

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) September 25, 2013 reconsideration decision denying the appellant's request for a Monthly Nutritional Supplement (MNS) for nutritional items because the ministry is not satisfied that the information provided by the appellant's medical practitioner in the MNS application and in the Request for Reconsideration confirms that the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake to alleviate the appellant's symptoms as required in section 67(1.1)(c) of the Employment and Assistance for Persons With Disabilities Regulation and to prevent imminent danger to her life as set out in section 67(1.1)(d) of the Regulation.

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

The evidence before the ministry at reconsideration included the following information:

From the ministry's file: the appellant is a recipient of disability assistance.

In the appellant's MNS application her medical practitioner (MP) indicates in a report dated June 28, 2013 that

- the appellant was diagnosed with 2 severe medical conditions: psychosis and Fibromyalgia;
- as a result of these conditions she is treated for weight loss due to taste and smell delusions;
- she displays significant weight loss – from 126 lbs to 99 lbs;
- her height is 150 cm, her weight is 44.9 kg and her Body Mass Index 20;
- the appellant requires a high protein and high calorie diet;
- the applicant does not have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular diet.
- When asked to describe how the nutritional items required will alleviate one or more of the symptoms specified previously and provide caloric supplementation to the regular diet the MP writes "reduce energy / muscle strength".
- The MP leaves blank the section for describing how the nutritional items requested will prevent imminent danger to the appellant's life.

On a diet supplement request form dated September 9, 2013 the MP diagnosed the appellant with

- underweight and chronic pain syndrome;
- none of the 7 listed Types of Special Diet were checked.

On September 10, 2013, the MP added the following comment into the appellant's MNS application:

- "Patient has IBS and good nutrition / *[one word illegible]* still no weight gain"

On September 10, 2013 the doctor added a second symptom - "significant muscle mass loss" - to the first symptom of "significant weight loss" as noted in the original ministry's decision summary.

In her Request for Reconsideration dated September 10, 2013 the appellant states that

- she has severe weight and muscle mass loss;
- her regular diet is not sufficient to give her enough nutrition;
- she gets frozen meals from the CMHA to assist her when she is not able to cook;
- she requires Boost or Ensure to provide her with sufficient supplementation of her diet;
- she is always eating but gets dizzy and fatigued.

In a letter from the appellant's advocate dated September 10, 2013, the advocate states that

- she attended an appointment with the appellant and her physician and requested additional information from the doctor to support the appeal;
- the doctor added 2 remarks to Part C appellant's application that he had initially completed:
 - he marked an x beside "significant muscle loss" and initialed it;
 - he added the comment patient has IBS and good nutrition---unable still to weight gain."
- the appellant is enrolled in the Frozen Meal Program, a program provided by CMHA where clients receive three frozen nutritionally balanced meals a week for \$35 deduction from her MSD cheque.

- despite extra meals and additional food from friends and family the appellant has not gained any weight from her physician's visit on June 28, 2013 at which he filled out the MNS application and recorded her weight at 99 pounds). Today - 6 weeks later - she is still at 99 pounds.
- the appellant is constantly eating because of fatigues and chronic pain syndrome but her IBS limits the absorption of calories from her food.

In her Notice of Appeal dated October 2, 2013 the appellant states that

- she has severe impairments;
- her physician has confirmed significant weight loss (from 126 lbs to 99 lbs) and significant muscle mass loss;
- her regular diet is not adequate and she requires nutritional supplements.

At the hearing the appellant said that her doctor thinks she is imagining smells and it is too expensive to perform tests on this issue. She said that her doctor may have discussed her going to see a psychiatrist but in answer to a question from her advocate she stated that she had never been referred to a psychiatrist.

The appellant reports that she lives in an old and run-down place. When she was in the hospital she encountered bad smells, the worst coming from the morgue – it was burning her throat. These smells stayed with her after she went back home, even the cat food smelled badly.

The appellant relates that she had several previous injuries – she was hit by a truck, fell into a sink hole, sustained more falls and spent time in a wheelchair. She is on several medications and takes primrose oil. She eats properly and more than a normal diet, and she walks for exercise. She has had the same doctor for 21 years.

The ministry stood by its position at reconsideration.

Pursuant to section 22(4) of the Employment and Assistance Act the panel admits the appellant's statements in her Notice of Appeal and at the hearing as being in support of the information that was before the ministry at reconsideration because this new information provides additional details about the appellant's medical condition and circumstances in connection with her MNS application.

PART F – Reasons for Panel Decision

The issue under appeal is whether it was reasonable of the ministry to deny the appellant's request for the Monthly Nutritional Supplement (MNS) of nutritional items; specifically, did the ministry reasonably conclude that the information provided by the appellant's doctor did not confirm that the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake to alleviate the appellant's symptoms as required in section 67(1.1)(c) of the EAPWDR and to prevent imminent danger to life as set out in section 67(1.1)(d)?

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, or

(b) section 8 [*people receiving special care*] of Schedule A, if the special care facility is an alcohol or drug treatment centre,...

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, ...

(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

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) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
- (c) for vitamins and minerals, up to \$40 each month.

The ministry determined that the information provided by the appellant meets the eligibility criteria of section 67(1.1)(a) and (b) of the EAPWDR: the appellant is treated for a chronic, progressive deterioration of health pursuant to section 67(1.1)(a), and she is displaying at least 2 of the symptoms set out in section 67(1.1)(b).

The panel will consider each party's position regarding the reasonableness of the ministry's decision under the remaining MNS criteria at issue at this appeal.

In reference to alleviating a prescribed symptom through additional nutritional items that are part of a caloric supplementation to a regular dietary intake:

The appellant argues that her regular diet is not sufficient to address her significant weight loss and significant muscle mass loss and she needs Boost or Ensure to supplement her diet. She is always eating because of fatigue and chronic pain syndrome but her regular diet does not give her the needed energy - she remains dizzy and fatigued. Her IBS limits the absorption of calories from her food. Despite extra meals and additional food from friends and family she has not gained any weight since June 28, 2013.

The appellant and advocate further argue that the appellant's MP was dismissive and not fully engaged in helping the appellant qualify for a monthly nutritional supplement; the MP failed to fill in the form correctly and provided contradictory information.

It is the ministry's position that the appellant is not eligible for a monthly nutritional supplement because the eligibility criteria set out in sections 67(1.1) (c) of the EAPWDR and section 7(a) of Schedule C of the EAPWDR have not been met: a medical practitioner does not describe how the nutritional items required will alleviate one or more of the symptoms identified and provide caloric supplementation to a regular diet. The ministry further argues that with a BMI of 20 the appellant's weight is normal and has stabilized. A loss of 27 lbs over a certain period of time could be considered a significant weight loss, but the MP provided no information over what period of time this weight loss occurred. Also, no inability to absorb sufficient calories from a regular dietary intake has been diagnosed.

Section 67(1.1)(c) of the EAPWDR provides that a medical practitioner has to confirm that the appellant requires specified additional nutritional items to alleviate a prescribed symptom. Two criteria are addressed in this legislation simultaneously: the specified items have to be part of a caloric supplementation to a regular dietary intake, and their purpose is to alleviate one or more of the symptoms.

The panel notes that the medical practitioner has not specified or identified any nutritional items but only requesting a "high protein and high caloric diet" - using these general terms.

The panel further notes that the medical practitioner did not provide any information on how dietary items would alleviate the appellant's significant weight loss and/or severe muscle mass loss: Originally the MP answered "no" to the question whether the appellant has as a medical condition that results in the appellant's inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. Later the MP added IBS but left the original "no". Therefore the ministry cannot reasonably be expected to rely on the IBS diagnosis as causing inability to absorb sufficient calories. The panel also notes that the MP had not reported any further weight loss at the time he added IBS. The panel further notes that when the MP was asked to describe how the additional nutrition items requested will alleviate the appellant's symptoms of significant weight loss and significant muscle mass loss and provide caloric supplementation is limited to the answer: "Reduce energy/muscle strength." The panel does not consider this answer to substantiate a confirmation by the doctor that the requested nutritional items are required for the purposes set out in the legislation. The panel therefore finds that the ministry was reasonable in determining that this criterion had not been met.

Failure to obtain the items will result in imminent danger to life

The appellant argues that if she does not have Boost or Ensure she will not overcome her significant weight loss and significant muscle mass loss.

It is the ministry's position that the appellant is not eligible for a monthly nutritional supplement because the eligibility criteria set out in section 67(1.1) (d) and section 7(a) of Schedule C EAPWD have not been met: a medical practitioner has not described how the nutritional items required would prevent an imminent danger to the appellant's life.

Section 67(1.1)(d) EAPWDR stipulates that the doctor has to confirm that failure to obtain the required nutritional items will result in imminent danger to the appellant's life. The panel finds that the medical practitioner has not provided any information how failure to obtain high protein and high calorie items would result in imminent danger to the appellant's life and therefore finds that the ministry reasonably determined that this criterion had not been met.

Conclusion

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