

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of October 8, 2013 wherein the ministry decided that the appellant was not eligible for a monthly nutritional supplement (“MNS”) – either for nutritional items for caloric supplementation or for vitamins and minerals. The basis for the decision was that the appellant did not satisfy the eligibility criteria set out in section 67(1.1) and Schedule C, section 7 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). In particular, the ministry found that the appellant’s physician had not confirmed that the appellant satisfied the following legislative criteria:

- That the appellant was being treated for a chronic, progressive deterioration of health on account of a severe medical condition, as required by EAPWDR section 67(1.1)(a);
- That the appellant displayed two or more of the symptoms prescribed by EAPWDR section 67(1.1)(b);
- That the appellant required the MNS for the purpose of alleviating one or more of the prescribed symptoms as required by EAPWDR section 67(1.1)(c);
- That failure to obtain the MNS will result in imminent danger to the appellant’s life as required by EAPWDR section 67(1.1)(d); or
- That the appellant required caloric supplementation to a regular dietary intake as specified by EAPWDR Schedule C section 7(a);

PART D – Relevant Legislation

EAPWDR Section 67 [*nutritional supplement*]
Schedule C, section 7 [*monthly nutritional supplement*]

PART E – Summary of Facts

With the consent of the parties, the hearing was held as a written hearing in accordance with section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included the following:

- An Application for Monthly Nutritional Supplement form signed by the appellant's physician on June 5, 2013 (the "application form").
- The appellant's written reconsideration submission dated October 1, 2013.

The appellant is a person with disabilities in receipt of disability assistance.

In the application form, the physician diagnosed the appellant with Type 2 diabetes, GERD, bipolar disorder, and drug/alcohol abuse. In answer to a question as to whether the appellant is being treated for a chronic, progressive deterioration of health, the physician wrote "Not really – needs to deal with her addiction issues and be more compliant with treatment plans and management of her diabetes."

In response to a question as to whether the appellant displays two or more of the prescribed symptoms as a direct result of a chronic, progressive deterioration of health, the physician responded "No". He indicated, though, that the appellant could benefit from multivitamins with B and C, and calcium and vitamin D supplementation, both as a general health preventative and to prevent osteoporosis. In response to a question as to whether vitamins or minerals will prevent imminent danger to the appellant's life the physician wrote "life more at risk from diabetes and addiction issues."

With respect to nutritional items, in response to a question as to which nutritional items were required the physician responded "N/A". He indicated that the appellant does not suffer from a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The physician responded "N/A" to questions as to whether nutritional items were required to alleviate one or more of the prescribed symptoms and as to how nutritional items will prevent imminent danger to the appellant's life. The physician commented "patient needs to pay more attention to diet rich in vegetables and fruits i.e. Canada Food Guide rules..."

In her reconsideration submission the appellant wrote that she needs diabetic supplies and heart valve medication, as well as vitamins, minerals, and vitamin E. She wrote that she drinks Boost for energy but that she has no extra money.

In her appeal submission the appellant wrote that her diabetes is causing her to go blind and that she needs Omega 3 for her eyes. She stated that she has to buy Ensure every 4 days and that she has no other funds.

The panel has assessed the information provided by the appellant in her appeal submission as providing additional detail with respect to her nutritional needs, and has accepted it as evidence in support of the information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which held that the appellant is not eligible for a MNS, is reasonably supported by the evidence or whether it is a reasonable application of the applicable enactment in the circumstances of the appellant.

The applicable legislation is as follows:

EAPWDR**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 ...

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 appellant's position is that she satisfies the legislative criteria for MNS, and that she does not have enough money to pay for the nutritional items she needs unless she obtains the MNS.

The ministry's position, as set out in its reconsideration decision, is that the appellant is not eligible for MNS as she has not satisfied the legislated criteria in EAPWDR sections 67(1.1)(a) through (d) and Schedule C, subsection 7(a).

Panel Decision

Section 7 of EAPWDR Schedule 7 provides for two kinds of MNS:

- Up to \$165 per month for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, and
- Up to \$40 per month for vitamins and minerals.

In order for a person to be eligible for either or both MNS, section 67(7)(1.1) of the EAPWDR requires that a medical practitioner or nurse practitioner confirms the information required in each of paragraphs 67(1.1)(a) through (d). In the appellant's case, her physician has not provided the necessary confirmation. On the contrary, he has provided information that demonstrates that:

- The appellant is not being treated for a chronic, progressive deterioration of health on account of a severe medical condition;
- She does not display two or more of the prescribed symptoms for the prescribed reason;
- She does not require MNS to alleviate one or more of the prescribed symptoms;
- Failure to obtain MNS will not result in imminent danger to her life; and
- She does not require MNS for caloric supplementation to a regular dietary intake.

No other evidence has been provided by a medical practitioner or nurse practitioner on which the panel can determine that any of these legislated criteria are satisfied.

Based on this information and analysis, the panel finds that the ministry's reconsideration decision to deny the appellant's request for MNS is reasonably supported by the evidence, and the panel accordingly confirms the ministry's decision.