

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated February 25, 2013 which denied the Appellant's request for a Monthly Nutritional Supplement ("MNS") for additional nutritional items and for vitamin and mineral supplements on the basis that the Appellant had not met all of the criteria of section 67 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR").

Specifically, the Ministry determined that:

1. The Appellant's physician did not confirm that the Appellant displayed two or more of the specific symptoms as listed in section 67(1.1)(b);
2. The Appellant did not require additional 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 by section 67(1.1)(c) and (d) and Schedule C, section 7 of the EAPWDR; and
3. The Appellant did not require vitamin and mineral supplements to alleviate the symptoms of a chronic, progressive deterioration of health and to prevent imminent danger to her life as required by section 67(1.1)(c) and (d) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") section 67(1), (1.1) and (2) and Schedule C, section 7

PART E – Summary of Facts

The evidence before the Ministry at reconsideration included:

1. The Appellant's Request for Reconsideration dated February 14, 2013,
2. The Ministry letter of refusal dated January 22, 2013,
3. The Ministry Monthly Nutritional Supplement Decision Summary dated January 22, 2013; and
4. The Appellant's Application for Monthly Nutritional Supplement form ("MNS Application") dated October 9, 2012 and prepared by the Appellant's physician.

The ministry relied on the reconsideration decision and submitted no new information.

In the Request for Reconsideration, the Appellant stated that she suffers from severe depression and that she needs to take multi-vitamins and vitamin B complex. The Appellant further states that she suffers from weight loss and hair loss and needs to take iron supplements, vitamin H and another supplement.

In the Notice of Appeal, the Appellant notes that she and her family are going through a financial crisis and have no extra money for vitamins and minerals or nutritional supplements. The Appellant states that when she was discharged from hospital in 2010, the physicians recommended that she continue taking multivitamins including vitamin B complex. The Appellant submits that she is severely anemic and suffering from weight loss and hair loss and that she needs nutritional supplements that are high in iron and silicon content but due to her family financial difficulties there is no extra money left for nutritional supplements and most of the time their family has only one meal per day.

The MNS Application asks the Appellant's physician to list and describe the Appellant's severe medical conditions and the physician diagnoses the Appellant with severe anemia. In response to the question as to whether the Appellant is being treated for a chronic, progressive deterioration of health, the physician notes that the Appellant requires supplements, vitamin B12, vitamin C and folic acid. With respect to the question of whether the Appellant displays two or more of the listed symptoms as a direct result of the chronic, progressive deterioration of health, the physician has not indicated that the Appellant displays any of the symptoms, nor does the physician list the Appellant's height and weight.

Under the section for Vitamin or Mineral Supplementation, the physician does not, as requested in the application form, identify the specific vitamin or mineral supplement required by the Appellant or the expected duration of need. The physician does not indicate how the vitamin or mineral supplements will alleviate the Appellant's specific symptoms identified and similarly does not comment how the vitamin and mineral supplements will prevent imminent danger to the Appellant's life.

Under the section for Nutritional Items, the physician does not specifically identify the additional nutritional items required or the expected duration of need. The physician makes no comment as to whether the Appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The physician describes how the nutritional items required will alleviate one or more of the Appellant's symptoms and provide caloric supplementation to her regular diet by noting "supplements" and referring back to the supplements

recommended as vitamin B12, vitamin C and folic acid. The physician notes that the nutritional items will prevent imminent danger to the Appellant's life by commenting "severe anemia requires IV transfusions and boosted with the items in #2." The "items in #2" refers to vitamin B12, vitamin C and folic acid.

The Panel makes the following findings of fact which are not in issue:

1. The Appellant is a Person with Disabilities in receipt of disability assistance.
2. The Appellant is being treated for severe anemia.

PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry reasonably determined that the Appellant was ineligible for a Monthly Nutritional Supplement (“MNS”) for additional nutritional items and for vitamin and mineral supplements on the basis that the Appellant had not met all of the criteria of section 67 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”).

Specifically, the Ministry determined that:

1. The Appellant’s physician did not confirm that the Appellant displayed two or more of the specific symptoms as listed in section 67(1.1)(b);
2. The Appellant did not require additional 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 by section 67(1.1)(c) and (d) and Schedule C, section 7 of the EAPWDR; and
3. The Appellant did not require vitamin and mineral supplements to alleviate the symptoms of a chronic, progressive deterioration of health and to prevent imminent danger to her life as required by section 67(1.1)(c) and (d) of the EAPWDR.

The relevant legislation, section 67 and Schedule C, section 7 of the EAPWDR, provides as follows:

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)

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)

The Appellant's position is that she requires monthly nutritional supplements in the form of additional nutritional items as well as vitamins and minerals due to severe anemia.

The Ministry's position as set out in the Reconsideration Decision is that the Appellant has not met the eligibility criteria for additional nutritional items or vitamins and minerals as set out in section 67 and Schedule C, section 7 of the EAPWDR .

Section 67(1.1) of the EAPWDR sets out the criteria that an applicant must satisfy to be eligible for a nutritional supplement. Each of the criteria are mandatory in nature and where an applicant does not satisfy each of them, the request for the nutritional supplement will be denied.

Section 67(1.1)(b) of the EAPWDR provides that an applicant must demonstrate that as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the seven specifically listed symptoms. These symptoms must be confirmed by a medical practitioner or nurse practitioner. In the MNS Application, the Appellant's physician confirms a diagnosis of severe anemia but in the section where she is asked whether the Appellant displays two or more of the symptoms listed in section 67(1.1)(b)(i-vii) she did not identify any of them. While the Panel notes that the Appellant reports in her Notice of Appeal that she is suffering from weight loss and that her family is often only eating one meal per day, section 67(1.1) requires that it is a medical practitioner or nurse practitioner who must confirm that the Appellant displays two or more of the specifically listed symptoms that are a direct result of the chronic, progressive deterioration of health. As such, the Panel finds that the Ministry reasonably determined that the Appellant does not display two or more of the specific symptoms listed in section 67(1.1)(b) of the EAPWDR.

Section 67(1.1)(c) of the EAPWDR provides that a medical practitioner or nurse practitioner must confirm that for the purpose of alleviating a symptom referred to in sub-paragraph (b), an applicant requires one or more of the items set out in s.7 of Schedule C and specified in the request. As set out above, the Appellant's physician has not indicated in the MNS Application that the Appellant suffers from any of the symptoms set out in section 67(1.1)(b).

The Appellant's physician makes no comment in the MNS Application how vitamin or mineral supplements will alleviate one or more of the specific symptoms. As referenced above, the Appellant's physician has not identified any symptoms that are being displayed by the Appellant as a result of her severe anemia and as section 67(1.1)(c) requires that the requested vitamins and minerals be required to alleviate one of those symptoms, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the criteria for vitamins and minerals as set out in section 67(1.1)(c) of the EAPWDR.

When asked in the MNS Application how additional nutritional items will alleviate one or more of the specific symptoms, the Appellant's physician states that the Appellant requires supplements and refers to specific vitamins, notably, vitamin B12, vitamin C and folic acid. As noted above however, the Appellant's physician has not identified any symptoms that are being displayed by the Appellant as a result of her severe anemia. Further, the Appellant's physician does not comment in the MNS Application as to how the additional nutritional items will provide caloric supplementation to the Appellant's regular diet as required by Schedule C, section 7(a) of the EAPWDR. As such, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the criteria for additional nutritional items as set out in section 67(1.1)(c) of the EAPWDR.

Section 67(1.1)(d) of the EAPWDR provides that a medical practitioner or nurse practitioner must confirm that failure by an applicant to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

In the MNS Application, the Appellant's physician makes no comment as to how vitamins and minerals will prevent imminent danger to the Appellant's life. The Panel therefore finds that the

Ministry reasonably determined that the Appellant did not meet the criteria for vitamins and minerals as set out in section 67(1.1)(d) of the EAPWDR.

In the MNS Application, the Appellant's physician responds to the question of how the nutritional items will prevent imminent danger to the applicant's life by stating that severe anemia requires IV transfusions boosted with supplements, vitamin B12, vitamin C and folic acid. The Appellant's physician does not describe what the imminent danger is to the Appellant's life and makes no connection between that and the required nutritional items. The Panel therefore finds that the Ministry reasonably determined that the Appellant did not meet the criteria for additional nutritional items as set out in section 67(1.1)(d) of the EAPWDR.

Therefore, the Panel finds that the Ministry's decision to deny the Appellant monthly nutritional supplements was a reasonable application of the applicable legislation in the circumstances of the Appellant and confirms the Reconsideration decision.