

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 15 August 2014 which denied the appellant's request for a monthly nutritional supplement (MNS) for nutritional items because it had not been established that all the required criteria set out in the Employment and Assistance for Persons with Disabilities Regulation, section 67 (1.1) and Schedule C section 7, have been met. Specifically, the ministry determined that the appellant's medical practitioner had not confirmed that:

- for the purpose of alleviating a symptom referred to in paragraph (b) of section 67(1.1) of the Regulation, the requested items are required as part of a caloric supplementation to a regular dietary intake, as specified in paragraph (c) and Schedule C, section 7(a),
- failure to obtain the items will result in imminent danger to the appellant's life, as required under paragraph (d) of section 67(1.1) of the Regulation.

The ministry's decision reversed the original decision regarding a monthly nutritional supplement for vitamins and minerals, and approved the appellant's request in that respect.

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 appellant did not appear at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

As the ministry approved the appellant's MNS request for vitamins and minerals, the panel will summarize only the evidence related to the request for nutritional items. The evidence before the ministry at reconsideration included the following:

1. The appellant's Application for Monthly Nutritional Supplement dated 26 March 2014. Part C, completed by the appellant's medical practitioner (physician) is dated 20 March 2014. The physician reports that:
 - The appellant is being treated for a chronic, progressive deterioration of health due to Type I diabetes, diabetic neuropathy with chronic diarrhea and incontinence and diabetic gastroparesis.
 - She is being treated for these conditions with dimenhydrinate (panel note = "Gravol"), oral and intramuscular, and Imodin.
 - As a result of the chronic, progressive deterioration of health, the appellant is displaying 2 of the listed symptoms, namely malnutrition and significant muscle mass loss.
 - The appellant's height and weight are 5'3" and 135 lbs.
 - Additional nutritional items required are specified as dimenhydrinate and probiotics, multivitamin supplementation due to ongoing diarrhea, vitamin D and calcium supplementation.
 - How the nutritional items will alleviate the listed symptoms and provide caloric supplementation to the regular diet is described as: "Does have chronic ongoing diarrhea that has been fully investigated → results in wasting."
 - How the nutritional items will prevent imminent danger to life is described as: "↓diarrhea, ↓nausea."
 - The physician provides no commentary as to how the requested nutritional items will prevent imminent danger to the appellant's life.
 - Attached to the Application is a "To whom it may concern" letter from the physician dated 20 March 2014 which reads:

"This patient has ongoing nausea and vomiting secondary to diabetic gastroparesis caused by poor diabetic control. She finds intramuscular Gravol does help her. Better diabetic control will help this condition and she has recently acquired an insulin pump. However, it may take some time (3-4 months) to improve the gastroparesis."
2. The appellant's Request for Reconsideration, dated 25 July 2014.
 - Under Reasons, the appellant writes:

"I need additional calories because I am constantly nauseous and also have chronic diarrhea. It would benefit me to take vitamins and minerals and liquid meals like Ensure, because I am not getting what I need through my regular diet and I am very weak and pale and I'm getting very sick all the time because I am so unhealthy. I need probiotics to help with my gut bacteria to help with the chronic

diarrhea. I have gastroparesis, and do not digest food properly. I need Gravol too, to be able to eat a better amount of food. I need these things because I am so unwell.”

- On a copy of the MNS Application, the physician provided the following Additional Comments:

“Has diabetic gastroparesis and chronic nausea secondary to diabetic autonomic [illegible].” She has again, because of inability to eat regularly and maintain regular meals and nausea, ended up in ICU. Erratic sugar → Imminent danger to her life. Because of the chronic nausea, diarrhea (which would be helped by regular gravel, probiotics, liquid supplements) she has had a 20-30% loss of muscle mass (estimation).”

In her Notice of Appeal dated 08 April 2013 the appellant writes:

“Because my health is rapidly deteriorating, I have neurological degeneration/diabetic neuropathy/diabetic autonomic neuropathy causing chronic diarrhea & nausea/vomiting. I need this money to buy the specific kinds of foods & vitamins & minerals & probiotics, because this will only get worse & chances of me dying by this disease will be very high if I do not maintain my disease the best way I can. My life is in your hands.”

At the hearing, the ministry stood by its position at reconsideration.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant's request for a monthly nutritional supplement (MNS) for nutritional items because it had not been established that all the required criteria set out in the EAPWDR, section 67 (1.1) and Schedule C section 7, had been met. Specifically, the issue is whether the following ministry determinations are reasonably supported by the evidence or are a reasonable application of the legislation in the circumstances of the appellant:

- that a medical practitioner has not confirmed that for the purpose of alleviating a symptom referred to in paragraph (b) of section 67(1.1) of the EAPWDR, the requested items are required as part of a caloric supplementation to a regular dietary intake, as specified in paragraph (c) and Schedule C section 7(a), and
- that a medical practitioner has not confirmed that failure to obtain the items will result in imminent danger to the appellant's life, as required under paragraph (d) of section 67(1.1) of the EAPWDR,

The relevant legislation is from the EAPWDR:

Nutritional supplement

67 (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.

(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).

And from Schedule C of the EAPWDR:

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;

The ministry determined that the appellant's request met the criteria set out in EAPWDR section 67(1.), paragraphs (a) and (b): she is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically Type I diabetes, diabetic neuropathy with chronic diarrhea and incontinence and diabetic gastroparesis and displays 2 or more of the prescribed symptoms: malnutrition and significant muscle mass loss.

The panel will consider each party's position regarding the reasonableness of the ministry's decision under the remaining MNS criteria at issue in this appeal.

Relieving a prescribed symptom and caloric supplementation to a regular dietary intake

The panel notes that paragraph (c) of subsection 67 (1.1) of the EAPWDR reads "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." Substituting the relevant words from section 7(a) of Schedule C provides the following criterion:

The person requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake and specified in the request for the purpose of alleviating a symptom referred to in paragraph (b).

In its reconsideration decision, the ministry addressed the appellant's MNS eligibility using the combined legislative wording above. The panel notes that this criterion, formulated this way, contains two issues: Under the legislation, has a medical practitioner confirmed that

1. the requested items are required for the purpose of alleviating a prescribed symptom? and
2. the requested items are additional nutritional items that are part of a caloric supplementation to a regular dietary intake?

The position of the ministry, as set out in the reconsideration decision, is that when asked to specify the additional nutritional items required, the appellant's physician listed items that are considered under the vitamin/mineral supplements, not under the nutritional items required for caloric supplementation to a regular dietary intake. (Panel note: the ministry was unable to read the word "dimenhydrinate" as written by the physician in Part C, #6 of the MNS Application form.) The ministry notes that the physician writes that it would be beneficial for the appellant to eat smaller, more frequent meals due to chronic diarrhea; this suggests to the ministry a dietary regime rather than caloric supplementation to the regular diet. Further, the physician has not confirmed that the appellant is displaying symptoms of underweight status as the height and weight recorded in the application indicates that her BMI is within the normal range for her reported height and weight. The ministry noted that in the information provided with the appellant's Request for Reconsideration, the physician wrote that the appellant was unable to eat regularly and maintain regular meals due to nausea and

was admitted to the hospital intensive care unit (ICU); however the items the physician recommended were covered under the vitamin/mineral supplements approved by the ministry.

The appellant's position, as the panel understands from her Request for Reconsideration and Notice of Appeal, is that her physician has indicated that she needs regular Gravol, probiotics and liquid supplements, the latter in the form of a proprietary supplement such as Ensure. Taking the latter on a frequent regular basis would help stabilize her dangerously erratic blood sugar and alleviate her muscle mass loss.

Panel finding

In addition to the requested vitamin/mineral supplementation approved by the ministry, the appellant's physician has indicated the need for dimenhydrinate (Gravol), probiotics and, added on the MNS Application form submitted at reconsideration, "liquid supplements." The panel will address each of these components of the request.

Dimenhydrinate (Gravol): This part of the request was not addressed by the ministry, as it found the physicians writing of the word to be illegible. Dimenhydrinate is an over-the-counter medication, not a nutritional item.

Probiotics: These come in many forms, including as capsules or as a powder, with no nutritional value, in which case the panel understands the ministry to consider them falling under the vitamin/mineral category, though strictly speaking they are neither. Alternatively, probiotics are a constituent of some food products such as yogurt. Although the appellant's physician has written that probiotics would help alleviate her diarrhea, she has not specified the form of the probiotics requested or how they would provide caloric supplementation to a regular dietary intake.

Liquid supplements: Though this part of the request was not addressed by the ministry, the panel notes that these were not requested in the original application, but were added at reconsideration. Again, such supplements could take many forms, such as a homemade smoothie, beverages of various kinds, such as soy or almond milk, or as proprietary supplements or meal replacements, such as Ensure. The latter was mentioned by the appellant in her Request for Reconsideration, but not specified by her physician, nor were the quantities required and how that would provide caloric supplementation to a regular dietary intake. The physician in fact states the appellant is unable to eat regular meals.

For these reasons, the panel finds that the ministry was reasonable either in determining that the requested items were not nutritional items or finding that not enough information had been provided to establish that they were required as caloric supplementation to a regular dietary intake.

Failure to obtain the items will result in imminent danger to life.

The position of the ministry is that, although the appellant's physician writes that she was unable to eat regularly and maintain regular meals due to nausea and was admitted to the ICU, the items the physician recommended were under the vitamin/mineral supplements which have been approved. The ministry acknowledges that the physician's dietary recommendations would be beneficial to the appellant's health, but there was no information provided by her medical practitioners to confirm that

failure to obtain nutritional items as part of a caloric supplementation to a regulatory dietary intake will result in imminent danger to her life as required by the legislation. The use of the word imminent in section 67(1.1)(d) refers to the immediacy such as the danger of the appellant's life is likely to happen soon.

The appellant's position, as set out in her Notice of Appeal, is that her health is rapidly deteriorating and without the funding to buy the requested items her health will only get worse and her chances of dying from her disease will be very high. That she was recently admitted to the ICU because of her erratic blood sugar levels demonstrates the need for the requested items to avoid another such life-threatening situation.

Panel findings

The panel has found that the ministry reasonably determined that the requested items – dimenhydrinate, probiotics and unspecified liquid supplements – are either not nutritional items or that not enough information had been provided to establish that they were required as caloric supplementation to a regular dietary intake. The panel therefore finds that the ministry reasonably determined that the information does not establish that failure to obtain an item meeting the nutritional item criteria would result in imminent danger to the appellant's life.

Conclusion

Based on the foregoing, the panel finds that the ministry decision to deny the appellant's request for a monthly nutritional supplement for nutritional items is reasonably based on the evidence. The panel therefore confirms the ministry's decision.