

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated February 18, 2013 which held that the appellant was not eligible for the Monthly Nutritional Supplement of additional nutritional items and vitamins/minerals because the appellant did not meet all of the criteria needed to qualify for nutritional supplements:

1. The minister is not satisfied that the appellant displays two or more symptoms as a direct result of chronic progressive deterioration of health as there were no symptoms reported as set out in section 67 (1.1) (b) of the EAPWDR.
2. The minister is not satisfied that the appellant requires vitamin/mineral supplementation to alleviate any symptoms of a chronic, progressive deterioration of health and to prevent imminent danger to life as set out in section 67 (1.1) of the EAPWDR.
3. The minister is not satisfied that the appellant requires additional nutritional items as part of a chronic supplementation to regular dietary intake to alleviate the symptoms of a chronic progressive deterioration of health and to prevent imminent danger to your life as set out in section 67 (1.1) and Schedule C, section 7 of the EAPWDR.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)
Section 67, and
Schedule C, Section 7

PART E – SUMMARY OF FACTS

The evidence before the minister at reconsideration was as follows.

- The Application for Monthly Nutritional Supplement dated October 19, 2012, completed in part by the appellant and also by her doctor. The applicant's severe medical conditions were listed as: depression, mental health, obesity. The doctor noted that as a direct result of being treated for a chronic progressive deterioration of health the appellant has the following medical conditions obesity and high cholesterol. The doctor did not complete the third question which asked if the applicant displays two or more symptoms as a result of the chronic, progressive deterioration of health. The list of symptoms is taken directly from EAPWDR section 67 (1.1) (b) two or more of which must be present for a person to be eligible for a nutritional supplement. Under the questions related to vitamin or mineral supplementation the doctor noted that none of the questions asked were applicable and under the questions regarding specific nutritional items, the doctor again responded that none of the questions asked were applicable. The doctor included the following additional comments on the form:

“Patient requires healthy foods to help her start a healthy lifestyle. She is obese, she has a mental illness, and is on weight gaining medications. She needs to lose weight because she is at high risk for cardiovascular disease. She has a limited income and could use a supplement to help her afford nutritious fresh foods.”

- A letter dated January 18, 2013, from the Ministry denying her request for a monthly nutritional supplement.
- A ministry Monthly Nutritional Supplement Decision Summary worksheet completed but undated and unsigned.
- The appellant's request for reconsideration dated February 7, 2013, stating she requires healthy foods for a healthy lifestyle, she is on medication that causes weight gain and is obese, by trying more nutritive foods and healthy vitamins, her overall health and cardiovascular system will improve.

There were two additional documents submitted as part of this appeal.

- A note on a Doctor's medical prescription pad dated April 3, 2013 with the appellant's name listed, the note is as follows: Rx The above named patient needs to change her diet due to obesity, high cholesterol, chronic abdominal pain. She would benefit from vitamin supplementation and low fat diet. The note is unsigned.
- A note on a Medical Clinic's prescription pad dated March 13, 2013 with the appellant's name listed, the note is as follows: Rx patient needs extra benefit for diet to risk of cardiovascular disease in (illegible) obesity + mental health issues. The note is signed by the doctor and stamped with the doctor's number.

The two notes are from different medical doctors located at different addresses. Neither of the Doctors who completed these notes was the Doctor who completed the Application for Monthly Medical Supplement.

The panel determined the additional documentary evidence was admissible under s.22(4) of the EAA as the two notes on medical prescription pads confirmed the information provided in the

Application for Monthly Medical Supplement and the appellant's statement and therefore were in support of the information before the minister at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue is whether the ministry's decision dated February 18, 2013 which held that the appellant was not eligible for the Monthly Nutritional Supplement of additional nutritional items and vitamins/minerals because the minister was not satisfied that the appellant met the criteria of section 67 and section 7 of Schedule C of the EAPWDR was reasonable.

The relevant legislation in this matter is as follows.

Employment and Assistance for Persons with Disabilities Regulation

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)

(3) The minister may provide a nutritional supplement for a period of 3 calendar months to or for a family unit if the supplement is provided to or for a recipient of disability assistance or a dependent child of a recipient of disability

assistance if

- (a) the recipient or dependent child is not receiving a supplement under subsection (1) of this section or section 2 (3) of Schedule C, and
- (b) a medical practitioner or nurse practitioner confirms in writing that the recipient or dependent child has an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from (B.C. Reg. 317/2008)
 - (i) surgery,
 - (ii) a severe injury,
 - (iii) a serious disease, or
 - (iv) side effects of medical treatment.

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)

In the submission to this hearing the appellant's representative states the appellant disagrees with the decision to deny her the monthly nutritional supplement. The appellant has been told by her doctor that she is at high risk of cardiovascular disease and she needs to change her diet as soon as possible. The appellant feels she would benefit from vitamin supplementation, especially considering that her weight gain is directly related to the medication she takes. She is very concerned about her health and her ability to meet their nutritional needs on a limited budget.

The ministry stood by the reconsideration decision which found that the appellant did not qualify for a nutritional supplement based because she did not meet all of the criteria as set out in section 67(1.1) of the EAPWDR.

The regulation is quite specific in setting out what is required to qualify for a nutritional supplement. The Minister must receive the request in the form specified by the minister completed by a medical practitioner or nurse practitioner. The Application For Monthly Nutritional Supplement form completed by the medical doctor and dated October 19, 2012 is the specified form. In that form the medical doctor lists the appellant's severe medical conditions as depression, mental health and obesity. The doctor reports that as a direct result of the severe medical conditions the appellant is being treated for obesity and high cholesterol as chronic progressive deterioration of her health. The medical form lists the symptoms set out under section 67 (1.1) (b) of the EAPWDR and asks asked if as a direct result of the chronic, progressive deterioration of health (obesity and high cholesterol) the appellant displays two or more of the following symptoms. The doctor left this question blank. The doctor noted the series of questions related to vitamin or mineral supplement supplementation to be non-applicable. In the series of questions regarding the need for nutritional

items the doctor noted the questions to be non-applicable but referred to information provided under the additional comments. In that section, the doctor wrote the following:

“Patient requires healthy foods to help her start a healthy lifestyle. She is obese, she has a mental illness, and is on weight gaining medications. She needs to lose weight because she is at high risk of cardiovascular disease. She has a limited income and could use a supplement to help her afford nutritious fresh foods.”

The panel finds the two notes dated March 13 and April 3, 2013 written on prescription pads confirms the information provided in the application completed October 19, 2012. In addition, the April 3, 2013 unsigned note provides the opinion that the appellant would benefit from vitamin supplement and low-fat diet. The additional opinion that the appellant would benefit from vitamin supplement is new but the note is unsigned and provides no specific information as to what type of vitamin supplement how the supplement will alleviate specific symptoms and how the supplement will prevent imminent danger to the appellant's life, therefore the panel gives this new evidence little weight.

The panel finds the ministry's determination that the appellant did not meet the criteria of displaying two or more of the listed symptoms under section 67(1.1) (b) of the regulation was reasonably supported by the evidence because the medical practitioner completing the specified form dated October 19, 2012 and the two notes written on prescription pads dated March 13 and April 3, 2013 provided no information with respect to the list of symptoms required to qualify for either nutritional supplement.

In addition, the panel finds that while there was evidence the appellant could benefit from vitamin supplementation, there was no evidence that the appellant required vitamin or mineral supplementation to alleviate symptoms of a chronic, progressive deterioration of health and to limit imminent danger to life, as set out under section 67(1.1) (c) and (d) and section 7 of Schedule C of the regulation therefore the ministry's determination was reasonably supported by the evidence.

Finally, the panel finds that there was no evidence that the appellant required additional nutritional items as part of a caloric supplementation to alleviate symptoms of a chronic, progressive deterioration of health and to prevent imminent danger to life as set out under section 67(1.1) (c) and (d) and section 7 of Schedule C of the regulation.

As a result of the foregoing, the panel confirms the reconsideration decision.