normal range is 3.6-4.7. Potassium is an essential electrolyte that is critical for maintaining the electric currents necessary for a normal heartbeat. Low potassium – levels below 3.6, can cause the electrical signal to the heart to malfunction and a very dangerous arrhythmia or cardiac arrest may result at any moment. Chloride is another electrolyte that conducts electricity in the body and plays a role in the pacemaker activity of the heart.

In her written submissions, the appellant challenges the Ministry's determination that her physician has not indicated that the requested nutritional supplements are required as part of a caloric supplementation to a regular dietary intake to alleviate the appellant's symptoms. The reconsideration decision states, "PEG is not regular dietary intake, in fact there is no information to confirm that you are consuming a regular dietary intake." The appellant responds,

It clearly states in my physician statement ... that "she suffers from severe anorexia and bulimia. She is malnourished and has had significant weight loss, muscle and tissue damage with a BMI of 112.7. This is a chronic, life threatening illness and *****nutritional supplements as well as a high calorie refeeding diet will be necessary lifelong.***** [emphasis appellant]

A high calorie refeeding diet is confirmation that I must consume not only a regular dietary intake, but an intake over and above – a "high calorie refeeding diet". ...

I am currently trying very hard to restore my weight. ... I am required to purchase nutritional supplements over and above [her regular diet]. This includes Boost/Ensure and PEGlyte solution. My daily meal plan includes 3 meals and 3 snacks. At each meal and snack time, I need to drink approximately 140mL of Boost/Ensure in order to meet my caloric requirements for weight restoration. ...

The appellant challenges the statement in the reconsideration decision "it would appear that you require Boost/Ensure instead of food", stating that she drinks these at each snack and meal in addition to her regular food.

The appellant further challenges the reconsideration determination that the physician's statement "decreased bowel function and decreased electrolyte imbalance" in response to the question on the MNS form, does not provide information that the requested monthly nutritional supplements are required to prevent imminent danger to her health. The appellant writes,

Once again, I must argue that electrolyte imbalance certainly substantiates an imminent danger to life. Anorexia Nervosa has the highest mortality rate of any mental illness. Between 4 and 20% of people who develop this disease eventually die from it. Heart disease is the most common medical cause of death in people with anorexia nervosa. ... A primary danger to the heart is from imbalance of minerals such as potassium, calcium, magnesium and phosphate. An imbalance in these electrolytes can be life threatening unless fluids and minerals are replaced.

Panel Decision

The Ministry determined that the appellant's physician confirmed that she is being treated by for a chronic, progressive deterioration of health on account of a severe medical condition (anorexia and bulimia), and that as a direct result of her anorexia and bulimia, she displays two or more of the listed symptoms, meeting the criteria set out in subs. 67(1.1)(a) and (b).

Under subs. 67(1)(c) of the *EAPWDR*, in order to qualify for the MNS, the appellant's medical practitioner must confirm that the appellant meets **all** of the requirements set out in subs. 67(1.1)(a) through (d). Under s. 7(a) of Schedule C of the *EAPWDR*, additional nutritional items may be provided if they "are part of a caloric supplementation to a regular dietary intake." The panel stresses that the legislation requires that it is the **appellant's medical practitioner** who must provide confirming information that the appellant meets all of the requirements.

The appellant's submissions on this appeal are articulate, thoughtful and intelligent; she is clearly very knowledgeable about her disease, its effects and the steps she must take to alleviate her symptoms and improve her health. However, the appellant is not a medical or nurse practitioner – the only persons under the legislation who can confirm that the appellant meets all the criteria set out in subs. 67(1.1) of the *EAPWDR* are these medical personnel.

The panel finds that the Ministry's determination that the appellant's physician had not indicated that the appellant requires the requested MNS to provide caloric intake to supplement her regular diet is reasonable based on the evidence. In the MNS form of March 2013, the appellant's physician wrote in response to how the requested MNS will alleviate the appellant's listed symptoms and provide caloric supplementation to the regular diet, "Boost/ensure will help maintain body weight." In the letter of June 17, 2013, the appellant's physician wrote, "nutritional supplements as well as a high calorie refeeding diet will be necessary lifelong." The appellant has provided a great deal of information about her diet and how the Boost/Ensure will supplement it in her written submissions. However, the panel notes that the appellant's physician made no reference in either document to how the requested MNS will provide caloric supplementation to her regular diet, and it is the physician's evidence which is required by subs. 67(1.1)(c) and section 7(a) of Schedule C.

While it appears somewhat inconsistent that the Ministry accepts the appellant's physician's information that the vitamin/mineral supplements are required to prevent imminent danger to the appellant's life, but does not accept the information that the nutritional supplements are required to prevent imminent danger to the appellant's life, the panel finds that the Ministry's determination that the appellant's physician has not confirmed that failure to receive the requested MNS will result in imminent danger to her health is reasonable based on the evidence.

The MNS requested – as opposed to the monthly/vitamin supplements requested and granted – are listed in

the MNS form as "PEG – needs long term" and the appellant's physician also lists "long term bowel regulation, long term electrolyte replacement, long term vitamin + mineral replacement." In other places in the MNS form, the appellant's physician refers to Boost/Ensure as the requested MNS (in the list of requested vitamin and mineral supplements, and in response to how the nutritional items required will alleviate one or more of the appellant's symptoms and provide caloric supplementation).

With respect to the nutritional items, in response to the question, "Describe how the nutritional items requested will prevent imminent danger to the applicant's life", the appellant's physician's wrote, "↓ bowel dysfunction ↓ electrolyte imbalance", however, the appellant's physician does not provide the required information describing how the appellant's electrolyte imbalance will result in imminent danger to her health (it is the appellant who provides this information in her written submission on appeal).

There is no specific reference to Boost/Ensure in the June 2013 note from the physician, although the appellant repeatedly describes her use of Boost/Ensure in her submissions. While the June 2013 letter from the appellant's physician states that the appellant has a chronic, life threatening illness and nutritional supplements as well as a high calorie refeeding diet will be necessary life long, the physician does not sufficiently explain how the nutritional supplements will alleviate the condition or how the appellant's decreased bowel function or electrolyte imbalance will result in imminent danger to the appellant's life. Accordingly, the panel finds that the Ministry's determination that this evidence does not confirm the requirement of subs. 67(1.1)(d) is reasonable.

Therefore, the panel confirms the Ministry's decision to deny the appellant's request for MNS.