

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) June 3, 2014 reconsideration decision denying the appellant's request for a Monthly Nutritional Supplement (MNS) for nutritional items because the eligibility requirements set out in the legislation are not met: a medical practitioner has not confirmed that

- the appellant is treated for a chronic deterioration of health as set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67(1.1)(a);
- the appellant is displaying 2 of the symptoms set out in the EAPWDR section 67(1.1)(b);
- the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating a symptom referred to in paragraph (b);
- failure to obtain the above mentioned items will result in imminent danger to the appellant's life as set out in section 67(1.1)(d) EAPWDR.

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.
- She receives \$35 per month dietary allowance.

In the appellant's Application for a Monthly Nutritional Supplement (MNS) her medical practitioner (MP) indicates in a report dated December 23, 2013 that

- the appellant's MP diagnosed her with 1 severe medical condition: diabetes, and describes her condition as follows: despite insulin the appellant's blood sugar is quite volatile and she is starting to lose muscle mass;
- as a result of this condition the appellant will be seeing a dietitian to improve her intake and try to help with healing;
- as a direct result of this condition the appellant displays significant muscle mass loss and significant deterioration of a vital organ, specifically vaginal tissue loss;
- her height is 166 cm, her weight is 60 kg;
- the appellant requires 2-3 cans of Boost/Ensure daily;
- the applicant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular diet: Diabetes affecting Carbohydrate and Protein metabolism.
- 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 "Will provide more calories/protein to her diet and boost her muscle mass allow healing of vaginal tissues".
- Describing on how the nutritional items requested will prevent imminent danger to the appellant's life the MP writes "will stop muscle loss and deterioration".

In a letter dated December 31, 2009 the appellant reports ongoing issues with her trans-vaginal sling.

In her Request for Reconsideration dated April 29, 2014 the appellant states that

- she has lost 8% of her body weight;
- the trans-vaginal sling to hold the bladder is not working;
- her bladder is not working properly and deteriorating with ongoing and severe infections;
- Antibiotics are not working;
- she is unable to sit, stand or walk much;
- she is almost bed ridden;
- her pain is severe and tablets are not helping at all.

In her Notice of Appeal dated June 16, 2014 the appellant states that

- she is not able to afford the necessary nutrition to sustain her strength and nutrition requirements;

- because of her brittle diabetes she takes longer to heal;
- she will need extra nutrition to heal after her upcoming operation (June 23 to 26): to heal faster she needs more protein supplements;
- she is losing her appetite;
- she used to be strong and in shape, now she is weaker and has lost her strength and muscle mass.

At the hearing the appellant said she now weighs 131 lbs. She has diabetes type 1, and despite being on a diet and taking insulin, her blood sugar levels go up and down and are out of control. She is under stress most of the time, her body overheats, she is prone to infections and gets dizzy. In turn, stress and infections affect her blood sugar levels. Twice she did not wake up by herself after going to sleep. Sometimes she cannot function, is very weak, gets worried and a bit depressed. Instead of 2 months it took 5 months for her surgery wound to heal.

Her vaginal sling was taken out in June, and her vagina has improved as a result. She has to go back to the hospital for surgery in November. They are planning to insert a new sling out of her own tissue because the old sling gave her infections. She has a lot of scar tissue as a result of her issues with the vaginal sling and resulting surgery.

She has other problems: her body is calcified, she is not sleeping well, she has hereditary health problems. Infections affect her back and she can't walk as a result.

She has to live with a leaky roof, pays \$400 rent and has only \$200 to live on. She also has a student loan. It costs her \$20 on gas to see her doctor but she does not want to change her doctor.

She has to pay for insulin and other meds and does not have enough money. She is trying to stay healthy but can't afford the acidophilus yoghurt that her doctor wants her to have. It is more expensive to buy healthy food than junk food and she can't afford it. \$35 for a diabetic diet is not enough. She is not getting anywhere and does not want to continue like that.

The ministry stood by its position at reconsideration and added the following information: In order to determine significance of muscle loss the ministry does not rely on a chart but is looking for signs of wasting and information from the doctor in the practitioner's report.

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 these statements include additional details of the appellant's medical condition as reported in 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 a Monthly Nutritional Supplement (MNS) of nutritional items in accordance with section 67 (1.1) and Schedule C section 7 of the EAPWDR; specifically, did the ministry reasonably conclude that the information provided by the appellant's doctor did not confirm that the appellant is treated for a chronic deterioration of health; that the appellant is displaying 2 of the symptoms; that the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake; and that failure to obtain the MNS will result in imminent danger to her life?

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 panel will consider each party's position regarding the reasonableness of the ministry's decision regarding the MNS eligibility criteria that are at issue in this appeal.

Chronic, progressive deterioration of health on account of a severe medical condition (section 67(1.1)(a))

The appellant argues that as a result of her diabetes her health is progressively getting worse. Despite of taking insulin and observing a diet her blood sugar levels are out of control. Because of her progressing diabetes she takes increasingly longer to heal, she suffers more side-effects like infections, dizziness, loss of appetite, loss of muscle mass and vaginal tissue loss. She used to be strong and in good physical shape, but now she is getting weaker. The appellant's doctor confirms that the appellant is starting to lose muscle mass as a result of her diabetes.

The ministry argues that while the appellant's doctor has indicated significant muscle mass loss he has not stated how much muscle mass was lost and over what period of time. Furthermore, while the doctor has noted a significant deterioration of a vital organ, specifically vaginal tissue loss, the ministry finds that vaginal tissue is not a vital organ and therefore this symptom cannot be considered.

The panel finds that there is medical evidence of progressive deterioration of health: the doctor reports that the appellant is starting to lose muscle mass, indicating that the appellant's diabetes is progressing from a state without muscle mass loss to a more advanced state in which loss of muscle mass occurs. It is up to the doctor to establish progressiveness of the condition - legislation does not require significance of muscle mass loss to be a condition of progressiveness. For these reasons, the panel finds that the ministry did not reasonably determine that the appellant is not being treated for a chronic progressive deterioration of health due to a severe medical condition as set out in section 67(1.1)(a).

The appellant is displaying 2 of the symptoms set out in section 67(1.1)(b)

The appellant argues that she is displaying several symptoms and therefore meets this eligibility criterion. She is experiencing significant muscle loss - she has lost 8% of her body weight, she is displaying vaginal tissue loss, her bladder is not functioning properly, she has ongoing and severe infections, her pain is severe and medications are not helping. The appellants doctor notes two symptoms: significant muscle mass loss and significant deterioration of a vital organ, specifically vaginal tissue loss.

The ministry argues that even though the doctor has confirmed significant muscle loss he has not indicated how much muscle mass was lost and over what period of time, and, furthermore, the appellant's BMI is in the normal range. The ministry further argues that vaginal tissue is not considered a vital organ. For these reasons the ministry does not consider these 2 symptoms.

Section 67(1.1)(b) lists 7 symptoms out of which the appellant, confirmed by a medical or nurse practitioner, needs to display at least 2; these symptoms also have to be direct results of the chronic progressive deterioration of health, which in the appellant's case is diabetes.

The panel finds that the doctor reported "significant muscle mass loss" and stated that muscle mass loss was "starting", but provided no information on how he determined that the appellant's muscle mass loss was significant. The panel notes that at the hearing the appellant states that her weight is almost identical to the weight given on her application half a year ago. The second symptom the doctor noted was "significant deterioration of a vital organ", specifically "vaginal tissue loss". He provided no further information on how this symptom is a direct result of diabetes. Furthermore, the panel finds that there is no medical evidence defining "vaginal tissue loss" as a vital organ. Because of these reasons the panel finds that the ministry reasonably determined that the appellant does not display 2 of the symptoms set out in section 67(1.1)(b).

Alleviating a prescribed symptom through additional nutritional items that are part of a caloric supplementation to a regular dietary intake as set out in section 67(1.1)(c) and Schedule C section 7

The appellant argues that she needs protein supplements which she is not able to afford: she is losing her appetite, is becoming weaker and losing muscle mass. She will also need help with healing

after her up-coming operation. Her doctor prescribes 2-3 cans daily of Boost/Ensure and affirms that the appellant's diabetes is a condition that results in the inability to absorb sufficient calories to satisfy daily requirements through regular dietary intake. He adds that diabetes affects carbohydrate and protein metabolism. According to the doctor the nutritional items required will provide more calories/protein to the appellant's diet, boost her muscle mass and allow healing of vaginal tissues.

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: Muscle mass loss has not been established and vaginal tissue is not considered a vital organ. The ministry argues further that the appellant's BMI is within normal range and the doctor does not confirm symptoms of malnutrition, underweight status or significant weight loss, which would demonstrate that the appellant needs caloric supplementation to a regular dietary intake.

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. The panel finds the ministry has reasonably included the appellant's "normal range" BMI in its argument. Furthermore, the panel finds that even though the doctor has specified nutritional items that will provide more calories/protein to her diet in accordance with Schedule C section 7, the panel finds that the ministry reasonably determined that a medical practitioner has not confirmed that the appellant requires specific additional items to alleviate a prescribed symptom as set out in section (1.1)(c) because no prescribed symptom has been established.

Failure to obtain the items will result in imminent danger to life as set out in section 67(1.1)(d)

The appellant argues that she needs nutritional supplements because she wants to become healthy, but she cannot afford to pay for them out of her own pocket. Her doctor reports 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 EAPWDR 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: While the doctor affirms that the required items will stop muscle loss and deterioration, muscle mass loss has not been established and vaginal tissue is not considered a vital organ. Although the doctor's recommendation would benefit the appellant's health there is no medical information 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'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 since the appellant is not eligible under section 67(1.1)(c) this precludes eligibility under section 67(1.1) (d) Furthermore, the panel finds the ministry reasonably determined that the criterion of imminent danger to life was not established, even though the items requested by the doctor would help improve her health. There is no medical evidence that the appellant's life is in imminent danger and therefore the panel 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.