

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”)’s reconsideration decision dated July 8, 2014 which denied the appellant’s request for a Monthly Nutritional Supplement (MNS) as the appellant did not meet the requirements of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) section 67(1) and Schedule C, section 7.

The ministry was satisfied that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition as required by EAPWDR section 67(1.1)(a) and that she displayed two of the required symptoms set out in EAPWDR section 67 (1.1)(b), namely malnutrition and significant deterioration of a vital organ. However, the ministry was not satisfied that the information provided by the appellant’s physician establishes that:

- the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating one or more of the symptoms that are a direct result of a chronic, progressive deterioration of health as required by Section 67(1.1)(c) and Schedule C, section 7(a) of the EAPWDR; and that
- failure to obtain the additional nutritional items would result in imminent danger to her life as required by Section 67(1.1)(d) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67(1)
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C section 7



PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- 1) Request for Reconsideration dated June 30, 2014 (RFR) in which the appellant states that she has been diagnosed with pernicious anemia which by definition is the inability to absorb vitamin B12 (though not calories) and renal failure disposes her to anemia so she requires a high caloric diet to prevent malnutrition.
- 2) The MNS application completed by the appellant's physician on February 14, 2014 indicating diagnoses of renal insufficiency, sarcoidosis and pernicious anemia (vitamin B12 deficiency). The physician states that the appellant has declining renal function and malnutrition. The physician reports that as a direct result of the chronic, progressive deterioration of health the appellant displays the following symptoms: malnutrition and significant deterioration of a vital organ (decreased renal function). The physician reports that the appellant requires vitamin B12 to alleviate fatigue and muscle wasting and it will prevent imminent danger to the appellant's life by decreasing risk of falls and malnutrition. The physician reports that the appellant requires nutritional items of a diet that is low in fat and low in sodium, high plant based protein (such as legumes) to prevent deterioration of renal function. The physician indicates that the appellant does not have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The physician also reports that the nutritional items will prevent imminent danger to the appellant's life by preventing renal failure and chronic renal deficiency requiring dialysis. The physician indicates that the appellant is 168.5 cm and weighs 67.8 kg.
- 3) Letter from a physician dated February 13, 2014 indicating that the appellant has chronic vitamin B12 deficiency, chronic renal insufficiency and high cholesterol. The letter indicates that the appellant requires daily supplement of vitamin B12, a diet low in fat and sodium and high in plant-based proteins such as legumes in order to prevent deterioration of her condition.
- 4) Letter from the ministry to the appellant dated June 14, 2014 advising the appellant that she did not meet the eligibility requirements for the MNS.
- 5) MNS Decision Summary from the ministry Health Assistance Branch dated June 14, 2014

In her Notice of Appeal dated July 28, 2014, the appellant states that her "*bronchiectas has become a life or death matter and that a plant based diet will help to liquefy her mucus which creates actually a grave infection*".

Admissibility of New Information

At the hearing, the appellant provided oral testimony regarding her condition. She states that she requested the MNS because her renal failure is serious. She stated that her physician advised her to eat lots of fruit and vegetables and legumes. She states that the MNS is vital because if her kidneys fail then she will require dialysis and then she may die and that due to her pernicious anemia she does not absorb vitamins. The appellant confirmed that she is not on dialysis now. She reports that she does take daily vitamins but needs more meals.

The ministry did not object to the new information and documentation.

The panel has admitted the new documentation and oral testimony into evidence as it is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the information in the appellant's Notice of Appeal and her oral testimony provides further information regarding her previously diagnosed health conditions and requirements for MNS.

The ministry relied on the reconsideration decision.

Based on the evidence, the panel's findings of facts are as follows:

- the appellant is a Person with Disabilities in receipt of disability assistance; and
- the appellant has been diagnosed with chronic renal insufficiency, sarcoidosis and anemia.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's reconsideration decision denying the appellant's MNS application on the basis that she did not meet the requirements for the MNS as set out in Section 67(1.1)(c) and (d) and Schedule C, Section 7 of the EAPWDR was reasonably supported by the evidence, or whether the reconsideration decision was a reasonable application of the legislation in the appellant's circumstances.

The relevant sections of the EAPWDR are as follows:

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 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.

(B.C. Reg. 68/2010)

- (2) In order to determine or confirm the need or continuing need of a person for whom a supplement is provided under subsection (1), the minister may at any time require that the person obtain an opinion from a medical practitioner or nurse practitioner other than the practitioner referred to in subsection (1)
- (c). (B.C. Reg. 68/2010)...

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.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)

Section 67(1.1)(c) of the EAPWDR requires that a request for supplements must specify in the request that the person requires one or more of the items set out in Schedule C, section 7(a) namely additional nutritional items that are part of a caloric supplementation to a regular dietary intake. Section 67(1.1)(d) requires that the medical practitioner confirm that failure to obtain the nutritional items that are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the person's life.

The appellant's position is that she has a serious health condition with renal failure and pernicious anemia resulting in an inability to absorb vitamins and minerals. The appellant's position is that although she receives a vitamin and mineral supplement she needs the MNS for nutritional items too. The appellant's position is that she is no longer in imminent danger due to bronchiectasis as noted in her Notice of Appeal as medications have relieved that situation but that without the MNS she could have renal failure, dialysis, and death.

The ministry notes that it had approved the appellant's request for vitamin and mineral supplementation in March 2014. The ministry's position is that although the appellant's physician

indicated that the appellant requires a diet low in fat and low in sodium and a high plant based protein diet to prevent malnutrition due to pernicious anemia and an inability to absorb vitamin B12, this represents a specific dietary plan rather than caloric supplementation to a regular diet.

The ministry's position is that although the physician writes, in the RFR, that the appellant requires a high caloric diet to prevent malnutrition, there is no information to establish that an inability to absorb vitamin B12 results in an inability to absorb sufficient calories. The ministry notes that when asked if the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake the physician writes: "no". The ministry further notes that the physician did not confirm that the appellant displays symptoms of underweight status, significant weight loss or significant muscle mass loss which would be required to demonstrate that caloric supplementation is required to a regular dietary intake. The ministry further notes that the appellant's recorded height and weight indicate a BMI of 23.9, which is within the normal range of 18.5 to 24.9.

The ministry's position is that although the physician indicates that the dietary recommendations would be beneficial to the appellant's health, there was no information provided by the appellant's medical practitioners to confirm that failure to obtain a nutritional item as part of caloric supplementation to a regular dietary intake will result in imminent danger to the appellant's life as required by the legislation. The ministry notes that the use of the word imminent in section 67(1.1)(d) refers to immediacy such that the danger to the applicant's life is likely to happen soon.

Panel Decision

Section 67(1.1) of the EAPWDR makes it clear that there must be a direct link between the requested nutritional items, namely caloric supplementation, and the alleviation of the symptoms of the appellant's chronic, progressive deterioration of health. However, the panel finds that the evidence provided by the medical practitioner does not establish the required link between the nutritional items as caloric supplementation and the chronic, progressive deterioration of health.

On the MNS application, the appellant's physician reports that the appellant requires a diet low in fat and low in sodium and a high plant based protein diet and that the physician indicates that a high caloric diet is required to prevent malnutrition due to pernicious anemia and an inability to absorb vitamin B12. The panel also notes that when asked if the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake the physical writes: "no". Although the appellant indicates that she requires additional nutritional needs as recommended by her physician as she cannot absorb vitamins and minerals, the recorded height and weight indicate a BMI of 23.9, which is within the normal range of 18.5 to 24.9 and her physician did not confirm that the appellant displays symptoms of underweight status, significant weight loss or significant muscle mass loss which would be required to demonstrate that caloric supplementation is required to a regular dietary intake

The panel finds that the ministry reasonably concluded that the physician's recommendations represents a specific dietary plan rather than caloric supplementation to a regular dietary intake to alleviate the symptoms of her chronic, progressive deterioration of health as required by EAPWDR section 67(1.1)(c) and Schedule C, section 7(a).

Although the appellant indicated on the Notice of Appeal that she faced imminent danger to her life because of bronchiectasis, there was no information from a medical practitioner confirming that information. At the hearing, the appellant indicated that she was no longer in imminent danger to her life because of that condition. Although the appellant indicates that she continues to face imminent danger to her life because of her anemia resulting in inability to absorb vitamins and minerals and chronic renal failure that will lead to dialysis and death, that she is not currently on dialysis and there is no information from her medical practitioner indicating that the appellant faces an imminent danger to life if the requested items are not provided as required by Section 67(1.1)(d) of the EAPWDR.

The panel finds that the ministry's decision that the physician's information did not establish that failure to obtain the requested nutritional items would result in imminent danger to the appellant's life was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances.

Based on the above, the panel finds that the ministry's decision to deny the appellant's MNS request was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances. Therefore, the panel confirms the ministry's decision.