

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated March 5, 2013, finding the Appellant ineligible for a monthly vitamin/mineral supplement and a nutritional supplement under section 67 of the Employment and Assistance for Persons with Disabilities Regulation (EAPDR). The supplement was denied because the medical practitioner's report does not establish that:

- (1) the Appellant suffers from two or more of the symptoms listed in section 67(1.1)(b),
- (2) the Appellant requires the nutritional items or vitamin/minerals to alleviate one or more of the symptoms as required under section 67(1.1)(c),
- (3) the nutritional items supplement is a caloric supplementation to a regular dietary intake as required under section 7 of Schedule C, and
- (4) failure to obtain the items will result in imminent danger to the Appellant's life 67(1.1)(d).

PART D – Relevant Legislation

The relevant legislation is section 67 and section 7 of Schedule C of the EAPDR.

PART E – Summary of Facts

The Appellant originally applied to the ministry for a monthly nutritional supplement in November 2012 by submitting the required form completed by a medical practitioner. In order to determine eligibility for the supplement, the form asks a series of questions based on the legislative criteria. As the answers provided by the medical practitioner on the form are the basis for the Ministry's reconsideration decision, excerpts are set out here in some detail (medical practitioner's answers in italics).

1. Please list and describe the applicant's severe medical condition.

A: eating disorder: severe restriction, difficult to eat solids

2. As a direct result of the severe medical condition noted above, is the applicant being treated for a chronic, progressive deterioration of health?

A: yes, very poor intake, weight unstable

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?

*A: Malnutrition – very poor intake – no solid food for days at a time
Significant weight loss 10kg in 8 months*

4. Please specify the applicant's height 5'3" and weight 57.3kg

5. VITAMIN OR MINERAL SUPPLEMENTATION:

- Specify the vitamin or mineral supplement(s) required and expected duration of need:
multivitamins +1 year
- Describe how this item or items will alleviate the specific symptoms identified:
doesn't have sufficient intake to cover basic needs
- Describe how this item or items will prevent imminent danger to the applicant's life:
[No answer provided]

6. NUTRITIONAL ITEMS:

- Specify the additional nutritional items required and expected duration of need:
ensure/boost 2 cans per day
- Does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake? If yes, please describe:
Very symptomatic – reports ongoing severe nausea with solid foods – without liquid supplement may avoid eating anything for days

7. NUTRITIONAL ITEMS:

- Describe how the nutritional items required will alleviate one or more of the symptoms described in question 3 and provide caloric supplementation to the regular diet:
[No answer provided]
- Describe how the nutritional items required will prevent imminent danger to the applicant's life:
to decrease further weight loss

Based on the medical practitioner's answers above and the legislated requirements, the ministry completed an assessment form. That process led the ministry to conclude that the Appellant did not qualify for either a vitamin/mineral supplement or any nutritional items.

At the hearing the Appellant submitted two new documents which were not before the ministry when it made its reconsideration decision. The first is a letter dated February 5, 2013 from the medical practitioner who completed the original report detailed above. In this letter the medical practitioner states that the Appellant has severe anorexia and weight loss as a result. In oral testimony the Appellant explained that she has suffered from anorexia for a number of years, and bulimia for two years. She added that the medical practitioner referred to these conditions as an 'eating disorder' in the original report. In this new letter, the medical practitioner further states that the Appellant is severely restricting her intake of solid food which puts her at high risk for loss of bone density, infections, electrolyte imbalances, heart arrhythmia, medication toxicity, and potential heart or kidney damage.

The second is a letter dated February 1, 2013 from a Registered Nurse. The nurse describes various symptoms of malnutrition that the Appellant experiences due to the eating disorder. Both of these documents reiterate what was included in the original report – that the Appellant requires a vitamin/mineral supplement and a liquid nutritional supplement to combat the effects of the eating disorder and prevent further risk to the Appellant's health. Both letters also state that the Appellant has been accepted to an eating disorder clinic for treatment.

The panel finds that these documents are admissible under section 24(4)(b) of the Employment and Assistance Act as they are in support of the information before the ministry at the time of the reconsideration decision that the Appellant suffers from an eating disorder.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's reconsideration decision finding the Appellant ineligible for a monthly vitamin/mineral supplement and a nutritional supplement under section 67 of the EAPDR was reasonably supported by the evidence or was a reasonable application of the applicable legislation. The supplement was denied because the medical practitioner's report does not establish that:

- (1) the Appellant suffers from two or more of the symptoms listed in section 67(1.1)(b),
- (2) the Appellant requires the nutritional items or vitamin/minerals to alleviate one or more of the symptoms as required under section 67(1.1)(c),
- (3) the nutritional items supplement is a caloric supplementation to a regular dietary intake as required under section 7 of Schedule C, and
- (4) failure to obtain the items will result in imminent danger to the Appellant's life 67(1.1)(d).

The relevant legislation is section 67 and section 7 of Schedule C of the EAPDR:

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 centre,

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.

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. [B.C. Reg. 68/2010, s. 3 (b).]
- (c) for vitamins and minerals, up to \$40 each month.

- (1) It is agreed that the report establishes that the Appellant suffers from one of the listed symptoms: "malnutrition". The Appellant's position is that she also suffers from "significant weight loss", while the ministry's opinion is that a loss of 10kg (22lbs) over an 8 month period is not "*significant weight loss*". The panel notes that the Appellant's weight at the time of the report was 57.3 kg (126lbs) and her height 5'3" giving her a BMI of 22.4 which is well within a healthy range of 18.5 to 24.9. Given these numbers, the panel finds that it was reasonable for the ministry to conclude that a loss of 22lbs (from 148lbs to 126lbs) in an 8 month period for a 5'3" woman does not represent *significant weight loss* such that that the requirements of section 67(1.1)(b) were not met.
- (2) The ministry's position is that the report does not establish that either the vitamin/mineral supplement or the nutritional items are required to treat the Appellant's malnutrition. The evidence is that she cannot eat solid food, however there is no indication that she could not eat blended food. The Appellant did not contradict the ministry's position. The panel finds it reasonable for the ministry to have concluded that if the appellant can consume liquid food supplements such as Boost or Ensure, she could also consume blended foods. Therefore, the requirement of section 67(1.1)(c) of the EAPWDR that the supplements be required in order to alleviate one of the symptoms identified in the legislation was not met.
- (3) The Appellant's position as set out in the information from her physician, is that she requires nutritional items, i.e., Ensure or Boost to supplement her dietary intake. The Ministry's position is that the basis of the Appellant's need for nutritional items, i.e., Ensure or Boost, is to replace a regular dietary intake given that the Appellant may go for days without eating. The legislative

requirement in section 7 of Schedule C is for the nutritional items to be part of a caloric supplementation to a regular dietary intake. The panel accepts the Ministry's finding that there is no evidence of a medical condition that causes malabsorption of calories or that requires caloric supplementation.

- (4) Meeting the criteria that failure to supply an item would result in "imminent danger to the person's life" is an onerous one. In this case, the medical practitioner's report relied upon by the Ministry at the time of the reconsideration decision, was conspicuously silent on this question. The ministry would certainly require a statement from the medical practitioner addressing this requirement in order to make a determination that there was, in fact, "imminent danger" to the Appellant's life. As well, the information in the report in regards to the normal weight and BMI of the Appellant does not indicate that her life was in imminent danger. The panel finds that the ministry was reasonable to conclude that there was no indication that the Appellant's life was in imminent danger such that the requirement of section 67(1.1)(d) was not met.

The ministry's finding that the Appellant does not meet the above legislated criteria in order to qualify for a vitamin/mineral and nutritional items monthly supplement was reasonable.

Accordingly, the Panel finds that the Ministry's determination that the Appellant is not eligible to receive a monthly nutritional supplement for vitamins/ minerals and nutritional items was a reasonable application of the applicable legislation.

The Panel confirms the Ministry's decision.