

PART C – Decision under Appeal

The reconsideration decision dated 10 April 2013 determined that the appellant was not eligible for the monthly nutritional supplement (MNS) for either vitamins/minerals or additional nutritional items under section 67(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because the appellant, as a result of chronic, progressive deterioration of health, did not display two or more of the listed symptoms under s. 67(1.1)(b) of the EAPWDR. Additionally, it determined that she was not eligible for the MNS because it wasn't established that the requested vitamins and minerals would alleviate the symptom of a chronic, progressive deterioration of health and prevent imminent danger to life or that additional nutritional items were required as caloric supplementation to a regular dietary intake to alleviate a symptom of chronic progressive deterioration of health and prevent imminent danger to life under s. 67(1.1)(c) and (d) of the EAPWDR.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the Ministry at reconsideration was as follows:

- The appellant is a person with disabilities receiving disability assistance.
- An Application for Monthly Nutritional Supplement dated 12 February 2013, signed by the appellant's physician stating that:
 - The appellant is treated for a chronic, progressive deterioration of health on account of a severe medical condition and renal failure with a path report that indicates antineutrophilcytoplasmic antibody vasculitis and fetal alcohol syndrome (FAS);
 - The appellant displays underweight status;
 - The appellant is 5' and weighs 135 lbs.
 - The appellant requires a series of vitamins and minerals "daily long term";
 - Those vitamins and minerals will prevent any further deterioration or long term complication i.e. osteoporosis;
 - These vitamins will prevent imminent danger to the appellant's life by preventing nutritional deficiencies;
 - The appellant also requires nutritional items (Boost) on a daily basis for 2 years;
 - The appellant does not have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake;
 - The nutritional items will alleviate the mentioned symptoms by providing caloric supplementation;
 - They will prevent imminent danger to the appellant's life by preventing malnutrition.
- In her request for reconsideration dated 8 April 2013, the appellant states that at a further visit, her physician added malnutrition to underweight status and a significant deterioration of a vital organ, the kidneys. She states that by having those supplements, it will ensure her "health to only improve not worsen". Along with the request, is a one-page copy of page 1 of a document titled "Monthly Nutritional Supplement Decision Summary", undated, where, in the last box at the bottom of the document, the appellant's physician checked "Malnutrition" as another symptom resulting directly from a chronic progressive deterioration of health and signed.

In the appellant's Notice of Appeal dated 22 April 2013, she indicates that the form was incomplete because it was not her kidney specialist who filled them in but a general practitioner and that her kidney specialist would fill in new forms. She also indicates that the vitamins and minerals are vitally crucial for her health.

No further evidence was submitted.

PART F – Reasons for Panel Decision

The issue under appeal in this case is whether the ministry's decision that the appellant was not eligible for the MNS for either vitamins/minerals or additional nutritional items under section 67(1) of the EAPWDR was either a reasonable application of the legislation or reasonably supported by the evidence. The reasons at the basis of the ministry's decision are that, as a result of chronic, progressive deterioration of health, the appellant did not display two or more of the listed symptoms under s. 67(1.1)(b) of the EAPWDR, that it wasn't established that the requested vitamins and minerals would alleviate the symptom of a chronic, progressive deterioration of health and prevent imminent danger to life and that additional nutritional items were required as caloric supplementation to a regular dietary intake to alleviate a symptom of chronic progressive deterioration of health and prevent imminent danger to life under s. 67(1.1)(c) and (d) of the EAPWDR.

The applicable legislation is section 67 of the EAPWDR that states:

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 ...

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.

(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).

Also applicable is s. 7 (Monthly Nutritional Supplements), Schedule C of the EAPWDR:

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) Repealed (B.C. Reg. 68/2010)
- (c) for vitamins and minerals, up to \$40 each month.

The ministry acknowledges that the appellant meets six of the conditions for MNS:

1. She is a person with disabilities receiving disability assistance;
2. She does not receive any of the supplements indicated at s. 66(1)(2), s. 67(3)(a)(b) or Schedule C, s. 2(3) of the EAPWDR;
3. There are no available resources for the appellant's family unit to pay for any requested items;
4. The nutritional supplements are prescribed by a medical practitioner;
5. A medical practitioner has described a severe medical condition and,
6. The minister is satisfied that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition.

However, the ministry argues that the appellant does not meet the condition set at s. 67(1.1)(b) of the EAPWDR because even though the medical practitioner indicates she suffers of malnutrition and underweight status (s. 67(1.1)(b)(i) and (ii) EAPWDR) as well as significant deterioration of a vital organ (renal failure, which is acknowledged by the ministry – s. 67(1.1)(b)(vi) EAPWDR), it is not satisfied she is underweight since her body mass index (BMI) range for a person of her height and weight (5' and 135 lbs) is 18.5 – 24.9 while her BMI is 26.4, above that range and because there is no correlation between malnutrition and the two diagnosed conditions, renal failure and FAS, causing a chronic progressive deterioration of her health. Thus, the ministry argues, the appellant has not met the legislative condition for two or more symptoms as a result of a chronic, progressive deterioration of health on account of a severe medical condition.

Additionally, in terms of vitamins and minerals, the physician indicates the need for those nutritional items "to prevent any further deterioration or long term complication, i.e. osteoporosis" but the ministry argues that osteoporosis is not one of the diagnoses that causes those symptoms and therefore is not satisfied that the items requested would alleviate the symptom of significant deterioration of a vital organ.

In terms of nutritional items, the physician indicates "they will provide caloric supplementation" to which the ministry argues that the appellant's medical condition does not result in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake and that there

is no evidence she requires caloric supplementation over and above that provided as a regular dietary intake.

Finally the ministry argues that there is no evidence that either vitamins and minerals or nutritional items are required to prevent imminent danger to life as the physician indicates they are required respectively, to "prevent nutritional deficiencies" and malnutrition which, the ministry submits, are future possibilities, not imminent dangers.

The appellant argues that she suffers from two or more symptoms (malnutrition, underweight status and significant deterioration of a vital organ, her kidneys) as confirmed by her physician on the forms provided to the ministry. She argues that both MNS are vital for her health and that they will ensure it improves and not deteriorates. She finally argues that the forms were incomplete because they were not filled by the appropriate physician and that her kidney doctor would fill new forms.

The ministry determined that the appellant only displayed one out of three symptoms confirmed by the appellant's physician, dismissing underweight status and malnutrition. In terms of underweight status, the panel notes the BMI range for the appellant as 18.5 – 24.9 while her BMI is actually 26.4, which is higher than the high end of the range and is inconsistent with being underweight and finds the ministry reasonably determined she did not display this symptom, as it is not supported by the evidence. However, in terms of malnutrition, the panel finds the ministry unreasonably dismissed this symptom by justifying its decision on the basis that there was no correlation between malnutrition and her medical diagnosis, without any reason. The panel finds the physician did make that relation in the form she signed when she was responding to the issue of whether this symptom was a direct result of a chronic progressive deterioration of health and it was unreasonable for the ministry to dismiss that without justification. Thus, the panel finds it was unreasonable for the ministry to determine that the appellant did not display two or more symptoms as a direct result of a chronic, progressive deterioration of health since her physician confirmed she did display malnutrition and significant deterioration of a vital organ under s. 67(1.1)(b)(i) and (vi) of the EAPWDR.

The panel finds it was reasonable for the ministry to determine that "imminent" means that the danger to life is likely to happen soon and therefore, that the physician's notes to the effect that vitamins and minerals would prevent nutritional deficiencies and that the additional nutritional items would prevent malnutrition are not evidence of imminent danger to life.

In terms of vitamins and minerals (s. 7(c) Schedule C, EAPWDR), the appellant's physician indicates that those supplements will alleviate specific symptoms "to prevent any further deterioration or long-term complication i.e. osteoporosis". The panel finds the ministry reasonably determined that osteoporosis did not cause the significant deterioration of a vital organ as the physician stated it was caused by renal failure with a path report that indicates antineutrophilcytoplasmic antibody vasculitis.

In terms of additional nutritional items (s. 7(a) Schedule C, EAPWDR), the appellant's physician responded "NO" to the question "Does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake" and does not indicate how the requested nutritional item will alleviate one or more of the symptoms and provide caloric supplementation to the regular diet, in particular given the physician's determination of the height (5') and weight (135 lbs) of the appellant, resulting in a BMI higher than the general range.

Thus, the panel finds that, given the evidence submitted, it was reasonable for the ministry to determine it was not satisfied the appellant needed the specific nutritional items as caloric supplementation to a dietary intake to alleviate the symptom of a chronic, progressive deterioration of health.

Therefore, the panel finds it was reasonable for the ministry to determine the appellant had not met all of the conditions required under s. 67(1.1) of the EAPWDR and that its decision was reasonably supported by the evidence and confirms the decision.