

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated April 18, 2013, which held that the appellant was not eligible to receive a Monthly Nutritional Supplement (MNS), nutritional items and vitamin/mineral supplements, as all of the eligibility requirements set out in section 67 (1.1) of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, and Schedule C section 7 were not met. Specifically the ministry determined that:

1. The appellant is a person with disabilities and meets the requirements to apply for MNS benefits as set out in the EAPWD Regulation section 67 (1);
2. The appellant is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition, specifically schizophrenia, bipolar disorder and diabetes as set out in the EAPWD Regulation section 67 (1.1)(a).
3. The appellant's medical practitioner has confirmed that the nutritional item requested (Boost Diabetic) will alleviate her symptom of a chronic, progressive deterioration of health (malnutrition) as set out in the EAPWD Regulation section 67 (1.1)(c).

However the ministry also determined that

1. The appellant's medical practitioner has not confirmed that as a direct result of a chronic, progressive deterioration of health the appellant displays two or more of the listed symptoms as set out in EAPWD Regulation section 67 (1.1)(b);
2. The appellant's medical practitioner has not confirmed that the appellant requires the vitamin/mineral supplements requested to alleviate the symptoms of her chronic, progressive deterioration of health (malnutrition) set out in the EAPWD Regulation section 67 (1.1)(c);
3. The appellant's medical practitioner has not confirmed that failure to obtain the requested vitamin/mineral supplements would result in imminent danger to the appellant's life as set out in the EAPWD Regulation section 67 (1.1)(d);
4. The appellant's medical practitioner has not confirmed that failure to obtain the requested nutritional item (Boost Diabetic) will result in immanent danger to the appellant's life, as set out in the EAPWD Regulation section 67 (1.1)(d);
5. The appellant's medical practitioner has confirmed that that the nutritional item requested would be used to replace other items found in a regular dietary intake, and not in addition to them, as set out in section 7(a) of Schedule C of the EAPWD Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, Section 67 (1), (1.1) and Schedule C section 7.

PART E – Summary of Facts

Information and records which were before the ministry at the time of reconsideration include the following:

- Application for a Monthly Nutritional Supplement, date completed is not clear.
- Monthly Nutritional Supplement Decision Summary dated March 26, 2013.
- Ministry denial letter for Monthly Nutritional Supplement dated March 26, 2013.
- Request for Reconsideration signed by the appellant May 13, 2013.

Ministry records indicate that the appellant is designated as a person with disabilities in receipt of disability assistance, and that she is eligible to be considered for MNS under the EAPWD Regulation.

Chronic Progressive Deterioration of Health:

In response to question 1 of the MNS application, the appellant's physician confirms that she is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, and specifies schizophrenia, bipolar disorder and diabetes.

In response to question 2 of the MNS application, the physician states that as a result of the severe medical conditions noted above the appellant is being treated for a chronic, progressive deterioration of health with multiple antipsychotics, insulin and antiglycemics.

Symptoms:

Question 3 of the MNS application asks the physician; (As a direct result of the appellant's chronic, progressive deterioration of health noted above, does the appellant display two or more of the following symptoms?)

(i) Malnutrition; (ii) under weight 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. The physician reports that the appellant displayed one of the listed symptoms, that of malnutrition, and comments that she has poor protein intake.

In response to question 4 of the MNS application the physician reports that the appellant is 5 feet 3 inches tall and weighs 240 pounds. She also reports that the appellant has significant weight gain due to antipsychotics and limited understanding of diet.

Vitamin or Mineral Supplementation:

Question 5 was not completed by the appellant's physician.

Nutritional Items:

In response to question 6 of the MNS application, which has four subsections, the physician was asked to specify the additional nutritional items required and the expected duration of the need. The physician reports that the appellant requires "boost 1 can twd", however the physician does not specify the expected duration of the need. When asked if the appellant has a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, and if so to explain, the physician reports, the patient has limited ability to cook, and intake food correctly and provides no further comment. When asked to describe how the nutritional items required by the appellant will alleviate one or more of the symptoms identified by the physician in question 3, and provide caloric supplementation to a regular diet, the physician reports, boost will provide good protein balance and particularly with her diabetes will help to normalize her sugar levels. No further comment is provided to this question. When asked to describe how the nutritional items required will prevent imminent danger to the appellant's life, the physician does not respond. Under Additional Comments the physician reports the appellant is very motivated to improve but has limited understanding of nutrition despite her diabetes - it has proved impossible to get her to complete nutrition classes and she would benefit from boost as it is an easier way to provide regular intake.

In section 3 of the appellant's Request for Reconsideration she writes that she needs Boost Diabetic for severe diabetes. She states that she thinks she may have some neurological degeneration with bad pain (nerve pain) in both legs. She also states that she is severely mentally ill and can not cook or care for herself nutrition wise. Boost Diabetic or glycerna would help her get the protein required for adequate daily nutrition. She also states that she really needs vitamins B, A, D, for macular (eye) degeneration also lutein and milk thistle herbs. The appellant also states that she is living in a small hotel and has limited access to cook nutritious food. The appellant states that she needs help as her nerves are shot and due to stress she can barely eat solid food.

After the ministry's reconsideration decision, and prior to the hearing, the appellant wrote in the Reason for Appeal section of her Notice of Appeal that she has lost 40 to 50 pounds due to not being able to eat. She also states that she did not ask the doctor to tell the ministry that she has neurological degeneration (nerves dying) in the left leg and did not ask her doctor to write for all of her

vitamins/herbals. She concludes by stating that she has severe stress and can not eat solid foods and that she also has uncontrolled diabetes and that Boost would help stabilize the sugar.

The appellant did not attend the hearing. After confirming that the appellant was duly notified, the hearing proceeded pursuant to section 86(b) of the Employment and Assistance Regulation.

At the hearing the ministry stood by the record stating that the appellant was not eligible to receive a MNS, nutritional items and vitamin/mineral supplements, as all of the eligibility requirements set out in section 67 (1.1) of the EAPWD Regulation, and Schedule C section 7 were not met. No additional evidence was submitted.

The panel made the following findings of fact:

- The appellant is a person with disabilities in receipt of disability assistance and is eligible to be considered for MNS under the EAPWD regulation;
- A medical practitioner has confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition; specifically, schizophrenia, bipolar disorder and diabetes.
- The appellant displays the symptom of malnutrition.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request for MNS is reasonably supported by the evidence. The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated April 18, 2013, which held that the appellant was not eligible to receive a Monthly Nutritional Supplement (MNS), nutritional items and vitamin/mineral supplements, as all of the eligibility requirements set out in section 67 (1,1) of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, and Schedule C section 7 were not met. Specifically the ministry determined that:

1. The appellant is a person with disabilities and meets the requirements to apply for MNS benefits as set out in the EAPWD Regulation section 67 (1);
2. The appellant is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition, specifically schizophrenia, bipolar disorder and diabetes as set out in the EAPWD Regulation section 67 (1.1)(a).
3. The appellant's medical practitioner has confirmed that the nutritional item requested (Boost Diabetic) will alleviate her symptom of a chronic, progressive deterioration of health (malnutrition) as set out in the EAPWD Regulation section 67 (1.1)(c).

However the ministry also determined that:

1. The appellant's medical practitioner has not confirm that as a direct result of her chronic, progressive deterioration of health she displays two or more of the listed symptoms set out in EAPWD Regulation section 67 (1.1)(b));
2. The appellant's medical practitioner has not confirmed that the appellant requires vitamin/mineral supplements to alleviate the symptoms of her chronic, progressive deterioration of health (malnutrition) as set out in the EAPWD Regulation section 67 (1.1)(c));
3. The appellant's medical practitioner has not confirmed that failure to obtain the requested vitamin/mineral supplements would result in imminent danger to the appellant's life as set out in the EAPWD Regulation section 67 (1.1)(d));
4. The appellant's medical practitioner has not confirmed that failure to obtain the requested nutritional item (Boost Diabetic) will result in immanent danger to the appellant's life, as set out in the EAPWD Regulation section 67 (1.1)(d);
5. The appellant's medical practitioner has confirmed that that the nutritional item requested (Boost Diabetic) would be used to replace other items found in a regular dietary intake, and not in addition to them, as set out in section 7(a) of Schedule C of the EAPWD Regulation.

In arriving at its decision the ministry relied upon the following legislation:

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)

Schedule C section 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 is eligible to receive MNS, nutritional items, and vitamin/mineral supplements as she has met all of the eligibility requirements set out in section 67 (1.1) of the EAPWD Regulation, and Schedule C section 7(a). The ministry's position is that the appellant is not eligible to receive a MNS, nutritional items, or vitamin/mineral supplements as all of the eligibility requirements set out in section 67 (1.1) of the EAPWD Regulation, and Schedule C section 7(a) have not been met.

Symptoms

In order to meet the requirements set out in section 67 (1.1)(b) of the EAPWD Regulation the appellant must display two or more of the symptoms listed above as a direct result of a chronic, progressive deterioration of health. The ministry argued that when the

appellant's physician was asked in question 3 of the MNS application, if as a direct result of the appellant's chronic, progressive deterioration of health does she display two or more of the following symptoms, (i) Malnutrition; (ii) under weight 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, the physician reports that the appellant displayed only one of the listed symptoms, that of malnutrition, and comments that she also has poor protein intake.

The appellant argued in her Notice of Appeal she that she has lost 40 to 50 pounds due to not being able to eat.

The panel finds that while the appellant has argued that she has lost 40 to 50 pounds due to not being able to eat, which may serve to demonstrate significant weight loss, her argument is not supported in the documental medical evidence provided by her physician in the MNS application. In response to question 4 the physician reports that the appellant is 5 feet 3 inches tall and weighs 240 pounds. The physician also reports that the appellant has had significant weight gain as a result of antipsychotics and has a limited understanding of diet. As Section (1.1) of the EAPWD Regulation cited above requires that the MNS application be completed by a medical practitioner or nurse practitioner, and in the absence of any additional documental medical evidence in support of the appellant's argument, the panel finds that the ministry reasonably determined that as a direct result of a chronic, progressive deterioration of health, the appellant displays one symptom only, that of malnutrition, and therefore does not meet the legislative requirements set out above in section 67 (1.1)(b) of the EAPWD Regulation.

Vitamin/Mineral Supplements

As to the requirements set out above under section 67 (1.1)(c) and (d) of EAPWD Regulation the appellant's physician must confirm that she requires additional vitamin/mineral supplements to alleviate a symptom found under 67 (1.1)(b) of EAPWD Regulation and to prevent imminent danger to life.

The appellant argued in her Request for Reconsideration that she really needs vitamins B, A, D, for macular (eye) degeneration also lutein and milk thistle herbs. She also argues in her Notice of Appeal that she did not ask her doctor to write for all of her vitamins/herbs.

The ministry argued that as the appellant's physician did not complete this section of the MNS application they have no way of confirming that that the requested items are required and will alleviate the identified symptom of malnutrition, or that failure to provide the requested items will result in immanent danger to the appellant's life.

The panel finds that as the appellant's physician chose not to respond to question 5 of the MNS application, and in the absence of any additional medical evidence supporting the appellant's argument, regarding her need for vitamin/mineral supplements required to alleviate a symptom identified by her physician in the MNS, the ministry reasonably determined that the appellant does not meet the legislative requirements set out above in section 67 (1.1)(c) and (d) of the EAPWD Regulation.

Additional Nutritional Items

As to the requirements set out above under section 67 (1.1)(c) and (d) of EAPWD Regulation for the provision of requested nutritional items the appellant's physician must confirm that she requires additional nutritional items to alleviate a symptom found under 67 (1.1)(b) of EAPWD Regulation and to prevent imminent danger to life.

The appellant argued in section 3 of her Request for Reconsideration that she needs Boost Diabetic for severe diabetes. The ministry acknowledged that the appellant met the requirements set out in section 67 (1.1)(c), as the physician has reported in the MNS application that the appellant has malnutrition, with poor protein intake, and that Boost Diabetic will provide good protein balance, and particularly with diabetes, will help to normalize her sugar levels. However, when the physician was asked in question 6 of the MNS application to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the physician provided no response. For this reason the ministry argued that the appellant has not met the requirements set out above under section 67 (1.1)(d) of EAPWD Regulation for the provision of requested nutritional items.

The panel finds based on the lack of response provided by the appellant's physician to question 6 in the MNS application, and in the absence of any additional medical evidence reporting that the requested nutritional item will prevent imminent danger to the appellant's life, the ministry reasonably determined that the appellant has not met the requirements set out above under section 67 (1.1)(d) of EAPWD Regulation for the provision of requested nutritional items.

As to the requirements set out above in the EAPWD Regulation Schedule C section 7(a), the appellant's physician writes in the MNS application under (Additional Comments) that the appellant is very motivated to improve but has limited understanding of nutrition despite her diabetes - it has proved impossible to get her to complete nutrition classes and she would benefit from Boost as it is an

easier way to provide regular intake.

The ministry argued that the appellant's request for Boost Diabetic does not meet the criterion set out above as the information provided does not establish that the Boost Diabetic is part of a caloric supplementations to a regular dietary intake. The ministry argued that while the physician has stated that the appellant would benefit from Boost Diabetic as it is an easier way to provide a regular intake, the item requested would be used to replace other items found in a regular dietary intake, and not in addition to them, as set out in Schedule C section 7(a). For these reasons the ministry argued that the appellant has not met the requirements set out above in the EAPWD Regulation Schedule C section 7(a),

The panel finds that based on the evidence presented by the appellant's physician under "Additional Comments" in question 6 of the MNS application, and in the absence of any additional medical evidence, the ministry reasonably determined that the appellant has not met the requirements set out above under the EAPWD Regulation Schedule C section 7(a),

Having considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for the requested MNS supplement was reasonably supported by the evidence, and therefore confirms the ministry's decision.