

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated October 21, 2014 in which the ministry denied the appellant's request for a monthly nutritional supplement (MNS) for additional nutritional items and vitamins/minerals. In its decision, the ministry determined the appellant did not meet the qualifying criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67(1) and Schedule C section 7.

PART D -- Relevant Legislation

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

PART E – Summary of Facts

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

- An Application for Monthly Nutritional Supplement dated June 23, 2014, in the name of the appellant completed by her physician. The physician lists PTSD and insomnia as her diagnoses and writes she is going through counseling, seeing a sleep specialist, and that she feels she would benefit from vitamins and minerals. The physician indicates she displays significant neurological degeneration as a symptom. The physician writes that vitamins and minerals will prevent further deterioration in her psychological well being, should improve her sleep and alleviate some symptoms of PTSD.
- An updated Application for Monthly Nutritional Supplement dated October 7, 2014, in the name of the appellant completed by her physician. The physician used the same application that he completed on June 23; however, he provided additional information about the appellant's condition. He added the appellant displays malnutrition as an additional symptom of her condition. He notes that the malnutrition results in her losing weight, constipation, and deformed fingernails. The physician added in the Nutritional Items section that the appellant needs Boost, to maintain weight and that she needs to eat a higher fiber diet. He wrote that the vitamins would help with constipation. In response to the question of how will the nutritional items prevent imminent danger to the appellant's life, the physician wrote, they will prevent further weight loss and malnutrition.
- A request for reconsideration application form dated October 7, 2014. The appellant writes she has been told by several doctors to take vitamins, however, on her current disability assistance she cannot afford to buy enough food or vitamins. She writes she has an irritable bowel and her fingernails grow under if she doesn't eat fresh meats and vegetables.

In her notice of appeal dated October 29, 2014 the appellant writes she doesn't have enough money for proper food and vitamins and, as a result, she has been losing weight. She gets constipated when she doesn't eat properly, her nails grow under, and her life is in danger without proper nutrition.

The appellant was not in attendance at the hearing. After confirming she had been notified of the hearing location, date, and time, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

At the hearing the ministry reviewed the reasons for denial in the reconsideration decision and told the panel that although the physician had added malnutrition as a second symptom to the revised version of the application form, the physician failed to provide sufficient supporting detail for the ministry to consider it. The physician writes that the appellant has experienced weight loss, constipation, and deformed fingernails as a result of the malnutrition. The ministry stated in order for it to consider malnutrition as a symptom it requires more specific details about the applicant's weight, BMI, and rate of weight loss, in order to determine the severity of the her condition.

The ministry added that the physician details that the appellant requires a high fiber diet to alleviate her symptoms, however, he does not explain the connection of how the vitamins/mineral supplement will assist with her constipation and weight loss. The ministry told the panel that there are other diet allowances available to applicants, including funding for those requiring a high-fiber diet, however, the person would need to apply for this funding and it would be considered. The ministry suggested that the appellant's needs might be met by a different ministry option.

The ministry concluded that the appellant did not provide sufficient information to establish that as a result of her chronic condition, she displays two or more on the symptoms as listed in EAPWDR 67 (1.1)(b). Furthermore, the ministry told the panel that the appellant has not provided evidence that failure to obtain the requested items will result in imminent danger to her life.

PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the ministry's decision to deny the appellant's application for Monthly Nutritional Supplements including nutritional items and vitamins/minerals. The ministry determined that the appellant's application did not meet the criteria set out in the applicable legislation. The ministry found that the appellant did not meet the criteria of having two or more symptoms, that the additional nutritional items are part of a caloric supplementation to a regular dietary intake, nor did she provide evidence demonstrating the requested MNS are required to alleviate a symptom or that failure to receive the supplement poses an imminent threat to her life.

The applicable legislation is the EAPWDR section 67 and the EAPWDR Schedule C section 7:

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).

(3) The minister may provide a nutritional supplement for a period of 3 calendar months to or for a family unit if the supplement is provided to or for a recipient of disability assistance or a dependent child of a recipient of disability assistance if

(a) the recipient or dependent child is not receiving a supplement under subsection (1) of this section or section 2 (3) of Schedule C, and

(b) a medical practitioner or nurse practitioner confirms in writing that the recipient or dependent child has an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from

(i) surgery,

(ii) a severe injury,

(iii) a serious disease, or

(iv) side effects of medical treatment.

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.

Arguments of the Parties

The argument of the appellant is that she requires a vitamin/mineral supplement and extra money to buy nutritious food in order for her to maintain her physical and mental health. The appellant argues that without these items her health is in imminent danger.

The position of the ministry is that the appellant did not provide sufficient information to establish that, as a result of her chronic condition, she displays two or more on the symptoms as listed in EAPWDR 67 (1.1)(b) or that the requested additional nutritional items are part of a caloric supplementation to a regular dietary intake. Furthermore, the ministry holds that the appellant has not provided evidence the requested items are required to alleviate a symptom or that failure to obtain the requested items will result in imminent danger to her life.

Panel Decision and Reasons

The applicant applied for both a vitamin/mineral supplement (multivitamin, calcium, and magnesium supplement) and Nutritional Items (Boost and a high-fiber diet). As these two requests have different criteria, I will deal with them separately. Both requests are subject to a person meeting the criteria set out in EAPWDR 67 (1) and (1.1). The ministry has found that the appellant has met the criteria of EAPWDR 67(1) as well as EAPWDR 67(1.1)(a) so the panel will not address these. The panel will review the reasonableness of the ministry's decision to find the appellant failed to meet the three criteria EAPWDR 67(1.1)(b), (c), and (d) and EAPWDR Schedule C section 7.

Two or more symptoms

The EAPWDR 67(1.1)(b) requires: as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms. Malnutrition, underweight status, significant weight loss, significant muscle mass loss, significant neurological degeneration, significant deterioration of a vital organ, moderate to severe immune suppression.

First the panel considered the reasonableness of the ministry's determination that the appellant has not met EAPWDR 67(1.1) (b). The ministry writes in the reconsideration decision the although the appellant's application lists both malnutrition and significant neurological loss as symptoms, the physician has not provided details about how, or how severely, the appellant is impacted by the malnutrition. The physician has not provided her height and weight, her BMI, her underweight status, information on how much weight was lost, and over what period of time she has lost weight. The panel considered the lack of detail regarding the physician's indication that the appellant has suffered weight loss as a result of her condition. The panel noted that the ministry application form has a section for the physician to include the applicant's height and weight explicitly for the calculation of BMI, however, on this application the section was left blank. The physician does write that the appellant requires Boost and a high fiber diet however no further detail of her weight loss was

provided. The panel concludes that without the details of her weight loss the ministry could not thoroughly assess the impact of this symptom. The panel finds that the ministry was reasonable to find that the appellant has not met the criteria of displaying two or more symptoms as a result of her chronic condition.

Vitamin/mineral Supplements

The Ministry found that the appellant did not meet the following criteria for Monthly Nutritional Supplement for vitamins/minerals in the EAPWDR 67(1.1):

- 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.

The panel considered the reasonableness of the ministry's determination that the appellant has not met EAPWDR 67(1.1)(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. The evidence regarding the alleviation of symptoms before the ministry at the time of the reconsideration consisted of the physician's statements that the vitamins/minerals:

1. Should improve sleep
2. Alleviate some symptoms of PTSD
3. Prevent further deterioration in her psychological well being.

The panel considered the wording of the legislation that; the person requires one or more of the items set out in section 7 of Schedule C for "the purpose of alleviating a symptom referred to in paragraph (b)." The panel finds that the physician is clear that the vitamins/minerals will alleviate some symptoms related to her condition, as summarized in the bullet points above. The panel was not provided any evidence on how the ministry determined that the physician's assessment is incorrect. The panel finds that there is no conflicting or opposing evidence relating to of the effect these items will have on the appellant. The panel finds that the ministry was unreasonable to find that the vitamins/minerals would not alleviate her symptoms.

The panel considered the reasonableness of the ministry's determination that the appellant has not met the criteria that failure to obtain the requested items would result in imminent danger to her life. In the application form in the section asking, "How will this item prevent imminent danger to the appellant's life" the physician writes the vitamins/minerals will prevent further deterioration in her psychological well being. The physician does not elaborate on the possible outcome of her psychological condition nor the rate at which is deteriorating. Without this information the ministry could not determine if the appellant is under the threat of imminent danger to her life. The panel finds the ministry was reasonable to determine the appellant had not established that failure to obtain the vitamins/minerals will result in imminent danger to her life.

Nutritional Items

The Ministry found that the appellant did not meet the following criteria for Monthly Nutritional Supplement for vitamins/minerals in the EAPWDR 67(1.1):

- 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.

And EAPWDR Schedule C section 7(a)

- a. for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 per month.

The panel considered the reasonableness of the ministry's determination that the appellant has not met EAPWDR 67(1.1)(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. The evidence before the ministry at the time of the reconsideration consisted of the physician's statements regarding the appellant's nutritional needs. This included the physician's statements that:

1. The appellant requires Boost and a high-fiber diet
2. This diet will prevent further weight loss and malnutrition
3. This diet will help with constipation

As described previously in this decision, the panel has found the ministry was reasonable to determine the details regarding the symptom of malnutrition were not sufficiently supported. The ministry determined that there was insufficient evidence to determine whether the requested nutritional items, Boost and high fiber diet, would alleviate her malnutrition. The panel finds the ministry was reasonable to determine the appellant has not met EAPWDR 67(1.1)(c).

The panel considered the reasonableness of the ministry's determination that the appellant has not met EAPWDR Schedule C section 7(a), for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 per month. The panel notes the lack of detail regarding the appellant's malnutrition as discussed previously in this decision. The panel notes that the physician did not indicate in the application that the appellant's condition results in an inability for her to absorb sufficient calories to satisfy her daily requirements through a regular dietary intake. The ministry writes that there is no evidence that she requires additional calories to alleviate her malnutrition and constipation, but rather, she needs a high-fiber diet as noted by her physician. The panel finds the ministry was reasonable to determine the appellant has not met EAPWDR Schedule C section 7(a).

The panel considered the reasonableness of the ministry's determination that the appellant has not met the criteria that failure to obtain the requested items would result in imminent danger to her life. In the application form in the section asking, "How will this item prevent imminent danger to the appellant's life" the physician writes the vitamins/minerals will prevent further deterioration in her psychological well being. The physician does not elaborate on the possible outcome of her psychological condition nor the rate at which is deteriorating. Without this information the ministry could not determine if the appellant is under the threat of imminent danger to her life. Regarding how the appellant's need for nutritional items and how they will prevent imminent danger to the appellant's life the physician responds that the items will "prevent further weight loss and malnutrition. The physician does not provide any details about the appellant's weight loss, as discussed above in the reasons for EAPWDR 67(1.1)(b), the ministry was reasonable that the appellant had not established that failure to obtain these nutritional items will result in imminent danger to her life.

The panel finds that the ministry's decision was reasonably supported by the evidence and therefore confirms the ministry's decision.