



## PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated August 19, 2014, which denied her request for Monthly Nutritional Supplement (“MNS”) for nutritional items on the basis that she did not meet the criteria set out in the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) section 67(1.1) and Schedule C, section 7. The Ministry determined that the information provided did not establish that the appellant required the requested nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of her chronic, progressive deterioration of health, or that failure to provide the items would result in imminent danger to her life, as required under subsection 7(a) of Schedule C and subs. 67(1.1)(d) of the EAPWDR.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) section 67 and Schedule C – Health Supplements, s. 7.

## PART E – Summary of Facts

At the reconsideration, the Ministry relied on the following:

- The Ministry's MNS decision summary dated July 10, 2014;
- The appellant's application for MNS signed by the appellant on April 15, 2014, with the portion completed by the appellant's physician dated April 29, 2014 ("MNS form"), described below; and
- A letter from the appellant's physician and social worker dated July 31, 2014.

On the first page of the MNS form, the appellant's physician indicated that the appellant's severe medical condition (question #1) is Hepatitis C, Type 2 diabetes, hyperlipidemia, morbid obesity and depression. In response to question #2, "As a direct result of the severe medical condition(s) ... is the applicant being treated for a chronic, progressive deterioration of health? If so, please provide details ...", the appellant's physician indicated that the appellant is on medication for her diabetes and hypertension, is awaiting treatment for her Hepatitis C and is on medications for her mood.

On page 2 of the MNS form, in response to question #3 ("As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms?"), the appellant's physician indicated that the appellant displayed the symptoms of moderate to severe immune suppression and significant deterioration of a vital organ (her liver). In response to question #4, the appellant's physician provided the appellant's height and weight (164 cm and 110kg), writing "BMI [body mass index] 40.9."

Question #5 of the MNS form is for the request for vitamin or mineral supplementation, which the Ministry granted to the appellant and is not at issue on this appeal. In specifying the vitamin or mineral supplements required, the appellant's physician wrote that she should take 1 multivitamin daily indefinitely or at least until she completes her Hepatitis C treatment. In response to the question "Describe how this item or items will prevent imminent danger to the applicant's life" the appellant's physician wrote, "clients with the above conditions are highly susceptible to infection which would be life threatening."

In response to question #6 (which has 3 questions on pages 2 and 3 of the MNS form), the appellant's physician indicated that the additional nutritional items required and expected duration of need are "high protein diet with plenty of fruits & vegetables and low in fat indefinitely, or at least until completion of hep c treatment." The physician wrote that the appellant's "hepatitis causes this problem" in response to the question, "does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake?" In response to the question, "Describe how the nutritional items required will alleviate one or more of the symptoms specified in question 3 and provide caloric supplementation to the regular diet", the appellant's physician wrote, "these nutritional items should improve her weight and her resistance to infection." In response to the third question, "Describe how the nutritional items requested will prevent imminent danger to the applicant's life," the appellant's physician wrote, "fewer infections → lower imminent danger."

In the letter of July 31, 2014, the appellant's physician and social worker listed the same conditions as on the MNS form, and wrote that the appellant is preparing for treatment for her Hepatitis C and that while her medications help manage her conditions, "she is also required to adhere to a fairly strict diet regime to manage her health and to prevent further deterioration of her medical conditions." The appellant's physician and social worker wrote that while the appellant receives the high protein diet and the vitamin supplements, "she requires further financial assistance to manager her health needs. In order to prevent further deterioration of her health she also requires a low sodium diet and a diabetic diet. The low sodium diet is recommended for people with hypertension and the diabetic diet may prevent further exacerbation of her Type II Diabetes with life threatening consequences."

Prior to the hearing, the appellant provided a letter from her social worker dated September 15, 2014. In this letter, the appellant's social worker refers to the reconsideration decision and writes that it is "important to highlight that while [the appellant] may not meet the underweight status that [the] Ministry would like to see in order to approve this supplement, her family doctor has confirmed that her medical condition (Hepatitis) leads to the inability to absorb sufficient calories. If [the appellant] does not increase her caloric intake it may lead to her being underweight, at increased risk of infections, and increased need of medical care. If she is able to maintain an increased caloric intake at this point in her illness, then she will be able to maintain a healthy lifestyle and lower her imminent danger in prevention of infections." The Ministry did not object to the admission of the social worker's September 15, 2014 letter at the hearing.

This panel admits the September 15, 2014 letter from the appellant's social worker as written testimony in support of the information and records that were before the minister when the decision being appealed was made under subs. 22(4)(b) of the *Employment and Assistance Act*. The September 15, 2014 letter restates information referenced in the Ministry's reconsideration decision.

The appellant receives disability assistance and she also receives monthly vitamin/mineral supplement and a dietary supplement for a high protein diet. At the hearing, the appellant said that she really needs the MNS for additional nutritional items because she needs the extra money every month to purchase better quality food, such as spinach, to improve her diet, help her to continue to lose weight and get healthy. She said that food is more expensive than it used to be and the food available to her through the food bank is not healthy as it is often processed and has too much sugar and salt. The appellant told the panel that in the past year (12-13 months), she had lost approximately 70 pounds and she is continuing to lose weight through her diet and walking. She said that she "is not dying" but thinks that it is common sense that she should receive extra money every month so she can afford to purchase better quality food and follow a diabetic and low sodium diet. She said that her doctor has indicated she needs a better diet because she has both diabetes and hepatitis C, and refers to the information in the letters from her doctor and social worker of July 31, 2014 and from the social worker of September 15, 2014.



## PART F – Reasons for Panel Decision

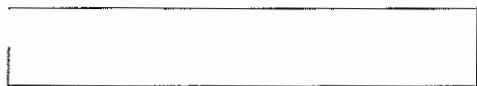
The issue on this appeal is whether the Ministry's decision to deny the appellant's request for the MNS on the basis that the information did not establish that that the appellant requires the requested additional nutritional items as part of a caloric supplementation to a regular dietary intake, as set out in s. 7(a) of Schedule C, and to prevent imminent danger to life, as required by subs. 67(1.1)(d), was reasonable.

Legislation

*EAPWDR*

### 67. Nutritional Supplement

- (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.



....

## Schedule C – Health Supplements

### 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
- (c) For vitamins and minerals, up to \$40 each month.

### Submissions

At the hearing, the appellant expressed her frustration with the Ministry's denial of her requested MNS. She noted that the reconsideration decision contained mistakes (such as the incorrect spelling of her physician's last name). She argued that she should be entitled to some extra money – she estimated \$30 per month – so that she can purchase better quality food to help her lose weight and improve her health. She said that her doctor and social worker have indicated that she needs to follow a strict diet to manage her health and to prevent her conditions from getting worse. The appellant could not identify a specific type of nutritional supplement (such as Ensure or Boost), but argued that she requires the monthly nutritional supplement for the additional nutritional items of fresh fruit and vegetables to improve her diet. She said that her doctor and her social worker have told her she needs to be on a diabetic and low sodium diet and to her, it makes common sense that the Ministry should provide her funds so she can afford to purchase better quality food.

The Ministry stood by its reconsideration decision. The Ministry said that the appellant has requested a MNS for nutritional items under EAPWDR section 67(1.1) and section 7 of Schedule C, which provides for up to \$165 per month for the requested nutritional items. The Ministry pointed out that the appellant has not applied for a specific diabetic diet or low sodium diet. The Ministry says that section 67(1.1)(c) and section 7(a) require that a medical or nurse practitioner confirm that the requested additional nutritional items be part of a caloric supplementation to a regular dietary intake. The Ministry argues that the appellant has not provided information from her physician or a nurse practitioner that confirms that she requires nutritional items as part of a caloric supplementation to her regular diet. The Ministry points to the information in the MNS form, confirmed by the appellant, that she is not underweight. The Ministry says that the appellant's physician has indicated that the appellant requires financial assistance to improve her diet – for a specific type of diet – but that this does not confirm that she requires nutritional supplements as part of caloric supplementation. The Ministry also says that section 67(1.1)(d) requires that a medical or nurse practitioner confirm that failure to provide the requested nutritional items will result in imminent danger to the appellant's life. The Ministry says that the word "imminent" "connotes a degree of immediacy." The Ministry argues that the appellant's physician has not provided information that the requested nutritional items (diabetic and/or low sodium diets) will prevent imminent danger to the appellant's life as the information indicates that the appellant may or may not suffer from future infections.

### Panel Decision

The Ministry determined that the appellant's physician confirmed that she is being treated by for a chronic, progressive deterioration of health on account of a severe medical condition (moderately severe Hepatitis C, Type 2 Diabetes, hyperlipidemia, morbid obesity and depression), and that as a direct result of her conditions, she displays two or more of the listed symptoms (moderate to severe immune suppression and significant deterioration of a vital organ – her liver), meeting the criteria set out in subs. 67(1.1)(a) and (b) of the EAPWDR.

[Redacted]

Under subs. 67(1)(c) of the *EAPWDR*, in order to qualify for the MNS, the appellant's medical or nurse practitioner must confirm that the appellant meets *all* of the requirements set out in subs. 67(1.1)(a) through (d). Subsection 67(1.1) (c) refers to s. 7 of Schedule C of the *EAPWDR* (for the purposes of alleviating the appellant's symptoms, the medical or nurse practitioner must confirm she requires one or more of the items set out in section 7 of Schedule C). Under s. 7(a) of Schedule C of the *EAPWDR*, additional nutritional items may be provided if they "are part of a caloric supplementation to a regular dietary intake." Under subsection 67(1.1)(d) of the *EAPWDR*, failure to provide the additional nutritional items will result in imminent danger to the appellant's life.

The panel finds that the Ministry's determination that the appellant's physician has not indicated that the appellant requires the requested MNS to provide caloric supplementation to her regular diet is reasonable based on the evidence. In the MNS, the appellant's physician indicated that the additional nutritional items required are "high protein diet with plenty of fruits and vegetables and low in fat." The panel notes that the appellant receives a monthly supplement for a high protein diet. In the MNS form, the physician indicated that the requested MNS will alleviate the appellant's listed symptoms and provide caloric supplementation to the regular diet as, "these nutritional items should improve her weight and her resistance to infection." In the July 31, 2014 letter, in addition to the high protein diet and daily multivitamin approved by the Ministry, the physician (and social worker) identified the requested nutritional items as "low sodium diet as well as a diabetic diet" for the reasons that the appellant "requires further financial assistance to manage her health needs," "to prevent further deterioration of her health" and the diet "may prevent further exacerbation of her Type II Diabetes with life threatening consequences." In the September 15, 2014 letter, the social worker indicates that if the appellant does not increase her caloric intake "it may lead to her being underweight, at increased risk of infections, and increased need of medical care." The panel notes that the appellant's physician has indicated that the appellant's Hepatitis C reduces her ability to absorb sufficient calories; however, there is no evidence relating to the possible extent of this reduction, the likelihood of it, or the probability of a potential infection as a result of the reduced caloric intake. The panel notes that in all of the information (the MNS form, the July 31 and September 15, 2014 letters) the appellant's physician did not indicate how the requested MNS of a diabetic and/or a low sodium diet will provide caloric supplementation to the appellant's regular diet, and it is this evidence which is required by subs. 67(1.1)(c) and section 7(a) of Schedule C.

The panel finds that the Ministry's determination that the appellant's physician has not confirmed that failure to receive the requested MNS will result in imminent danger to her health is reasonable based on the evidence. In the MNS form and the July 31, 2014 letter, the appellant's doctor describes that if the appellant receives the requested diabetic and/or low sodium diets, she will have "fewer infections → lower imminent danger" (MNS application) and the diabetic diet "may prevent further exacerbation of her Type II diabetes with life threatening consequences" (July 31 letter). In the September 15, 2014 letter, the social worker writes that if the appellant does not receive the requested diets, it "may lead to her being underweight," "at increased risk of infections" and in "increased need of medical care." The social worker also writes that "if [the appellant] is able to maintain an increased caloric intake at this point in her illness, then she will be able to maintain a healthy lifestyle and lower her imminent danger in prevention of infections." However, the panel notes that this information does not confirm that failure to provide the requested diets (diabetic and low sodium) will result in imminent danger to her health – the information indicates that the diets will help the appellant prevent a future occurrence that is unspecified and may not, in fact, occur. Accordingly, the panel finds that the Ministry's determination that this evidence does not confirm the requirement of subs. 67(1.1)(d) is reasonable.

Therefore, the panel confirms the Ministry's decision to deny the appellant's request for MNS.