



PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation's July 30, 2014 reconsideration decision denying the appellant's request for vitamin/mineral and monthly nutritional supplements, because the requirements of the EAPWD regulation, section 67(1.1)(b), (c) and (d) were not met.

PART D – Relevant Legislation

EAPWDR Employment and Assistance for Persons with Disabilities Regulation, section 67(1.1)(b), (c),(d)



PART E – Summary of Facts

The evidence before the ministry at reconsideration was

- the appellant is a person with disabilities in receipt of disability assistance.
- Application for Monthly Nutritional Supplement form dated October 6, 2013, in which the appellant's physician gave diagnoses of chronic fatigue and fibromyalgia, said without food supplements the appellant would be malnourished, would have weight loss, as not able to eat would lose muscle mass. He entered her height at 5' 8" and weight at 150, listed glucosamine, vitamins E,A,C,D as needed supplements, added "*had traumatic event in life, suffers from PTSD*". In describing how items will alleviate the specific symptoms the physician wrote "*as indicated before and based on (the appellant's) statement would lose weight and become malnourished*", and described how items will prevent imminent danger to applicant's life as "*weight loss, malnourishment will lower immune systems – more prone for infection.*" The physician stated the appellant did not have a medical condition resulting in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. In reply to the request for a description how the nutritional items required would alleviate the symptoms and provide caloric supplementation to the regular diet he wrote "*weight gain, stronger immune system more mobility.*" Under additional comments he wrote "*Form filled out to best knowledge and information provided by (the appellant).*"
- appellant's July 7, 2014 note claiming years of societal abuse, abuse by the ministry in failing to provide the requested supplements, saying from being malnourished she has cancer, hypertension, fibromyalgia, chronic fatigue, and for ten years has painful stigmata.
- July 7, 2014 Request for Reconsideration form, in which the appellant says her doctor has informed the ministry that she needs food supplements or she would die, that she cannot eat sugar or dairy, is down to dress size 0, her muscle mass has deteriorated, and she needs a different diet to live.

In her Notice of Appeal the appellant says without a special diet and vitamins, which are taking up one third of her income, she would be malnourished and have flaccid musculature. She states that she has been directed by a counsellor and a doctor to apply for the subsidy, and the doctor agrees she would need extra help with her health.

PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's reconsideration decision denying the appellant's request for vitamin/mineral and nutritional supplements because the requirements of the EAPWD regulation, section 67(1.1)(b), (c), and (d) were not met.

Relevant Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

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,*
- (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.*

Appellant's Position

The appellant argues she requires nutritional and vitamin supplements to maintain good health, to avoid malnourishment and muscle mass deterioration. She says she has lost weight and muscle mass, and needs a different diet to live. She says from being malnourished she has cancer, hypertension, fibromyalgia and chronic fatigue.

Ministry's Position

The ministry argues the appellant's physician has not overtly indicated that as a direct result of the chronic, progressive deterioration of her health the appellant displays two or more of the symptoms listed in section 67 (1.1)(b) of the EAPWDR, or that she requires the requested supplements to alleviate the symptoms, or that failure to obtain the supplements will result in imminent danger to her life, as required in subsections (1.1)(c) and (d) respectively.

Panel's Decision

The Employment and Assistance for Persons with Disabilities Regulation provides that a person with disabilities qualifies for nutritional supplements only if a medical practitioner confirms all conditions of section 67(1.1) (a) (b) (c) and (d) are met. The ministry determined that the appellant meets the requirement of 67(1.1) (a).

Subsection (1.1) paragraph (b) requires that as a direct result of the chronic, progressive deterioration of health on account of a severe medical condition, the person displays at least two of the symptoms listed. The physician did not state the appellant is displaying any of the listed symptoms. The appellant's weight shown is within a normal range, and the physician stated she does not have a medical condition that results in the inability to absorb sufficient calories to satisfy her daily requirements through a regular dietary intake. The panel finds the ministry's conclusion that requirement of EAPWDR section 67(1.1)(b) was not met to be reasonable.

Subsection (1.1) paragraph (c) requires supplements be for the purpose of alleviating a symptom referred to in paragraph (b). The physician said based on the appellant's statement without vitamin or mineral supplements the appellant would lose weight and become malnourished, but does not indicate a need to address an existing symptom. With respect to nutritional items, the physician said the appellant does not have a condition that results in the inability to absorb sufficient calories to satisfy her daily requirements through a regular intake, and showed the appellant's weight within a normal range. The panel find the ministry's conclusion that the requirement of EAPWDR section 67(1.1)(c) was not met to be reasonable.

Subsection (1.1) paragraph (d) requires that failure to obtain the supplements will result in imminent danger to the person's life. While the physician said in reply to the question how the supplements will prevent imminent danger to the applicant's life (weight loss, malnourishment will lower immune system, more prone to infection), he added the form was filled out to best knowledge and information provided by the appellant. He did not state that failure to obtain the supplements would result in imminent danger to the appellant's life. The panel finds the ministry's conclusion that the requirement



of EAPWDR section 67(1.1)(d) was not met to be reasonable.

The panel finds the ministry's decision was reasonably supported by the evidence as the appellant did not meet all conditions of EAPWDR section 67(1.1), and confirms the decision.