

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of October 29, 2014 wherein the ministry decided that the appellant was not eligible for a monthly nutritional supplement (“MNS”) – either for nutritional items for caloric supplementation as described in s. 7(a) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) or for vitamins and minerals as described in s. 7(c) of Schedule C.

The basis for the decision was that the ministry concluded that the appellant did not satisfy eligibility criteria set out in section 67(1.1) and Schedule C, section 7 of the EAPWDR. In particular, the ministry found that the appellant’s physician had not confirmed:

- That the appellant displayed two or more of the symptoms prescribed by EAPWDR section 67(1.1)(b);
- That the appellant required the MNS for the purpose of alleviating one or more of the prescribed symptoms as required by EAPWDR section 67(1.1)(c);
- That failure to obtain the MNS will result in imminent danger to the appellant’s life as required by EAPWDR section 67(1.1)(d); or
- That the appellant required caloric supplementation to a regular dietary intake as specified by EAPWDR Schedule C section 7(a).

PART D – Relevant Legislation

EAPWDR Section 67 [*nutritional supplement*]

EAPWDR Schedule C, section 7 [*monthly nutritional supplement*]

PART E – Summary of Facts

The appellant did not attend the hearing. Having confirmed that the appellant was notified, the panel proceeded with the hearing in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at the time of reconsideration included the following:

- An Application for Monthly Nutritional Supplement form signed by the appellant's physician on September 19, 2013 (the "application form").
- Two letters sent to the ministry by the appellant, dated February 25, 2014 and September 28, 2014 respectively.
- A prescription note from a pharmacy with prices indicated for pads, gloves, briefs, multivitamins, vitamin B6, and Metamucil fibre.

The appellant is a person with disabilities in receipt of disability assistance.

In the application form the appellant's physician diagnosed her with depression, epilepsy, and constipation (alternating with diarrhea). The physician indicated that the appellant demonstrates one of the symptoms prescribed in EAPWDR section 67(1.1)(b): significant neurological degeneration (commenting "epilepsy, memory loss"). He reported the appellant is 5'1" tall and weighs 140 pounds.

In section 5 of the application form, which deals with vitamin and mineral supplementation, the physician identified multi-vitamins and Metamucil as being required. He did not respond to questions about the expected duration of need, how the items will alleviate the specific symptoms identified, or how the items will prevent imminent danger to the appellant's life.

In section 6 of the application form, which deals with nutritional items for caloric supplementation, the physician identified multi-vitamins as being required. He did not respond to questions about the expected duration of need or about whether the appellant has a medical condition that results in the inability to absorb sufficient calories. When asked to describe how the requested nutritional items will alleviate one or more of the described symptoms the physician responded "Metamucil fibre" and "multivitamins". When asked to describe how the nutritional items will prevent imminent danger to the appellant's life, the physician responded "It will improve her nutritional status + will help to relieve constipation."

In her letter of February 25, 2014 the appellant wrote that:

- Because of her bowel condition it is hard to wait for long periods of time and she often can't even leave her home.
- She had attached a list of items that she was requesting, including briefs, pads and gloves.
- She is required to drink 6 bottles of water a day.
- These items are costly and she has not been able to purchase them.

In her letter of September 28, 2014 the appellant wrote that:

- Her muscle and leg pain have been severe due to medication for high blood pressure.
- Her medication reduces her potassium levels, so she has to be on a high fibre diet to compensate.
- She needs more milk and fruit (two bananas a day and orange juice.)

- It has been suggested that she take vitamins for her heart and nerves, and potassium for leg pain.
- Her memory loss and leg pain are severe.
- At times she can't walk and she gets extremely depressed.

On appeal the ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which held that the appellant is not eligible for a MNS, is reasonably supported by the evidence or whether it is a reasonable application of the applicable enactment in the circumstances of the appellant.

The applicable legislation is as follows:

EAPWDR

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 ...

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,

...

(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

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.

* * *

The appellant's position is that she satisfies the legislative criteria for MNS, and that she does not have enough money to pay for the nutritional items she needs unless she obtains the MNS. In her Notice of Appeal she argued that:

- She requires supplements for her bowel condition and for fibre.
- She can't take other medications because of side effects;
- Her physical and mental condition should be the ministry's priority so the appellant doesn't become hospitalized due to complications.
- It is such a small amount of money.

The ministry's position, as set out in its reconsideration decision, is that the appellant is not eligible for MNS as she has not satisfied the legislated criteria in EAPWDR sections 67(1.1)(b), (c) and (d) and Schedule C, subsection 7(a). The ministry argued that the physician only identified one of the prescribed symptoms rather than two as required by section 67(1.1)(b). The ministry also argued that there was insufficient evidence to establish that the requested vitamins/minerals and nutritional items will alleviate the identified symptoms and that failure to obtain them will result in imminent danger to the appellant's life. With respect to nutritional items, the ministry also argued that the appellant's body mass index indicates that she is slightly obese, so it couldn't be determined that she is in need of caloric supplementation.

Panel Decision

Section 7 of EAPWDR Schedule C provides for two kinds of MNS:

- Up to \$165 per month for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, and
- Up to \$40 per month for vitamins and minerals.

In order for a person to be eligible for either or both MNS, section 67(1.1) of the EAPWDR requires that a medical practitioner or nurse practitioner confirms the information required in each of sections 67(1.1)(a) through (d). In other words, this information must be professionally verified – it is not enough for an applicant to self-report. In addition, to be eligible for nutritional items, the evidence has to demonstrate that the person requires caloric supplementation to a regular dietary intake.

In the appellant's case, the ministry determined that the appellant satisfied the criterion in section

67(1.1)(a) *[appellant being treated by a practitioner for a chronic, progressive deterioration of health]*.

However, with respect to section 67(1.1)(b), the physician identified the appellant as displaying only one of the prescribed symptoms – significant neurological degeneration – which he linked to epilepsy and memory loss. This paragraph requires the appellant’s physician to confirm that she displays at least two of the prescribed symptoms in order to be eligible for either of the MNS. There is no evidence before the panel to establish that the appellant displays any of the other prescribed symptoms. Accordingly, the panel finds that the ministry’s decision with respect to section 67(1.1)(b) is reasonably supported by the evidence.

Regarding section 67(1.1)(c), which specifies that the requested MNS must be for the purpose of alleviating a prescribed symptom, the physician did not describe how any of the requested items would alleviate a prescribed symptom. His response “Metamucil fiber” and “multivitamins” - which he provided in the section of the application form dealing with nutritional items for caloric supplementation – simply re-identifies the requested items without describing how they would alleviate one or more symptoms. The panel finds that the ministry reasonably determined that this legislative criterion was not addressed for either MNS.

Section 67(1.1)(d) requires the appellant’s physician to confirm that failure to obtain the requested MNS will result in imminent danger to her life. The physician did not respond to the question in the application form dealing with this criterion for the vitamins and minerals MNS. His response regarding the nutritional items referred to improvement of nutritional status and relief of constipation. The physician has provided no other information to confirm that the appellant’s life would be in imminent danger without either MNS. The panel finds that the ministry reasonably determined that this criterion was not satisfied for either MNS.

Finally, with respect to the MNS of nutritional items, section 7(a) of Schedule C requires that the nutritional items must be necessary for caloric supplementation. This refers to the quantity of calories as opposed to the “quality” or source of calories. The height and weight information provided by the physician for the purpose of determining the appellant’s body mass index indicates that the appellant is slightly overweight. While the appellant indicated that she could use additional fruit in her diet, there is no evidence that she suffers from significant weight loss or significant muscle mass loss, and there is no indication that she requires extra calories in addition to a regular dietary intake. Accordingly, the panel finds that the ministry reasonably determined that this criterion for section 7(a) of Schedule C of the EAPWDR is not satisfied.

Conclusion

The panel is sympathetic to the appellant’s circumstances. However, based on the evidence and for the above-noted reasons, the panel finds that the ministry’s reconsideration decision to deny the appellant’s request for MNS is a reasonable application of the legislation in the appellant’s circumstances, and the panel accordingly confirms the ministry’s decision.