

APPEAL #

PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) February 20, 2014 reconsideration decision denying the Appellant’s request for a monthly nutritional supplement, specifically vitamin and mineral supplements and nutritional items because the Ministry determined that the request did not meet the eligibility requirements in section 67(1.1) and in Schedule C section 7 of the Employment and Assistance for Persons with Disabilities 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

For its reconsideration decision the Ministry had the following evidence:

1. Information from the Ministry's records that the Appellant is a Person with Disabilities ("PWD") receiving disability assistance.
2. Appellant's request for a Monthly Nutritional Supplements ("MNS") completed by a doctor on October 15, 2013 in the Ministry specified form, requesting the following:
 - Vitamin/mineral supplementation, specifically: 500 mgs calcium, 1000 UD of Vitamin D, 500 mg of Vitamin C, Omega 3 and 300 mg OD of FeSO₄ per day.
 - Nutritional items – doctor wrote "as above" referring to the vitamin/mineral supplements.
3. Appellant's request for reconsideration dated January 22, 2014 with information from the same doctor.

In the MNS request form, the doctor provided the following information for the MNS supplementation:

- The Appellant is being treated for the following severe medical condition - intracerebral bleed – spasticity right dominant arm
- He answered "yes" to the question whether as a direct result of the above severe medical condition the Appellant is being treated for a chronic deterioration of health.
- The details of this condition are that the Appellant has difficulty with meal preparation, incomplete meals, is unable to chop, cut, etc., easily frustrated so will avoid meals. Brain injury.
- As a direct result of this chronic, progressive deterioration of health, the Appellant displays symptoms of significant neurological degeneration - to post intracerebral bleed; the doctor provided no information for the other 6 listed symptoms.
- The Appellant's height is 5'5" and weight is 135 lbs.

The doctor provided the following information for the request for vitamin/mineral supplements:

- The vitamin/mineral supplements requested will alleviate the specific identified symptom: "improve energy, reduced infection and tone loss."
- He did not complete the section for describing how the vitamins/minerals requested will prevent imminent danger to the Appellant's life.

The doctor provided the following information regarding the request for additional nutritional items:

- In response to the question – does the Appellant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake – the doctor wrote – "No, but meal prep is challenging. Spasticity dominant [right] hand."
- In response to the request to describe how nutritional items required will alleviate one of more of the symptoms previously noted and provide caloric supplementation to the regular diet, the doctor responded – "difficulty with meal preparation – right hand poor coordination".
- He did not complete the section for describing how the requested additional nutritional items will prevent imminent danger to the Appellant's life.

The following information was provided with the request for reconsideration:

- Significant spasticity [right] upper extremity.
- Difficulty with food preparation.
- Significant neurological compromise.
- Muscle mass loss upper extremity – decrease strength/coordination.
- Intercerebral bleed – fluctuating cognitive disorder – brain.
- Requires improved nutrition to optimize health and maintain independence.

At the hearing, the Appellant's advocate submitted oral argument which is summarized in Part F of this decision. Also, at the hearing, the Appellant described her need for supplements and how her disability affects her, including how she gets confused easily and is constantly exhausted. She said the supplements, especially the Omega 3, would help her a lot.

The Panel finds that the Appellant's oral testimony provided information about her health condition and her need for the requested supplements consistent with information that is in the record. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the Appellant's testimony as being in support of evidence that was before the Ministry at reconsideration.

At the hearing, the Ministry reviewed the legislation it relied on, the evidence in the record and reaffirmed the reconsideration decision.

The Panel makes the following findings of fact:

1. The Appellant receives disability assistance as a PWD.
2. The Appellant's doctor diagnosed her with intercerebral bleed- spasticity right dominant arm, fluctuating cognitive disorder – brain.
3. The doctor provided no information about how the requested supplements would prevent imminent danger to the Appellant's life.

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, specifically vitamin/mineral supplements and additional nutritional items because the Ministry determined that the request did not meet the eligibility requirements in section 67(1.1) and in Schedule C section 7 of the EAPWDR.

The following sections of the EAPWDR apply in this appeal:

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.

(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

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.

To obtain an MNS, the Appellant's request must satisfy the criteria in EAPWDR sections 67(1.1) and Schedule C section 7. The Panel notes that these requirements are also in the Ministry's MNS request form that was completed by a doctor and is in the record of this appeal. The Panel will consider whether the Ministry's decision was reasonable for each of the criteria at issue in this appeal.

Section 67(1.1)(a)

The Ministry determined that the Appellant's doctor did not confirm that the Appellant is being treated for a chronic deterioration of health as required by section 67(1.1)(a). The Appellant's advocate submitted that the Appellant's doctor confirmed that she is being treated for significant neurologic degeneration as a direct result of an injury to her brain, as noted by the doctor's reference to brain injury in the MNS application. The Appellant's advocate argued that the brain is a vital organ and an injury to that vital organ resulting in the intracerebral bleed is a chronic progressive deterioration of health.

The Panel finds that the evidence in the record is that the doctor answered "yes" to the question whether the Appellant is being treated for a chronic progressive deterioration of health as a result of the severe medical condition the doctor identified as intracerebral bleed. The doctor also provided the details of brain injury, difficulty with meal preparation and being easily frustrated. Based on this information from the doctor, in the MNS request form, the Panel finds that it was not reasonable for the Ministry to determine that the Appellant's request did not meet the criterion in section 67(1.1)(a).

Section 67(1.1)(b)

The Ministry determined that the Appellant's doctor did not confirm that, as a direct result of a chronic, progressive deterioration of health, the Appellant is displaying 2 or more of the symptoms listed in EAPWDR section 67(1.1)(b). The Panel notes that these symptoms are listed in the MNS request form completed by the Appellant's doctor.

The Appellant's advocate submitted that the doctor confirmed that the Appellant displayed three of the symptoms listed in section 67(1.1)(b); that is significant muscle mass loss, significant neurological degeneration and significant deterioration of a vital organ. The Appellant's advocate referred to the MNS request form with the doctor's note beside the neurological symptom and to the information in the request for reconsideration regarding muscle mass loss. The advocate also argued that the doctor's reference to the Appellant's brain injury and intracerebral bleed was a reference to the significant deterioration of a vital organ because the brain is a vital organ.

The Panel finds that in the MNS request form the doctor completed the symptoms section with a note by only one of the required symptoms; that is, significant neurological degeneration – post intracerebral bleed. In the request for reconsideration, the doctor wrote "muscle mass loss upper extremity – decrease strength/co-ordination". The Panel finds that this symptom noted by the doctor, without a description of the extent of muscle mass loss is not the same as the symptom listed in section 67(1.1)(b)(iv); that is, significant muscle mass loss. The Panel further finds that there is no evidence from the doctor that the Appellant's brain injury is a significant deterioration of a vital organ. Therefore, the Panel finds that the Ministry reasonably determined that the doctor did not confirm that the Appellant is displaying two or more of the symptoms listed in that regulation.

Vitamins/Minerals -Section 67(1.1)(c)

The Ministry determined that the doctor did not confirm that the Appellant required the MNS for the purpose of alleviating a symptom referred to in section 67(1.1)(b) and in the MNS request. The Appellant submitted that she needs the supplements requested to alleviate the significant symptoms noted by the doctor. Her advocate argued that there is an exact casual effect between the Appellant's symptoms, her need for the supplements and her ability to maintain her independence.

The Panel finds that in the MNS request form the doctor specified a number of vitamins/minerals required by the Appellant, but he did not specifically state how these would alleviate the symptom of significant neurological degeneration. The doctor only wrote that the items would improve energy, and reduce infection and tone loss. In the request for reconsideration, the doctor wrote that the Appellant requires supplements to improve her nutrition to optimize her health and maintain independence, but he did not link that to the symptoms of significant neurological compromise or of muscle mass loss cited in the reconsideration request. The Panel finds therefore, that based on this information from the doctor, the Ministry reasonably determined that the doctor did not confirm the need for the supplements as required by section 67(1.1)(c).

Vitamins/Minerals - Section 67(1.1)(d)

The Ministry found that the information provided did not confirm that failure to obtain vitamin/mineral supplementation would result in imminent danger to the Appellant's life. The Panel finds that the doctor did not complete the section of the MNS request form which specifically asked this question and the Appellant provided no information regarding this requirement. Therefore, the Panel finds that the Ministry reasonably concluded that the information from the Appellant and her doctor did not satisfy the requirements in section 67(1.1)(d).

Additional Nutritional Items – Schedule C section 7

The Ministry may provide for additional nutritional items that are part of a caloric supplementation to a regular dietary intake under section 7 of Schedule C of the EAPWDR. The Panel notes that the Ministry's MNS request form requires additional information from the doctor for this type of supplement.

The Ministry was not satisfied that the Appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake because the doctor did not confirm that the Appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements. The Ministry found that the doctor also did not confirm that the Appellant displays symptoms of malnutrition, underweight status, significant weight loss or significant muscle mass loss that would require caloric supplementation. The Ministry concluded that based on the height and weight recorded in the Appellant's application, her BMI is 22.5, within the normal range.

The Appellant's advocate submitted that the Appellant is unable to prepare meals on a regular basis due to her medical conditions. She needs additional nutritional supplements to maintain her energy and to address the symptoms identified by the doctor. The advocate also argued that the doctor should not have to explain everything in his prescription. The doctor provided additional information for the request for reconsideration and addressed the symptoms for which the Appellant needs the items requested. The doctor also wrote that the Appellant needs improved nutrition to optimize her health and maintain independence. The advocate also argued that there should be flexibility for disabled people and in this case, the Ministry's denial was not a fair and equitable solution.

The Panel finds that the doctor provided no information about malnutrition, underweight status or significant weight loss in the Appellant's case. The doctor noted that there was muscle mass loss, but not the extent of that. The doctor provided information only about the Appellant's difficulties with meal preparation and her need for improved nutrition. The Panel finds that the doctor also did not complete the section of the MNS form confirming that failure to obtain the additional nutritional items would result in imminent danger to the Appellant's life. The Panel thus finds that the Ministry reasonably determined that the doctor did not confirm that the Appellant needed additional nutritional items as part of a caloric supplement to a regular dietary intake to alleviate a symptom identified under section 67(1.1)(b) as required by section 67(1.1)(c) and to prevent imminent danger to life as required by section 67(1.1)(d).

Conclusion

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