

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) July 23, 2013 reconsideration denying the Appellant’s request for a Monthly Nutritional Supplement for vitamin/mineral supplements and for nutritional items because the Ministry determined that the information provided by a medical practitioner did not establish that the criteria in section in section 67(1.1.)(c) and (d) and in Schedule C section 7 of the Employment and Assistance for Persons with Disabilities Regulation had been met for either type of supplement.

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

Neither the Appellant nor the Ministry attended the hearing. The Panel confirmed that both were provided with notice of the hearing and then proceeded with the hearing in their absence, in accordance with section 86(b) of the Employment and Assistance Regulation.

For its reconsideration decision, the Ministry had the following evidence:

1. Information from its records that the Appellant:

- Is designated as a Person with Disabilities (“PWD”) and receives disability assistance.
- Receives the dietary allowance of \$35 a month.

2. Application for Monthly Nutritional Supplement form signed by a doctor on April 22, 2013 with the following information about the Appellant and her need for supplements:

- Diagnosis of severe medical condition – “D.M.” [diabetes mellitus].
- As a direct result of this condition the Appellant is being treated for a chronic progressive deterioration of health; that is, “D.M” [diabetes mellitus]
- As a direct result of the chronic progressive deterioration of health noted as “D.M”, the Appellant displays the following symptom -significant deterioration of a vital organ – pancreas.
- Appellant’s height is 5’10” and weight is 318 lbs.
- For vitamin or mineral supplements needed, the doctor wrote – multiple vitamins and calcium, but no duration is specified.
- As to how the supplements will alleviate the specific symptoms of deterioration of her pancreas, the doctor wrote “adequate vit & minerals” and as to how these supplements will prevent imminent danger to the Appellant’s life the doctor wrote “vit/minerals”.
- For nutritional items which will provide caloric supplementation, the doctor specified “fruits + vegetables”.
- For the medical condition that results in the inability to absorb sufficient calories through regular dietary intake, the doctor wrote “proper nutrition”.
- As to how the nutritional items will alleviate the symptom of significant deterioration of the pancreas, the doctor wrote “balance of glucose for D.M.”.
- As to how the nutritional items required will prevent imminent danger to the Appellant’s life, the doctor wrote “prevents hypo and hyperglycemia”.

3. Appellant’s request for reconsideration in which she wrote that she has type 2 diabetes, high blood pressure, high cholesterol and an enlarged fatty liver. She stated that she can better manage these conditions with a better diet and a proper diet for a diabetic is costly. The Appellant wrote that the supplements that she would take are krill oil for help to stop cell deterioration at \$47 a month, milk thistle for liver support at \$25 a month and PGX which helps keep blood sugar levels under control. The Appellant indicated that her doctor stated that her pancreas is deteriorating and she has #2 neuropathy. The Appellant submitted another copy of the same Application for Monthly Nutritional Supplement form described above, except that the symptom of “peripheral neuropathy” appears to have been added by the doctor.

Because the Appellant did not appear at the hearing, the Panel will consider her submissions in her request for reconsideration and in her notice of appeal to be her position in this appeal. In that notice the Appellant wrote that she believes the Ministry does not understand what and why she needs the supplements. The Panel will consider the Ministry’s reconsideration decision to be its position in this appeal.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant's request for a Monthly Nutritional Supplement for vitamin/mineral supplements and for nutritional items because the Ministry determined that the information provided by a medical practitioner did not establish that the criteria in section 67(1.1)(c) and (d) and in Schedule C section 7 of the EAPWDR had been met for either type of supplement.

The following sections of the EAPWDR apply to this appeal:

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, (b) 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.

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; (c) for vitamins and minerals, up to \$40 each month.

The Panel notes that the Ministry's prescribed application form for supplements has a section in which the doctor is asked to list and describe his diagnosis of any of the Appellant's severe medical conditions, to detail any treatments being given for a chronic progressive deterioration of health, to describe in detail two or more of the listed symptoms displayed as a direct result of the Appellant's

chronic progressive deterioration of health, and to specify the Appellant's height and weight. These parts of the form address sections 67(1.1)(a) and (b) of the EAPWDR.

The form also has a section in which the doctor is asked to specify and describe vitamins or mineral items needed and another section to specify and describe nutritional items needed. For each identified supplement, the doctor also is asked to describe how the requested item will alleviate the specific symptoms identified and how the item will prevent imminent danger to the Appellant's life. These sections of the form address the requirements in EAPWDR section 67(1.1)(c) and (d).

The Panel will consider the parties' positions under the criteria at issue in this appeal.

Vitamin/Mineral Supplementation

The Appellant submits that she has type 2 diabetes, high blood pressure, high cholesterol and enlarged fatty liver. Her position is that she needs krill oil to help stop cell deterioration, milk thistle for liver support and PGX to help keep her blood sugar levels. The Appellant also submitted that the Ministry does not understand what she needs and why.

The Ministry reviewed the information provided by the doctor and based on that determined that the Appellant is being treated for only one severe medical condition - diabetes mellitus. The Ministry did accept, based on the doctor's information, that the Appellant is displaying two of the symptoms listed in EAPWDR section 67(1.1)(b); that is, significant deterioration of a vital organ, the pancreas and peripheral neuropathy. However, the Ministry determined that the doctor did not describe how adequate vitamins and minerals will alleviate these symptoms of the Appellant's chronic, progressive deterioration of health. The Ministry further determined that the doctor did not explain how the vitamins and minerals will prevent imminent danger to the Appellant's life. Therefore, the Ministry was not satisfied, based on the information provided, that the eligibility criteria in section 67(1.1)(c) and (d) for vitamin/mineral supplements were met.

The Panel's Findings

The doctor identified multiple vitamins and calcium as the vitamin/mineral supplements required by the Appellant. However, when describing how these supplements will alleviate the symptoms of significant deterioration of the pancreas and peripheral neuropathy, the doctor only wrote "adequate vit & minerals". Based on this information, the Panel finds that the Ministry reasonably determined that this response does not specify how multiple vitamins and calcium will alleviate the identified symptoms. When describing how these supplements will prevent imminent danger to life, the doctor only wrote "vit/mineral", and again provided no specifics. Based on this information, the Panel finds that the Ministry reasonably determined that the doctor did not provide evidence or any description of how multiple vitamins and calcium will prevent imminent danger to the Appellant's life.

Nutritional Items

The Appellant's position is that the information from her doctor establishes that she needs nutritional items. She also submitted that the Ministry does not understand what she needs and why.

The Ministry noted that the doctor indicated that the Appellant needs fruit and vegetables as additional nutritional items. The Ministry found that this represents a specific dietary regime involving proper food choices within a regular diet rather than a caloric supplementation to a regular diet. With respect to the question about a medical condition which results in the inability to absorb sufficient

calories, the Ministry noted that the doctor wrote "proper nutrition", but did not explain how diabetes mellitus results in the inability to satisfy daily requirements through a regular dietary intake. In addition, the Ministry found that the information from the doctor did not indicate any symptoms of underweight status, significant weight loss or significant muscle mass loss which would require caloric supplementation. In fact, the Ministry determined that the information from the doctor indicates that the Appellant's body mass index is in the obese range. The Ministry further determined that the information from the doctor did not establish that the Appellant requires nutritional items to alleviate the symptoms of her chronic progressive deterioration of health or how nutritional items will prevent imminent danger to the Appellant's life.

The Panel's Findings

Under section 67(1) and Schedule C section 7 of the EAPWDR, the Ministry may also provide a supplement for a nutritional item that is part of a caloric supplementation to a regular dietary intake if the requirements of section 67(1.1)(c) and (d) are met. In the supplement application form, in the section for specifying nutritional items required, the doctor only wrote "fruits and vegetables", but did not indicate how these items will provide caloric supplementation to a regular dietary intake especially as related to the Appellant's medical conditions and symptoms. The doctor also did not identify any medical condition that results in the Appellant's inability to absorb sufficient calories. He only wrote "proper nutrition". In response to the question, how the nutritional items will alleviate one or more of the Appellant's symptoms and provide caloric supplement to a regular diet, the doctor only wrote "balance of glucose for D.M.". The doctor addressed the medical condition, not the symptoms he identified. The doctor also provided no information about how failure to obtain fruits and vegetables will result in imminent danger to the Appellant's life. He only wrote "prevents hypo and hyperglycemia". Therefore, based on the evidence from the doctor, the Panel finds that the Ministry reasonably determined that the requirements in section 67(1.1)(c) and (d) for nutritional items were not satisfied.

Conclusion

Having considered all of the evidence and the applicable legislation, the Panel finds that the Ministry's decision was reasonably supported by the evidence. Therefore, it confirms that decision.