



PART C – Decision under Appeal

The decision under appeal is the January 15, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”), in which the ministry determined that the appellant was not eligible for a monthly nutritional supplement as provided in Section 67 of the Employment and Assistance for Persons with Disabilities Regulation (the “EAPWDR”) and Schedule C, (7)(a). In particular, the ministry found that:

- There was insufficient information provided in the appellant’s application and Request for Reconsideration (RFR) to establish that a medical practitioner had confirmed that the appellant required additional nutritional items as part of a caloric supplementation to a regular dietary intake for the purposes of alleviating a specific symptom, as required by Section 67 (1.1) (b) and (c); and
- There was insufficient information provided by the appellant’s medical practitioner to confirm that failure to obtain a nutritional item as part of a caloric supplementation to a regular dietary intake will result in imminent danger to the appellant, as required by Section 67 (1.1) (d).

PART D – Relevant Legislation

EAPWDR Section 67;
EAPWDR Schedule C, Section 7



PART E – Summary of Facts

The appellant is designated as a person with disabilities, and is a recipient of disability assistance. The appellant applied for the monthly nutritional supplement on September 10, 2013. On November 19, 2013 the appellant was advised by the ministry that he was ineligible for the supplement, and he requested reconsideration of that decision on November 28, 2013.

The information before the ministry at the time of reconsideration included the following:

- An Application for Monthly Nutritional Supplement, dated September 10, 2013, completed by the appellant's physician. The physician states that the appellant is being treated for diabetes with oral medication and that he has been diagnosed as having hepatitis C which was unsuccessfully treated in the past. The physician states that the appellant displays significant muscle mass loss and has a calculated Body Mass Index (BMI) of 24. In the section of the form requesting the physician to specify the additional nutritional items required and duration of need, the physician wrote, "High protein diet." He also wrote, "No" when asked if the appellant has a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. Additionally, the physician stated that the nutritional items he indicated above would prevent imminent danger to the appellant's life by, "Improve muscle mass." In the section of the form where the physician may provide additional comments, he wrote, "Type II diabetes requires Diabetic diet to maintain sugars."
- The Monthly Nutritional Supplement Decision Summary from November 19, 2013 indicating that the appellant's BMI is within or above the normal range and although significant muscle mass loss is noted, there is no indication of the time period in which this occurred. The information does not establish that the muscle mass loss is a symptom of a chronic progressive deterioration of health. Also, none of the other symptoms listed in the EAPWDR under Section 67 (1.1) (b) have been reported by the physician, of which two or more are required for eligibility.
- A fax message from the appellant's advocate, dated December 16, 2013 requesting an extension of time to submit information for the reconsideration, as the appellant's appointment to see his physician was not until December 17, 2013.
- A fax from the appellant's advocate, dated January 15, 2014 which included a copy of EAPWDR Section 67 (1.1) legislation, which had a hand written note to the appellant's physician, requesting confirmation that, "due to [the appellant's] severe medical conditions, he displays symptoms according to (1.1) (iv) muscle loss and (vi) significant deterioration of liver & kidney." The appellant's physician wrote below, "He has chronic liver disease and early renal disease. Has muscle mass loss," signed and dated, December 18, 2013.

In his Notice of Appeal, dated January 23, 2014, the appellant states that he disagrees with the ministry's decision because his doctor confirmed all the requirements under the legislation.

The appellant's oral evidence on appeal included the following information:

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- The appellant's advocate stated that when he reviewed the Monthly Nutritional Supplement Decision Summary, he understood that the only criteria that was not satisfied was EAPWDR Section 67 (1.1)(b), requiring a medical practitioner to identify two or more symptoms that were a direct result of a chronic progressive deterioration of health. For this reason, the appellant attended his physician on December 18, 2013 and provided a copy of the legislation to him, requesting that he look through the listed criteria of Section 67 (1.1)(b) and provide signed confirmation of the symptoms the appellant was experiencing. The advocate argues that this document, signed by the appellant's physician satisfies the outstanding criteria. The appellant opted to have his physician do this, rather than write an official letter that would take considerable time and cost.
 - The appellant states that he has experienced significant weight loss over the past 18 months, losing approximately 20 pounds. He feels that this is due to his inability to afford the food he needs. The advocate adds that this demonstrates the appellant's need for increased caloric intake and high protein diet.
 - The appellant states that approximately four months ago, his physician increased the oral medication for his diabetes from one pill per day to one pill three times per day, in order to stabilize his insulin levels.
 - The appellant states that he is making efforts to maintain and improve his health and has researched the specific dietary recommendations from the Canadian Diabetic Association's Everyday Diabetes Cookbook, which recommends a diet high in fresh fruits and vegetables and sources of lean protein. The appellant noted that the cookbook states that his diet should consist of fresh fruit and vegetables, low fat dairy products, whole grains, lean protein, including fish twice per week, and sugar-free beverages. The appellant states that these are items that he cannot currently afford to purchase.
 - The appellant states that by improving his diet and providing caloric supplementation he hopes to increase his energy so that he can work to recover his muscle mass loss.
 - The advocate states that in the Application for Monthly Nutritional Supplement the physician wrote, "High protein diet" in the space provided to specify details of how the nutritional items will provide caloric supplementation and are required to prevent imminent danger. Additionally, when asked to describe how the nutritional items will prevent imminent danger, the physician wrote, "Improve muscle mass." The advocate argues that these statements acknowledge that the high protein diet is required for these purposes, meeting the criteria.

The ministry relied primarily on its reconsideration decision, however, the ministry representative did encourage the appellant to look into the diabetic supplement and vitamin and mineral supplement which may be available to him.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's January 15, 2014 reconsideration decision in which the ministry determined that the appellant was not eligible for a monthly nutritional supplement as provided in Section 67 of the EAPWDR.

The relevant 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 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

(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)

EAPWDR 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; (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)

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Whether the appellant is being treated for a chronic deterioration of health (Section 67 (1.1) (a))

The appellant's medical practitioner confirmed that as a result of a chronic, progressive deterioration of health from diabetes and hepatitis C, the appellant is displaying symptoms of significant muscle mass loss as well as significant deterioration of an organ (liver and kidneys).

The ministry is satisfied that the information provided by the appellant's physician has established that he is being treated for a chronic deterioration of health and he has met the statutory criteria for EAPWDR (Section 67 (1.1) (a)).

Whether the appellant is displaying at least two of the symptoms set out in Section 67 (1.1) (b)

The appellant's medical practitioner reported that the appellant displays symptoms of significant muscle mass loss and significant deterioration of a vital organ (liver and kidney).

The ministry is satisfied that the information provided by the appellant's physician has established that he is displaying at least two of the symptoms and has met the statutory criteria for EAPWDR (Section 67 (1.1) (b)).

Whether the nutritional items are part of a caloric supplementation to a regular dietary intake to alleviate symptoms of his chronic progressive deterioration of health (Section 67 (1.1) (c))

The appellant and his advocate argue that the dietary requirements needed for the appellant to appropriately manage his diabetes are unaffordable to him and that caloric supplementation to his regular dietary intake is needed to prevent further deterioration of his liver and kidneys, prevent further weight loss, and recover lost muscle mass.

The ministry determined that the information provided by the medical practitioner does not establish how the appellant's medical conditions result in an inability to absorb calories to satisfy his daily requirements through regular dietary intake, nor how the nutritional items requested will alleviate one or more of the symptoms identified or prevent imminent danger to his life. The appellant, therefore, has not met the statutory criteria for EAPWDR (Section 67 (1.1) (c)).

The panel finds that the ministry reasonably determined that the information provided did not

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demonstrate that the nutritional items are a required part of a caloric supplementation to a regular dietary intake to alleviate symptoms of his chronic progressive deterioration of health, namely significant muscle mass loss and significant deterioration of a vital organ. Section 67(1.1), together with Section 7 of Schedule C, stipulates that additional nutritional items are designed to be part of a supplement of calories beyond those foods already being consumed in the regular diet. When asked in the Monthly Nutritional Supplement application whether the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy his daily requirements through a regular dietary intake, the medical practitioner wrote "No." The panel finds that the medical practitioner provided a definitive answer that the appellant is able to absorb sufficient calories to satisfy daily requirements through a regular dietary intake and, therefore, does not require supplementation, or extra calories, to a regular diet. Furthermore, as argued by the ministry, the appellant's height and weight do not indicate the need for caloric supplementation and the medical practitioner does not indicate that the appellant is underweight, malnourished or had significant weight loss. Therefore, the panel finds that the ministry's decision, that the appellant's request for a nutritional supplement was not confirmed by a medical practitioner to be part of caloric supplementation to a regular dietary intake as required by EAPWDR section 67(1.1)(c), was reasonable.

Whether the failure to obtain the nutritional items will result in imminent danger to the appellant's life (Section 67 (1.1) (d))

The appellant and his advocate argue that without the nutritional supplement the appellant cannot afford the types of foods needed to appropriately manage his diabetes and prevent further loss of muscle mass and deterioration of his liver and kidneys.

The ministry determined that, in the opinion of the minister, the information provided by the medical practitioner in the application does not demonstrate that a failure to provide the items requested will result in imminent danger to his life and therefore, he has not met the statutory criteria for EAPWDR (Section 67 (1.1) (d)).

The panel finds that the ministry reasonably determined that the information provided by the medical practitioner did not demonstrate that a failure to provide the items requested will result in imminent danger to the appellant's life. When asked in the Monthly Nutritional Supplement application to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the medical practitioner wrote "Improve muscle mass." Although the appellant and his advocate described the poor outcomes associated with mismanaged diabetes and liver and kidney functional decline, the medical practitioner did not confirm that the appellant's life will be in imminent danger, as required by the legislation.

The panel finds that the ministry reasonably interpreted the use of the word "imminent" in the Section 67(1.1)(d) to refer to an immediacy such that the danger to life is likely to happen soon. Therefore; the panel finds that the ministry's decision, that the appellant's request for a nutritional supplement did not establish that a medical practitioner confirms that failure to obtain the nutritional items requested will result in imminent danger to his life as required by EAPWDR section 67(1.1)(d), was reasonable.



Conclusion

For the reasons detailed above, the panel finds that the ministry decision was a reasonable application of the legislation in the circumstances of the appellant. Accordingly, the ministry decision is confirmed.