

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision dated June 12, 2013 that determined the appellant was not eligible for a Monthly Nutritional Supplement (MNS) for additional nutritional items because the ministry was not satisfied the appellant requires 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 imminent danger to life as required under section 67(1.1) and section 7 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

**PART D – Relevant Legislation**

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

## PART E – Summary of Facts

The evidence before the ministry at reconsideration was comprised of an Application for Monthly Nutritional Supplement (MNS Application) signed and dated by a physician on April 2, 2013 and a Request for Reconsideration dated June 6, 2013.

In the MNS Application the appellant is diagnosed with Depression, Anxiety, hemorrhagia and weight loss with comments regarding hemorrhagia, "She has been bleeding PV 6 weeks." In response to the question "As a direct result of the severe medical condition(s) noted above, is the applicant being treated for a chronic, progressive deterioration of health? If so, please provide details and any information on treatments including any relevant clinical or diagnostic reports", the physician responds "Recently she has been oppressed by constipation for 4 months." When asked, "As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms?", the physician indicates that the appellant displays malnutrition ("anorexia"), significant weight loss ("weight has fallen from 160 lbs to 128 lbs"), significant muscle mass loss ("Significant muscle mass loss") moderate to severe immune suppression ("severe immune depression"), and significant deterioration of a vital organ ("severe constipation"). The physician reports that the 46 year old appellant is 5' 4 1/2" in height and weighs 128 lbs.

In the MNS Application section respecting nutritional items, the physician when asked to specify the additional nutritional items medically essential that will provide caloric supplementation to a regular dietary intake and required to prevent imminent danger to the applicant's life responds "Patient is Vegan" and "Obtains Proteins in beans and lentils." The response when asked 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 is "Malabsorption due to Chronic Constipation." When asked how the nutritional items will alleviate one or more of the specified symptoms and provide caloric supplementation to the regular diet, the physician responds "Beans lentils and hemp seed required for protein nutrition" The response when asked how these items will prevent imminent danger to the applicant's life is "Increased fibre required in diet and to provide good caloric diet."

Additionally, the physician writes "Financial assistance for a well balanced vegan diet would be helpful."

In the Request for Reconsideration, the appellant writes that her physician with respect to her application for a MNS had completed section 6 regarding Nutritional Items.

In her Notice of Appeal (NOA) dated June 24, 2013 the appellant reports that she has had IBS (Irritable Bowel Syndrome) since January 2013 causing malnutrition and severe immune depression resulting in several fevers, flu and weakness and cannot afford the nutritional food sources for her vegan diet to supply enough calories, proteins to correct her conditions. The appellant further notes that her physician does not have a "clinical nutrition" background and that she cannot afford the fees to obtain supporting documentation from a Clinical Nutritionist. The panel finds the written testimony of the appellant in her NOA as admissible under section 22(4) of the Employment and Assistance Act as being in support of the information that was before the ministry at the time of reconsideration.

The panel makes the following findings of fact: (a) a medical practitioner confirms that the appellant is vegan and requires protein in beans and lentils for nutrition, increased fibre and a good caloric diet for treatment of symptoms of malnutrition, underweight status, significant weight loss, significant muscle mass loss, moderate to severe immune depression and significant deterioration of a vital organ. (b) the appellant is 5' 4 1/2" in height and weighs 128 lbs.

In this written hearing, the ministry advised that its submission is the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry reasonably determined that the appellant was not eligible under section 67 and section 7 of Schedule C of the EAPWDR for a MNS for additional nutritional items because the minister was not satisfied that she requires 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 imminent danger to life,

*The relevant legislation, section 67 and section 7 of Schedule C of the EAPWDR, provide as follows.*

### **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,*  
*the minister is satisfied that* *if*

*(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.

(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).

### **Schedule C Health Supplements**

#### **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;

The appellant's position is that she requires a MNS for additional nutritional items and food sources from a vegan diet to supply her with needed fibre and proteins and a good caloric diet to alleviate her medical symptoms that result from her chronic progressive deterioration of health and that a failure to provide these will result in imminent danger to health.

The ministry accepts that as a result of her chronic, progressive deterioration of health the appellant suffers from 2 or more of the symptoms set out in section 67(1)(1.1)(b) of the EAPWDR. However, the ministry's position is that the legislative criteria respecting a MNS for nutritional items were not met as the information provided did not establish that the appellant requires 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 imminent danger to life. The ministry argues that the information establishes that the appellant's Body Mass Index (BMI) is in the normal, very low risk category and that it is unknown over what length of time the weight loss occurred and that the physician does not provide information indicating that the appellant requires extra calories over and above those in the appellant's regular vegan diet. The physician, rather, makes dietary recommendations that involve specific and appropriate food choices with increased protein from beans, lentils and hemp seed which demonstrates that the appellant needs to eat specific foods which are appropriate food choices within her regular dietary composition. Therefore, it has not been established what nutritional item is required to provide caloric supplementation to a regular dietary intake in order to alleviate symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life.

Regarding a MNS for additional nutritional items, the panel finds that the information provided by the medical practitioner is that the appellant is vegan and requires a specific diet, namely a vegan diet. Additionally, although the medical practitioner identifies underweight status and significant weight loss as symptoms, the information respecting the appellant's height and weight conflicts as the appellant's weight is 128 lbs at a height of 5'4 1/2". To resolve this conflict, the panel relies on the evidence respecting the appellant's height and weight as it is quantitative rather than subjective. Therefore, the panel finds that the ministry reasonably determined that the information provided by the medical practitioner identifies the need for a food specific diet as a regular dietary intake and not caloric supplementation to a regular dietary intake. It finds that the physician does not provide information indicating that the appellant requires extra calories (caloric supplementation) over and above those in the appellant's regular diet but rather, demonstrates the appellant needs to eat specific foods which are appropriate food choices within her regular dietary composition.

Respecting the ministry's determination that the nutritional items are not required to prevent imminent danger to the appellant's life, the panel finds that the evidence of the medical practitioner that the nutritional items will increase fibre and provide a good caloric diet do not establish in any compelling manner that a failure to provide these will result in imminent danger to the appellant's life.

The panel, consequently, finds that the ministry reasonably determined that the appellant is not eligible for a MNS for nutritional items as she has not met the requirement of section 67 (1) (1.1) (c) and (d) and section 7 of Schedule C of the EAPWDR that the additional nutritional items be required as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of chronic progressive deterioration of health and to prevent imminent danger to life.

The panel, therefore, finds that that all of the criteria of section 67(1.1) of the EAPWDR and section 7 of Schedule C were not met and that the ministry's reconsideration decision denying the appellant a MNS for nutritional items is a reasonable application of the applicable legislation in the circumstances of the appellant and confirms the decision.