

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated March 21, 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 did not require additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of his chronic, progressive deterioration of health and to prevent an imminent danger to his life as required by section 67(1.1)(c) and (d) and Schedule C, section 7 of the EAPWDR; and
2. 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 his 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 É – Summary of Facts

The evidence before the Ministry at reconsideration included:

1. The Appellant's Request for Reconsideration dated February 19, 2013 which attaches to it the following:
 - (a). Written submissions of the Appellant; and
 - (b). A letter addressed to "To Whom It May Concern," signed by the Appellant's physician and dated March 4, 2013 ("the Physician Letter") in which the physician provides answers to five questions relating to the Appellant's eligibility for Monthly Nutritional Supplements,
2. The Ministry letter of refusal dated January 26, 2013,
3. The Ministry Monthly Nutritional Supplement Decision Summary dated January 26, 2013,
4. An undated "Note to Employment and Assistance Workers," and
5. The Appellant's Application for Monthly Nutritional Supplement form ("MNS Application") dated September 5, 2012 and prepared by the Appellant's physician.

In his Request for Reconsideration, the Appellant argues that he suffers from malabsorption syndrome (chronic diarrhea), significant muscle mass loss, peripheral neuropathy and heart problems resulting from diabetes 2, congestive heart failure and ischemic heart disease. The Appellant says that he requires daily caloric supplementation in the form of fresh produce, fish, poultry and whole grains in addition to regular dietary intake to prevent or alleviate further wasting and deterioration and subsequent health risks resulting from his conditions and symptoms. The Appellant says that he requires daily intake of multivitamin and mineral supplements including iron-free multivitamin and mineral tablet/capsule, vitamin D and vitamin B complex to prevent or alleviate further wasting and deterioration and subsequent health risks resulting from his conditions and symptoms. The Appellant submits that his medical condition is at a stage where nutritional intervention specifically increased caloric intake and vitamin and mineral supplementation is required to prevent or alleviate further health deterioration and reduce the rate of further deterioration and prevent imminent danger to life.

In the Physician Letter, he answers a number of questions that are posed to him. First, the physician answers "Yes" to the question "Does your patient suffer from malabsorption syndrome (chronic diarrhea), significant muscle mass loss, peripheral neuropathy and heart problems arising from diabetes 2, congestive heart failure and ischemic heart disease. Further, the Appellant's physician has circled peripheral neuropathy, diabetes 2 and ischemic heart disease. Next, the physician answers "Yes" to the question "Does your patient require daily caloric supplementation in the form of fresh produce, fish, poultry and whole grains in addition to regular dietary intake to prevent or alleviate further wasting and deterioration and subsequent health risks resulting from malabsorption syndrome (chronic diarrhea), significant muscle mass loss, peripheral neuropathy and heart problems arising from diabetes 2, congestive heart failure and ischemic heart disease. The Appellant's physician has again circled peripheral neuropathy, diabetes 2 and ischemic heart disease. Next, the physician answers "Yes" to the question "Does your patient require daily intake of multivitamin and mineral supplements including iron-free multivitamin and mineral tablet/capsule, vitamin D and vitamin B complex intake to prevent or alleviate further wasting and deterioration and subsequent health risks resulting from malabsorption syndrome (chronic diarrhea), significant muscle mass loss, peripheral neuropathy and heart problems arising from diabetes 2, congestive heart failure and ischemic heart disease. The Appellant's physician has circled vitamin D, vitamin B, peripheral neuropathy and diabetes 2. Next, the physician answers "Yes" to the question of whether the Appellant's medical condition is at a stage where nutritional intervention, specifically increased caloric

intake and vitamin and mineral supplementation, is required to prevent or alleviate further health deterioration or reduce the rate of further deterioration and prevent imminent danger to life. Finally, the Appellant's physician notes in response to the question whether the \$35.00 diabetes diet allowance is sufficient to meet the Appellant's nutritional needs he states "No income at present."

In the Notice of Appeal, the Appellant says that due to medical facts, he needs supplements that he cannot afford.

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 chronic heart failure ("CHF"), ischemic heart disease ("IHD") and diabetes mellitus ("DM") and reference is made to a low sodium diet. 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's CHF, angina and DM contribute to weakness and that degenerative disc disease and peripheral neuropathy are causing him to fall. 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 notes under "Significant neurological degeneration", that the Appellant has spinal stenosis limiting walks to less than 100 metres. The physician indicates that the Appellant is 183 cm tall and weighs 89 kg.

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 or the expected duration of need other than to note that "Daily vitamins with minerals" are required. The physician does not indicate how the vitamins or mineral supplements will alleviate the Appellant's symptoms other than to comment that the Appellant is a bachelor and doesn't eat well. The physician comments further that the vitamins and mineral supplements will prevent imminent danger to the Appellant's life by helping to maintain the integrity of the body.

Under the section for Nutritional Items, the physician does not specifically identify the additional nutritional items required other than to note "Diabetic diet – 1800 [calories]/day". The physician does not indicate the duration of need. The physician also notes that the Appellant has no 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 his regular diet by noting "control shortness of breath and leg oedema" and he states that the nutritional items will prevent imminent danger to the Appellant's life noting "orthopnea, PND [paroxysmal nocturnal dyspnea], death." Under the heading "Additional Comments", the physician states that the Appellant "has OA, DM, IHD and needs to eat and exercise properly."

At the hearing, the Appellant stated that his physician feels that he requires the MNS and that this is reflected in the Physician Letter. The Appellant argued that the government appears to conclude that his health condition is not such that the MNS is justified which he says makes no sense. The Appellant referred to a monthly financial supplement he had been receiving and which was discontinued but the Ministry clarified that this was for a dietary supplement as opposed to the MNS. The Appellant went on to say that the food that he eats is not nutritional and he is unable to cook as he cannot stand for long. The Appellant understands that he is sick and his physician needs to have him on a more nutritional diet. The Appellant went on to submit that he has accessed an organization that provides nutritious meals but they are not affordable and as such, he is not eating a sufficient or

nutritional diet which impacts his current and future health. He says that he needs vitamins and supplements but can't afford them.

In response to questions from the Panel, the Appellant stated that he is not aware of the caloric content of the meals he purchases from the meal organization. The Appellant stated that for exercise he tries to walk but can only do so for approximately 100 feet before needing to rest and he uses a cane that folds out into a chair for that. The Appellant stated that he has had specific discussions with his physician as to which foods are good and bad and that he drinks a lot of water. The Appellant stated that he did not write the written submissions that were attached to his Request for Reconsideration but rather they were written by his Advocate in consultation with his physician. The Appellant confirmed that he does not suffer from chronic diarrhea as he takes medication to control it. After being referred to the Physician Letter, the Appellant agreed that he does not suffer from malabsorption syndrome and significant muscle mass loss and he agreed that those items that are circled in the letter are the conditions that should be paid attention to.

In response to a question from the Ministry, the Appellant stated that he discussed with his physician which foods were good for him and which were bad and he prepared a written list based on that discussion. The Appellant answered that he discussed taking vitamins with his physician but that he did not write them on the same list as the food.

The Ministry reviewed and relied on the Reconsideration Decision. The Ministry stated that it can only rely on medical evidence in determining MNS eligibility and in this case, that includes the MNS Application as well as the Physician Letter.

In response to a question from the Panel, the Ministry stated that with respect to section 67(1.1)(c) of the EAPWDR, the evidence did not support a finding that nutritional items or vitamins and minerals will alleviate the Appellant's symptoms.

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 a chronic, progressive deterioration of health on account of a severe medical condition, specifically diabetes mellitus, chronic heart failure and ischemic heart disease.
3. As a result of his chronic, progressive deterioration of health, the Appellant displays symptoms of significant neurological degeneration and significant deterioration of a vital organ (the heart).

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 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 did not require additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of his chronic, progressive deterioration of health and to prevent an imminent danger to his life as required by section 67(1.1)(c) and (d) and Schedule C, section 7 of the EAPWDR; and
2. 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 his 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 due to his medical condition as set out in the MNS Application, he needs nutritional supplements which he cannot afford.

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 mineral supplements 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 is 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) provides that for a person with disabilities to receive the MNS under this section, the request must be "in the form specified by the minister, completed by a medical practitioner or nurse practitioner." The Appellant's physician completed the MNS Application and later completed the Physician Letter. As set out above, the Ministry gave evidence at the hearing that it could rely on the Physician Letter as medical evidence in determining MNS eligibility.

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.

The Appellant's physician states in the MNS Application that nutritional items will alleviate one or more of the symptoms referred to in section 67(1.1)(b) and provide caloric supplementation to the Appellant's regular diet by noting "Control SOB [shortness of breath] and leg oedema." Neither of these conditions are symptoms referred to in sub-paragraph (b) and the physician does not specifically comment in the MNS Application as to how the nutritional items will provide caloric supplementation to a regular dietary intake. However, the Panel notes that in the Physician Letter, the Appellant's physician answers "Yes" to the question of whether the Appellant requires daily caloric supplementation in addition to his regular dietary intake to prevent or alleviate further wasting and deterioration and subsequent health risks resulting from malabsorption syndrome, significant muscle mass loss, peripheral neuropathy and heart problems resulting from diabetes 2, congestive heart failure and ischemic heart disease. The Panel is of the view that the MNS Application and the Physician Letter can be read together and this view is supported by the Ministry's evidence at the hearing that it considered the Physician Letter to be "medical evidence" and to be considered in determining MNS eligibility.

The Panel again notes that the Appellant in his evidence confirmed that he does not suffer from chronic malabsorption syndrome or significant muscle mass loss but there is no issue that he displays symptoms of significant neurological degeneration secondary to peripheral neuropathy in addition to significant deterioration of his heart secondary to congestive heart failure and ischemic heart disease as evidenced by the MNS Application.

The Panel finds that by reading the MNS Application and the Physician Letter together, the Appellant's physician has confirmed that requires nutritional items that are part of a caloric supplementation to his regular dietary intake for the purpose of alleviating significant neurologic degeneration secondary to peripheral neuropathy as well as significant deterioration of a vital organ, the heart, secondary to congestive heart failure and ischemic heart disease. As such the Panel finds that the Ministry's decision that the Appellant did not require nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of his chronic, progressive deterioration of health as set out in section 67(1.1)(c) was unreasonable.

With respect to vitamins and minerals, the physician provides in the MNS Application that vitamins and minerals will alleviate one or more of the symptoms referred to in section 67(1.1)(b) by noting that the Appellant is a bachelor and doesn't eat well. In the Physician Letter, he answers "Yes" to the question of whether the Appellant requires daily intake of multivitamin and mineral supplements to prevent or alleviate further wasting and deterioration and subsequent health risks due to a number of

symptoms including peripheral neuropathy and heart problems resulting from congestive heart failure and ischemic heart disease. Reading the MNS Application and the Physician Letter together, the Panel finds that the Ministry's decision that the Appellant did not require vitamins and minerals to alleviate the symptoms of his chronic, progressive deterioration of health as set out in section 67(1.1)(c) was unreasonable.

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 responds to the question of how the nutritional items will prevent imminent danger to the applicant's life by stating "orthopnea, PND [paroxysmal nocturnal dyspnea], death." He goes on to answer "Yes" in the Physician Letter to the question of whether the Appellant's medical condition is at a stage where nutritional intervention, specifically increased caloric intake is required to prevent or alleviate further health deterioration or reduce the rate of further deterioration and prevent imminent danger to life. Reading the MNS Application and the Physician Letter together, the Panel finds that the Ministry's decision that the Appellant did not meet the criteria for additional nutritional items as set out in section 67(1.1)(d) of the EAPWDR was not reasonable.

With respect to vitamins and minerals, the Appellant's physician responds to the question of how the vitamins and minerals will prevent imminent danger to the applicant's life by stating "help to maintain the integrity of the body." He goes on to answer "Yes" in the Physician Letter to the question of whether the Appellant's medical condition is at a stage where nutritional intervention, specifically vitamin and mineral supplementation is required to prevent or alleviate further health deterioration or reduce the rate of further deterioration and prevent imminent danger to life. Reading the MNS Application and the Physician Letter together, the Panel finds that the Ministry's decision that the Appellant did not meet the criteria for vitamins and minerals as set out in section 67(1.1)(d) of the EAPWDR was not reasonable.

Therefore, the Panel finds that the Ministry's decision to deny the Appellant monthly nutritional supplements in the form of additional nutritional items and vitamins and minerals was not a reasonable application of the applicable legislation in the circumstances of the Appellant and the Panel rescinds the Ministry's decision.