

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the Ministry") Reconsideration Decision dated December 4, 2013 which denied the Appellant's request for a Monthly Nutritional Supplement ("MNS") for vitamin and mineral supplements on the basis that the Appellant had not met all of the criteria of section 67 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR").

Specifically, while the Ministry was satisfied that the Appellant was being treated for a chronic, progressive deterioration of health on account of a severe medical condition, it determined that:

1. The Appellant had not demonstrated that her family unit did not have any resources to pay the cost of or to obtain the vitamin and mineral supplements as required by section 67(1)(g) of the EAPWDR;
2. The Appellant's physician did not confirm that the Appellant displayed two or more of the specific symptoms as a direct result of the chronic, progressive deterioration of health and as listed in section 67(1.1)(b);
3. The Appellant did not require vitamin and mineral supplements to alleviate a symptom of a chronic, progressive deterioration of health as required by section 67(1.1)(c) of the EAPWDR; and
4. The Appellant had not demonstrated that failure to obtain the vitamin and mineral supplements would result in an imminent danger to her life as required by section 67(1.1)(d) of the EAPWDR.



**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) section 67(1), (1.1) and (2) and Schedule C, section 7

## PART E – Summary of Facts

The evidence before the Ministry at reconsideration included:

1. The Appellant's Request for Reconsideration completed by a physician ("Physician #2") and signed by the Appellant and dated December 2, 2013. Attached to the Request for Reconsideration is one page of written submissions prepared by the Appellant and dated December 2, 2013;
2. The Ministry letter of refusal dated November 13, 2013,
3. The Ministry Monthly Nutritional Supplement Decision Summary dated November 13, 2013; and
4. The Appellant's Application for Monthly Nutritional Supplement form ("MNS Application") dated September 10, 2013 and prepared by the Appellant's family physician ("the GP").

In the Request for Reconsideration, Physician #2 states that the Appellant suffers from asthma and schizoaffective disorder and she strongly recommends that the Appellant supplement with Omega 3 fish oil, Vitamin D and a multivitamin. Physician #2 comments that these are additional supplements that she would like the Appellant to take but that she is financially restricted due to being on Persons With Disability ("PWD") status.

In the written submissions attached to the Request for Reconsideration, the Appellant states that she suffers from schizophrenia and asthma and that she takes three different medications for asthma, one for schizophrenia and another for hypothyroidism. The Appellant states that she has noticed a big difference in her life with the vitamins and minerals.

The MNS Application asks the GP to list and describe the Appellant's severe medical conditions and the GP lists bipolar disorder and schizoaffective disorder as the Appellant's diagnoses and the GP describes these conditions as including mood alteration, depression, anxiety and paranoia.

In response to the question as to whether the Appellant is being treated for a chronic, progressive deterioration of health as a result of the severe medical conditions, the GP notes that "without meds and psychiatric care would be deteriorated."

With respect to the question of whether the Appellant displays two or more of the listed symptoms as a direct result of the chronic, progressive deterioration of health, the GP has indicated that the Appellant displays symptoms of significant neurological degeneration and adds the comment "psychiatric." None of the other six listed symptoms have been confirmed by the GP. The GP notes the Appellant's height and weight as 5'2" and 168 lbs respectively.

Under the section for Vitamin or Mineral Supplementation, the GP identifies Omega 3 fatty acids (3 times per day), a multivitamin which includes vitamins C and D and vitamin D (1000 units per day) as the required vitamins or mineral supplements but does not note the expected duration of need.

The GP indicates that the noted vitamins or mineral supplements will alleviate the Appellant's specific symptoms as being "beneficial for depression/mood elevation" and comments that the vitamin and mineral supplements will prevent imminent danger to the Appellant's life by preventing suicide.

The Appellant has not requested Nutritional Items. The GP does not specifically identify the

additional nutritional items required or the expected duration of need. The GP makes no comment as to 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. The GP does not describe how the nutritional items required will alleviate one or more of the Appellant's symptoms and provide caloric supplementation to her regular diet or comment that the nutritional items will prevent imminent danger to the Appellant's life.

Under "Additional Comments", the physician notes that the Appellant is "relatively stable on psych. Meds and vitamins" that she has not been hospitalized in four years and that without vitamins ("omega 3's") she would deteriorate.

The ministry relied on the Reconsideration Decision and submitted no new information.

In the Notice of Appeal, the Appellant attaches a letter from the GP dated December 19, 2013 ("the Physician Letter") who states that the Appellant has asthma which can be quite severe and that vitamin D (1000 units/day), Omega 3 fatty acids (3/day) and a multivitamin help her immune system fight off viral infections that precipitate asthma attacks that can be life threatening.

Subsequent to filing the Notice of Appeal, the Appellant introduced one page of written submissions dated January 9, 2014 ("the Written Submissions"). In those submissions, the Appellant references the Physician Letter and argues that her asthma, which she contends is a moderate immune suppression symptom, was not given the attention it deserved and that her asthma is a second symptom as required by section 67(1.1)(b) and a direct result of her chronic, progressive deterioration of health.

The panel finds that both the Physician Letter and the Written Submissions address diagnoses and the requested vitamins and minerals that were in issue as at the date of the Reconsideration Decision and the Panel therefore admits as evidence the Physician Letter and the Written Submissions as written testimony in support of the information and records that were before the minister when the decision being appealed was made, pursuant to subs. 22(4)(b) of the Employment and Assistance Act.

The Panel makes the following findings of fact which are not in issue:

1. The Appellant is a Person with Disabilities in receipt of disability assistance.
2. The Appellant is being treated by a physician for asthma, bipolar disorder and schizoaffective disorder.

[ ]

## PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry reasonably determined that the Appellant was ineligible for a Monthly Nutritional Supplement (“MNS”) for vitamin and mineral supplements on the basis that the Appellant had not met all of the criteria of section 67 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”).

Specifically, while the Ministry was satisfied that the Appellant was being treated for a chronic, progressive deterioration of health on account of a severe medical condition, it determined that:

1. The Appellant had not demonstrated that her family unit did not have any resources to pay the cost of or to obtain the vitamin and mineral supplements as required by section 67(1)(g) of the EAPWDR;
2. The Appellant’s physician did not confirm that the Appellant displayed two or more of the specific symptoms as a direct result of the chronic, progressive deterioration of health and as listed in section 67(1.1)(b);
3. The Appellant did not require vitamin and mineral supplements to alleviate a symptoms of a chronic, progressive deterioration of health as required by section 67(1.1)(c) of the EAPWDR; and
4. The Appellant had not demonstrated that failure to obtain the vitamin and mineral supplements would result in an imminent danger to her life as required by section 67(1.1)(d) of the EAPWDR.

The relevant legislation, section 67 and Schedule C, section 7 of the EAPWDR, provides as follows:

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,

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.

(B.C. Reg. 68/2010)

### **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.C. Reg. 68/2010)

(b) Repealed (B.C. Reg. 68/2010)

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

The Appellant's position is that she requires monthly nutritional supplements in the form of additional nutritional items as well as vitamins and minerals due to severe anemia.

The Ministry's position as set out in the Reconsideration Decision is that the Appellant has not met the eligibility criteria for vitamins and minerals as set out in section 67 and Schedule C, section 7 of the EAPWDR .

Sections 67(1) and 67(1.1) of the EAPWDR set out the criteria that an applicant must satisfy to be eligible for a nutritional supplement. Each of the criteria are mandatory in nature and where an applicant does not satisfy each of them, the request for the nutritional supplement will be denied.

**Does the Appellant have resources available to pay for or obtain the vitamins and minerals?**

Section 67(1) of the EAPWDR provides that the minister may provide a nutritional supplement in accordance with section 7 of Schedule C to a person with disabilities in a family unit who receives disability assistance under specific provisions. However, the Regulation provides that certain conditions must be met including subsection (g) which states that 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.

The Ministry takes the position in the Reconsideration Decision that the Appellant has not satisfied this subsection on the basis that she is a PWD recipient and receives financial assistance each month which is intended for the purchase of items including food, clothing and incidentals such as multivitamins.

In the Request for Reconsideration, the Appellant's physician notes that she would like the Appellant to supplement with vitamins and minerals but that she is financially restricted due to being on PWD.

*Panel Finding*

The Panel finds that there is insufficient evidence to demonstrate that the Appellant does not have any resources available to pay the cost of or to obtain the vitamins and minerals requested. The Appellant has PWD status and receives monthly disability assistance from the Ministry. Physician #2 has stated in the Request for Reconsideration that the Appellant is "financially restricted due to being on PWD" but without further evidence of whether the Appellant does not have any resources available to pay the cost of or to obtain the vitamins and minerals requested the Panel finds that the Ministry reasonably determined that the Appellant did not meet the criteria for vitamins and minerals as set out in section 67(1)(g) of the EAPWDR.

**Has the Appellant's physician confirmed that the Appellant displays two or more of the specific symptoms as a direct result of the chronic, progressive deterioration of health?**

Section 67(1.1)(b) of the EAPWDR provides that an applicant must demonstrate that as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the seven specifically listed symptoms. These symptoms must be confirmed by a medical practitioner or nurse practitioner in the form specified by the minister.

The Ministry takes the position that the Appellant's GP has indicated in the MNS Application that she suffers from only one of the specifically listed symptoms and that no other symptom is described. The Ministry further argues that there is no evidence to meet the other listed symptoms in section

67(1.1)(b).

The Appellant argues that in addition to her physician noting in the MNS Application that she suffers from significant neurological degeneration, she also suffers from asthma which she argues constitutes a moderate immune suppression symptom which is one of the listed symptoms in section 67(1.1)(b).

*Panel Finding*

The MNS Application, which was prepared by a medical practitioner, provides that the Appellant displays only one of the seven specifically listed symptoms. While the Panel notes that the Physician Letter includes a diagnosis of asthma which is also reflected in both the Appellant's submissions and Physician #2's comments in the Request for Reconsideration, section 67(1.1)(b) of the EAPWDR is clear that a medical practitioner must confirm that the person displays two or more of the seven specifically listed symptoms. The Panel is unable to conclude that the diagnosis of asthma constitutes one of the seven specifically listed symptoms in the MNS Application particularly as asthma was not originally included by the GP in the MNS Application. The Appellant is not a medical practitioner or a nurse practitioner and therefore her argument that her asthma constitutes a moderate immune suppression symptom does not meet the legislative test in section 67(1.1)(b). Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the criteria for vitamins and minerals as set out in section 67(1.1)(b) of the EAPWDR.

**Has the Appellant demonstrated that she requires the vitamin and mineral supplements to alleviate a symptom of a chronic, progressive deterioration of health?**

Section 67(1.1)(c) of the EAPWDR provides that a medical practitioner or nurse practitioner must confirm that for the purpose of alleviating a symptom referred to in sub-paragraph (b), an applicant requires one or more of the items set out in s.7 of Schedule C and specified in the request.

The Ministry takes the position that it is not satisfied that the Appellant requires vitamin/mineral supplementation to alleviate the symptom of her chronic, progressive deterioration of health.

The Appellant states in the Reconsideration Decision submissions that she has noticed a very big difference in her life with vitamins and minerals and that they will help her out a great deal.

*Panel Finding*

The Appellant's GP comments in the MNS Application that vitamin or mineral supplements will alleviate one or more of the specific symptoms by stating "beneficial for depression/mood elevation." However, as provided above, the legislation requires that the vitamin or mineral supplements will alleviate the specific symptoms and the Panel finds that being "beneficial" does not meet the legislative requirement that the vitamins and minerals alleviate a symptom referred to in section 67(1.1)(b). Further, the Panel finds that while the GP has described how the vitamins and minerals will aid the Appellant's immune system in fighting viral infections that precipitate her asthma attacks, the Panel notes that neither viral infections nor asthma attacks are symptoms referred to in section 67(1.1)(b). For these reasons, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the criteria for vitamins and minerals as set out in section 67(1.1)(c) of the



EAPWDR.

**Has the Appellant demonstrated that failure to obtain the vitamin and mineral supplements would result in an imminent danger to her life?**

Section 67(1.1)(d) of the EAPWDR provides that a medical practitioner or nurse practitioner must confirm that failure by an applicant to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

The Ministry takes the position that it is not satisfied that failure to obtain the requested vitamin/mineral supplementation will result in imminent danger to the Appellant's life.

The Physician Letter attached to the Appellant's Notice of Appeal states that the requested vitamins and minerals help the Appellant's immune system fight off viral infections that precipitate asthma attacks which can be life threatening.

*Panel Finding*

In the MNS Application, the GP answers the question of how vitamins and minerals will prevent imminent danger to the Appellant's life by stating "prevent suicide." The Panel notes that there is no additional evidence from the GP or the Appellant commenting on whether the Appellant has experienced or is currently experiencing suicidal ideation and whether it is imminent in nature. Further, the GP comments in the MNS Application that the Appellant is "relatively stable on psych meds and vitamins" and that she has not been hospitalized in four years. Lastly, as set out above the Appellant's asthma has not been included as one of the seven specifically listed symptoms in the MSN Application and in any event, the Panel finds that the GP's comment that asthma attacks can be life threatening is more descriptive of a possibility rather than an imminent danger to the Appellant's life. The Panel therefore finds that the Ministry reasonably determined that the Appellant did not meet the criteria for vitamins and minerals as set out in section 67(1.1)(d) of the EAPWDR.

Therefore, the Panel finds that the Ministry's decision to deny the Appellant a monthly nutritional supplement for vitamins and minerals was a reasonable application of the applicable legislation in the circumstances of the Appellant and confirms the Reconsideration Decision.