

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) reconsideration decision dated October 10, 2014 in which the Ministry determined that the Appellant is not eligible for the Monthly Nutritional Supplement (MNS) of nutritional items and vitamin/minerals pursuant to section 67(1.1), and Schedule C section 7 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The Ministry found that a medical practitioner has not confirmed that failure to obtain the requested items will result in imminent danger to the Appellant's life as required by subsection 67(1.1)(d) of the EAPWDR. Further, the Ministry was not satisfied that the Appellant requires nutritional items to alleviate a symptom pursuant to subsection 67(1.1)(c), or as part of a caloric supplementation to a regular dietary intake as set out in Schedule C section 7 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation - section 67, and Schedule C section 7

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration consisted of:

1) The Appellant's Request for Reconsideration dated September 30, 2014 with an attached questionnaire (the questionnaire) completed by the Appellant's physician on September 30, 2014 that contained the following information:

- Question 1, the physician wrote "yes" in response to the question: "Does your patient suffer from chronic diarrhea causing malabsorption (*crossed out*, "*weight ok*" *inserted*), muscle mass loss, susceptibility to frequent infections and liver damage as a result of Hepatitis B and C and rheumatoid arthritis?"
- Question 2, the physician wrote "yes" in response to the question: "Does your patient require daily intake of vitamins and minerals including high potency Vitamin B complex, Vitamin D3 2000 IU, calcium and fish oil to prevent or alleviate further health deterioration or reduce the rate of further deterioration due to chronic diarrhea causing malabsorption, muscle mass loss, susceptibility to frequent infections and liver damage as a result of Hepatitis B and C and rheumatoid arthritis?"
- Question 3, the physician wrote "yes" in response to the question: "Is your patient's medical condition at a stage where vitamin and mineral supplementation is required to prevent or alleviate further health deterioration or reduce the rate of further deterioration and prevent imminent (*crossed out*) eventual (*inserted*) danger to life?"

2) A letter from the Ministry to the Appellant dated September 15, 2014, with attached decision summary, denying her request for MNS. In its decision summary, the Ministry noted that the request is for Super B complex, milk thistle, artichoke, fish oil, Vitamin D3 and calcium. In addition, "Greens powder" was requested and the Appellant's physician has provided no information regarding the Appellant's height and weight.

3) An Application for MNS signed by the Appellant on July 11, 2014 and completed by the Appellant's physician who provided the following information:

- Under the heading "Diagnosis (severe medical conditions)", the physician indicated: Hepatitis B and C, rheumatoid arthritis, and osteoarthritis, with the comment: "Elevated liver enzymes on treatment, followed by (a specialist), Rheum, generalized joint involvement".
- In response to the question of whether the Appellant is being treated for a chronic, progressive deterioration of health due to her severe medical conditions, the physician indicated the Appellant is being treated with methotrexate and plaquenil for her rheumatoid arthritis which affects her hands and feet. Her liver enzymes are being monitored regularly.
- In response to the question of whether the Appellant displays two or more of the legislated symptoms under subsection 67 (1.1)(b) of the EAPWDR as a direct result of a chronic, progressive deterioration of health, the physician noted: a) Significant weight loss with the comment: "weight changes with prednisone alternating with weight loss"; and b) Significant deterioration of a vital organ. The physician wrote: "requires plaquenil for rheumatoid arthritis and having (possibly related) vision changes."
- The Appellant's height and weight are left blank.
- Under the heading "Vitamin or Mineral Supplementation", when asked to specify the vitamin or mineral supplements required and expected duration of need, the physician indicated: Super B

complex and fish oil daily; milk thistle daily for liver protection; Vitamin D3 – 2000 IU daily; artichoke; and calcium – 1200 mg daily.

- When asked to describe how the above items will alleviate the specific symptoms identified, the physician wrote: “Vitamins for bone health given bone loss on prednisone and osteoporosis; milk thistle, artichoke for liver support on methotrexate”.
- When asked to describe how the above specified items will prevent imminent danger to the applicant’s life the physician wrote: “It is moderately severe and requires methotrexate and prednisone at times. Vitamins/ supplements offset side effects.”
- Under the heading “Nutritional Items”, in specifying additional nutritional items required, the physician indicated “Greens powder” daily.
- In response to the question of whether 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 wrote: “No”.
- When asked to describe how the nutritional items will alleviate one or more of the legislated symptoms (in subsection 67(1.1)(b) of the EAPWDR) and provide caloric supplementation to the regular diet, the physician stated: “Greens powder daily helps improve energy and allows patient to do swimming/ exercise which supports joints/ maintains strength”.
- When asked to describe how the nutritional items will prevent imminent danger to the Appellant’s life the physician wrote: “As above”.

4) A letter to the Appellant’s physician from a specialist in rheumatology dated July 7, 2014 with attached laboratory results in which the specialist indicated the Appellant’s rheumatoid arthritis or possibly a milder form of lupus-like syndrome is asymptomatic although she feels some joint stiffness returning. Her test results for DNA, ENA, and CCP were negative and her rheumatoid factor is 15. The specialist reported that the Appellant has been well for some time, and discontinued both Hydroxychloroquine and Methotrexate three months ago due to some skin lesions and concerns about her vision. She has remained well ever since, though her current symptoms may be due to arthropathy that is not revealed on physical examination. The Appellant continues to have mild elevation of liver function in keeping with her past history of Hepatitis C and possibly mild fatty liver. The specialist recommends a new trial of Hydroxychloroquine and observation with a three month follow up.

5) The Ministry noted the following in its reconsideration decision:

- The Appellant is a Person with Disabilities in receipt of disability assistance.
- Upon review, the Appellant’s request for MNS meets some of the eligibility criteria in EAPWDR section 67(1.1): The Ministry found that the Appellant is being treated for a chronic, progressive deterioration of health on account of her severe medical conditions as required by EAPWDR subsection 67(1.1)(a). In addition, the Ministry accepted that she displays two or more of the legislated symptoms as set out in subsection 67(1.1)(b): moderate to severe immune suppression and significant deterioration of a vital organ (her liver).

Additional submissions

Subsequent to the reconsideration decision, the Appellant filed a Notice of Appeal dated October 20, 2014 in which she stated that she was previously in receipt of “medical benefits” and her health status is deteriorating. The Appellant brought an advocate to the hearing (her daughter) and verbally

consented to the advocate's participation. The Appellant explained that she previously received disability assistance and MNS. The Ministry stopped all of these benefits in February 2014 when the Appellant received compensation for a motor vehicle accident. This settlement supported her for three or four months, enabling her to buy vitamins and other supplements.

The Appellant explained that the Ministry re-opened her file in June 2014 and reinstated her disability assistance. However, they required a new application for MNS which was refused. The Appellant stated that her health status has not changed between the two MNS applications except for constant fluctuations and deterioration of health. She stated that she no longer has access to vitamins and supplements due to her finances and lower socio-economic status.

The panel admits the Appellant's statements pursuant to section 22(4)(b) of the *Employment and Assistance Act* (EAA) as testimony in support of the information and records that were before the Ministry at the time the decision being appealed was made. The panel finds that the statements corroborate the Appellant's health status and MNS history which the Ministry had information on.

At the hearing, the Appellant submitted several new documents as follows:

1) A letter from her physician with attached "Consultation Request" for a dermatologist dated November 26, 2014, and two pages of laboratory test results with a date range from October 2013 to October 2014:

- In the letter, the physician stated that the Appellant's diagnoses include Hepatitis B and C, osteoporosis, osteoarthritis, rheumatoid arthritis, possible PH TB, asthma, a positive T/M in 2013, and a negative MIBI colonoscopy in 2012. The physician stated that the Appellant would benefit from a high protein, highly nutritious diet, and Vitamin D and calcium are recommended for her osteoporosis. The physician recommends folic acid for when the Appellant is taking Methotrexate, and she prescribed a general multivitamin that contains selenium and other essential minerals. The physician reported that the Appellant is immunocompromised due to her hepatitis and also due to the drugs that treat her rheumatoid arthritis.
- In the Consultation Request, under "Pertinent Clinical Information", the physician wrote: "Hep B and C (name of specialist) Osteoarthritis OA and RA (name of specialist) possible PH TB Asthma positive T/M 2013. Negative MIBI colonoscopy 2012 (name of specialist) ok."
- The laboratory test results indicate fluctuations over time for a large number of measures (none are highlighted), and the notation "white blood normal" is written on the first page.

2) An undated three page submission from the Appellant describing exercises, complementary therapies, laboratory tests, vitamins and minerals, and specific foods for arthritis. The Appellant explained that she copied the information from a book she saw at an arthritis support society.

3) Two Government of Canada health information print outs containing general information on Hepatitis B and Hepatitis C.

The Ministry had no objection to admitting these documents into evidence. The panel admits the physician's letter, the laboratory test results, and the Appellant's three page submission pursuant to section 22(4)(b) of the EAA as submissions in support of the information and records that were before the Ministry at the time the decision being appealed was made. The panel finds that the information in these documents substantiates the Appellant's medical conditions that were described in the

Request for Reconsideration (Hepatitis B and C and Arthritis). The letter and Appellant's submission also describe vitamins and nutritional items that the Appellant's physician recommends per the MNS application and questionnaire that the Ministry had at the time of the reconsideration.

With regard to the Government of Canada health information, the panel notes that these documents contain general information only regarding Hepatitis B and C, and do not specifically address the Appellant's health or reference any vitamins and minerals or nutritional supplements. The panel finds that these documents are consistent with the health information that was before the Ministry at reconsideration and admits them under section 22(4)(b) of the EAA. However, the panel gives them little weight due to their generalized content and lack of information regarding nutritional supplements.

At the hearing, the Ministry relied on its reconsideration decision and did not submit any further information. In response to a question from the Appellant, the Ministry stated that it does not have a list of supporting documents that would be considered sufficient for MNS eligibility. It makes its decision on the basis of the information in the Application for MNS and any additional documents or submissions provided by the client.

In response to a question from the panel, the Ministry stated that it does not refer back to any previous applications for MNS. When it reinstated the Appellant's disability assistance, a new application for MNS was required in order to provide current information regarding the Appellant's nutritional requirements.

In response to another question from the panel, the Ministry considered whether EAPWDR subsection 67(1.1)(d) contains two parts: "will result in" and "imminent danger to the person's life". However, in finding that the criteria set out in clause (d) were not met, the Ministry confirmed that it focused on the word "imminent" which implies an immediate event and the Ministry was not satisfied that there was evidence of immediate danger to the Appellant's life if she did not receive the prescribed vitamins and nutritional items.

The Panel makes the following finding of fact:

A medical practitioner has prescribed vitamins and minerals (Vitamins B, D3, and calcium), and nutritional supplements (fish oil, milk thistle and artichoke) for bone health and liver support, and to offset the side effects of medications. The medical practitioner also prescribed "Greens powder" to improve energy and facilitate participation in exercise.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's determination that the Appellant is not eligible for the MNS of nutritional items and vitamin/minerals pursuant to section 67(1.1), and Schedule C section 7 of the EAPWDR was reasonably supported by the evidence, or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

The relevant sections of the legislation are as follows:

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.

(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).

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.

Appellant's position

In her Notice of Appeal, the Appellant argued that she really needs the vitamin and mineral supplements because her health status is deteriorating. In her Request for Reconsideration, she submitted that her physician's supporting letter from September 30, 2014 (the questionnaire) shows that she meets the eligibility requirements for vitamin and mineral supplements per section 67 of the EAPWDR.

At the hearing, the Appellant argued that she needs nutritious food in order to live and to manage her health conditions. She no longer has access to the supplements due to her finances; and not having access to MNS is a barrier to her health. When the Ministry reinstated her disability assistance, she was not fully familiar with how to provide documents for her new MNS application. She submitted that it was difficult to understand the logistics of all the paperwork.

The Appellant argued that she needs MNS to assist her in maintaining a minimum balance and quality of life because she lives in poverty and the stress increases her symptoms. Once she pays for food, laundry and other expenses, there is nothing left in her cheque for vitamin and mineral supplements.

Ministry's position

The Ministry argued that the Appellant's request for MNS, specifically vitamins and minerals, and nutritional items, does not meet all of the criteria in EAPWDR section 67 and the Appellant is therefore not eligible for the items specified by her physician. The Ministry noted that MNS is provided to persons in receipt of disability assistance who have a severe medical condition causing a chronic, progressive deterioration of health "with *symptoms of wasting*". MNS is intended to prevent imminent danger to the person's life by providing essential, specified items to supplement regular nutritional needs. The Ministry argued that the following criteria were not met:

EAPWDR subsection 67(1.1)(d): Failure to obtain the items will result in imminent danger to life

Vitamin/mineral supplementation

The Ministry argued that the physician's comment that "vitamins/supplements offset side effects" of the Appellant's medications does not establish that the Appellant requires vitamin/mineral supplementation to prevent imminent danger to her life. The Ministry further argued that the physician's information in the questionnaire does not confirm the "imminent danger" criteria because the physician crossed out the word "imminent" and replaced it with the word "eventual" when affirming that the Appellant's medical condition is at a stage where vitamin and mineral supplementation is required to prevent imminent danger to life. The Ministry argued that the word "imminent" does not mean "eventual" because "Imminent" denotes immediacy and means that the threatened loss of life is likely to occur very soon.

Nutritional items

With regard to the "Greens powder" specified by the Appellant's physician, the Ministry argued that the physician's comment: "helps improve energy and allows patient to do swimming/exercise which supports joints/ maintains strength" does not confirm that failure to obtain this item will result in imminent danger to the Appellant's life. The Ministry further submitted that the physician's subsequent information in the questionnaire refers only to vitamins and minerals and does not address a need for nutritional items.

Panel's decision

In order for a recipient of disability assistance to be eligible for MNS, specifically vitamins and minerals and nutritional items under section 67 of the EAPWDR, all of the criteria in section 67(1.1) as well as additional criteria in Schedule C section 7 must be satisfied. With regard to section 67(1.1), the Ministry determined that the criteria in subsection 67(1.1)(d) were not met: failure to obtain the requested items (the specified vitamins and minerals, and "Greens powder") will result in imminent danger to the person's life.

The Ministry explained in its reconsideration decision that imminent danger "denotes a degree of immediacy and means the threatened loss of life is more likely than not going to occur very soon" if the Appellant does not receive the supplements that her physician specified. At the hearing, the Ministry confirmed that it focused on the immediacy of any danger to the Appellant. The panel notes that the proper approach to statutory interpretation is to read the words in their ordinary sense in harmony with the objective of the legislation. The dictionary definition of "imminent" is "impending/ soon to happen", while the purpose of section 67(1.1) of the EAPWDR is to provide MNS only in exceptional circumstances where there is an immediate need for the supplement; failure to provide it will clearly result in life-threatening consequences. The panel finds that the Ministry was reasonable in interpreting the word "imminent" to denote a degree of immediacy in support of the legislative objective to provide the supplement in cases where the applicant requires it to prevent a serious threat to life.

With regard to the Ministry's finding that there was no evidence of imminent danger to the Appellant's life if vitamins and minerals and nutritional items were not obtained, the physician's information in the MNS application was that specific vitamins and minerals, and supplements of fish oil, milk thistle and artichoke are required to offset the side effects of the Appellant's medications. Further, "Greens powder" helps improve energy and allows the Appellant to participate in exercises that support her joints and maintain strength. The Ministry noted that the physician did not indicate any life-threatening symptoms such as significant weight loss or wasting that would support there being imminent danger to the Appellant's life if she did not receive the specified items.

With regard to the Ministry's argument that the physician's information in the questionnaire also does not confirm that failure to obtain the items will result in imminent danger to the Appellant's life, the panel notes that the physician affirmed only (by answering "yes") that the vitamins and minerals will prevent "eventual" danger to life. The physician did not elaborate on any imminent danger to life that will result if the Appellant does not obtain the specified supplements. The panel finds that the Ministry reasonably determined that the information in the questionnaire does not support finding that failure to obtain the specified items will result in imminent danger to life pursuant to EAPWDR subsection 67(1.1)(d).

With regard to the new information provided by the Appellant at the hearing, the panel assigns a greater weight to the November 2014 letter from the Appellant's physician because EAPWDR section 67(1.1) requires the eligibility criteria for MNS (including "imminent danger" in subsection 67(1.1)(d)) to be confirmed by a medical practitioner. While the laboratory test results, and Appellant's submission provide background information on her medical conditions and the supplements requested, they do not contain any comments from the Appellant's physician regarding imminent danger to her life that will result from failing to obtain the vitamins and other items.

The panel finds that the physician's November 2014 letter does not confirm that failure to obtain vitamins and minerals and nutritional items will result in imminent danger to the Appellant's life. In the letter, the physician lists vitamins and mineral supplements that she "recommends" for the Appellant's various medical conditions and for the Appellant to take while she is taking her arthritis medication. The physician provided no information regarding any imminent danger to life that will result from not taking the specified vitamins and minerals. Given the evidence that the Ministry had at the time of the reconsideration, and the new information from the physician, the panel finds that the Ministry reasonably determined that the "imminent danger" criteria in subsection 67(1.1)(d) of the EAPWDR were not met.

EAPWDR Schedule C section 7 and section 67(1.1)(c): Nutritional items that are required to alleviate a symptom as part of a caloric supplementation to a regular dietary intake

The Ministry argued that the additional requirement in Schedule C section 7 was not met. With regard to the nutritional item "Greens powder", the Ministry noted that the physician did not confirm that the Appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through her regular dietary intake, and therefore needs the item for caloric supplementation. The Ministry found that there is no evidence from the Appellant's physician to indicate that the Appellant is displaying symptoms of underweight status, significant weight loss, or significant muscle mass loss (as listed in subsection 67(1.1)(b) of the EAPWDR) which would demonstrate that she needs "Greens powder" to alleviate one of these symptoms or as part of a

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caloric supplementation to her regular dietary intake. The Ministry argued that the physician's comment: "Greens powder daily helps improve energy and allows patient to do swimming/exercise" does not confirm that the Appellant needs nutritional items to alleviate a symptom of her chronic, progressive deterioration of health.

The Ministry noted that the Appellant's height and weight are not recorded in her application for MNS, and argued that it therefore cannot be determined that the Appellant has symptoms of wasting which would indicate a need for caloric supplementation. The Ministry argued that the information the physician provided in the questionnaire does not establish that the Appellant requires *additional nutritional items* that are part of a caloric supplementation to her regular dietary intake.

Panel's decision

The panel notes that the specified nutritional items under Schedule C section 7 must be part of a caloric supplementation to a regular dietary intake, and that "caloric supplementation" indicates a need for additional calories. The Appellant's request for nutritional items is therefore a request for extra calories beyond those provided by her regular diet.

The panel finds that the Ministry reasonably determined that there was no evidence to indicate that additional nutritional items are required as part of a caloric supplementation to a regular dietary intake or to alleviate a symptom described in EAPWDR subsection 67(1.1)(c). The only symptoms that were accepted by the Ministry were significant deterioration of a vital organ and moderate to severe immune suppression. The physician stated in the MNS application that "Greens powder" helps improve energy and allows the Appellant to participate in exercise such as swimming which in turn supports joints and maintains strength. The physician's rationale does not address the alleviation of a symptom and therefore the Ministry reasonably determined that subsection 67(1.1)(c) was not met.

Regarding the symptom of significant weight loss which would support a need for additional calories, the Ministry noted that there is no information from the Appellant's physician specifying the Appellant's height and weight. In the MNS application, the physician also did not indicate whether there was weight loss over a specified period of time or how much weight was lost. The panel notes that the physician's only reference to the Appellant's weight was in response to the question of whether the Appellant had significant weight loss. The physician wrote "weight changes with prednisone alternating with weight loss". This is not evidence that the Appellant has experienced significant weight loss over a specified time period and is unable to obtain sufficient calories from her regular diet. Moreover, the physician did not explain how "Greens powder" would provide the additional calories; that is, caloric supplementation to a regular dietary intake.

Similarly, the laboratory test results do not highlight any measures that indicate a need for caloric supplementation and the physician did not explain how any of the test results pertain to a need for caloric supplementation to a regular dietary intake. With regard to an inability to absorb sufficient calories due to her a medical condition, the physician's evidence was to answer "No" to the question of whether 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 recommended the "Greens powder" as an additional nutritional item but did not indicate how the Appellant would use it as part of a caloric supplementation to her regular dietary intake.

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With regard to the information in the questionnaire, and as noted by the Ministry, there were no questions or responses that addressed the need for caloric supplementation to a regular dietary intake. The Ministry noted that there was no evidence in any of the documentation of the Appellant presenting with underweight status or symptoms of wasting that would indicate a need for caloric supplementation.

With regard to the new medical evidence (the September 2014 physician's letter), the panel finds that the information in this letter does not confirm any need for caloric supplementation. In this letter, the physician reported that the Appellant is "immuno-compromised" due to her Hepatitis and the medications that treat her rheumatoid arthritis, but there is no information regarding a need for additional nutritional items as a caloric supplement. The panel therefore finds that the Ministry reasonably determined that the criteria in Schedule C section 7 of the EAPWDR were not met.

Conclusion

The Panel confirms the Ministry's reconsideration decision as being reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the Appellant.