

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation ("Ministry") October 2, 2014 reconsideration decision denying the Appellant a monthly nutritional supplement for nutritional items because, based on the information provided, it was not satisfied that a medical practitioner confirmed that the Appellant met the requirements in section 67(1.1) and Schedule C section 7 of the Employment and Assistance for Persons with Disabilities Regulation, and specifically that:

- The Appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake; and,
- Failure to obtain the items required would result in imminent danger to her life.

The Ministry did approve the Appellant's request for a monthly nutritional supplement for vitamin and mineral supplements.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67(1.1) and Schedule C Section 7.

PART E – Summary of Facts

For its reconsideration decision, the Ministry had the following evidence:

1. Information from its records that the Appellant receives disability assistance as a Person with Disabilities (“PWD”) designation, as well as, a \$40 diet supplement for high protein.
2. Applicant’s Application for a monthly nutritional supplement for nutritional items submitted on the Ministry form and completed by her doctor in July 2014 with the following information:
 - Diagnoses: hypoglycemia (“low blood sugar”), osteoporosis, epilepsy and several severe neurological disorders.
 - Regarding treatment for a chronic progressive deterioration of health: Appellant has a very complex medical diagnosis with several severe illnesses. It is especially important that she eats enough protein. She has very weak muscles and multiple neurological abnormalities.
 - As a direct result of the chronic, progressive deterioration of health the Appellant displays the following symptoms: significant muscle mass loss and significant neurological degeneration.
 - Height 160cm and weight 60kg.
 - Nutritional items to alleviate one or more of the identified symptoms, are medically essential and will provide caloric supplementation to a regular dietary intake and are required to prevent imminent danger to the Appellant’s life: regulate protein intake; regular supplements.
 - As to 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: “No”.
 - Description of how nutritional items required will alleviate one or more of the specified symptoms: “N/A” [not applicable].
 - How nutritional items requested will prevent imminent danger to the Appellant’s life: prevent worsening of already frail neurological and orthopedic problems.
3. Appellant’s October 3, 2014 request for reconsideration and letter dated October 2, 2014 stating:
 - Severe muscle loss has occurred since 2001-2010 and will continue to occur due to myasthenia gravis, a neuromuscular auto immune disease which is chronic, possibly progressive and leads to a deterioration of health.
 - Her doctor indicated: multiple medical co-morbidities – epilepsy, Myelomeningoceles, Spina Bifida Diasternatomyelia, Arnold Chiarl Malformation, Asthma, Thyroid dysfunction and Mentere’s disease.
 - She has multiple symptoms as a direct result of chronic, progressive conditions – daily experiences weakness, fatigue, chronic pain, nausea, memory loss and retention, muscle weakness, double vision, difficulty chewing and swallowing at times (must be mindful).
 - She has struggled daily to maintain weight; has had to eat a lot of carbohydrates as these are less expensive, but not always good for her health; being a normal weight does not equal being nutritionally healthy; has attempted to eat as healthy as she can by making her own soups, etc.
 - She is asking for the monthly nutritional supplement to help cover the cost of her nutritional needs to prevent further deterioration and to maintain her health; that is, \$165 due to the autoimmune and neurological implications of this disease she needs to enrich her diet by eating more fruits and vegetables, quality protein and not possible on her current PWD income; and, \$40 for extra vitamins/minerals.
 - She referred to an attached brochure describing nutrition and myasthenia gravis.
4. Letter dated September 22, 2014 from the same doctor stating that:
 - The Appellant has been her patient since 2009.

- The doctor's motivation and support for the Appellant because the Appellant has a significant medical history including multiple medical co-morbidities; has several very severe neurologic conditions including Epilepsy, Myelomeningocele, Spina Bifida, Diastematomyelia and Arnold Chiari Malformation; also has significant systemic disease including Myasthenia Gravis, Asthma, Thyroid Dysfunction and significant Menier's Disease.
- The Appellant lives with great disability due to her multiple diseases; battles with musculoskeletal weakness; has muscular wasting, especially of the leg muscle and has to use bilateral crutches, bilateral custom made shoes with high lifts and an ankle foot orthosis; has had over 30 surgeries on one knee only and is due to have another ankle surgery later this year; has significant muscle weakness due to the deterioration of her muscles and the Myasthenia Gravis superimposed on this predisposes her for further muscle wasting and injury.
- The Appellant lives on a disability grant and takes multiple nutritional supplements to augment her food intake; she cannot afford to pay for all these supplements on her current income; has a chronic iron deficiency for which she needs to take iron; due to her osteopenia several of these supplements including Vitamin D and Calcium are necessary; due to her peripheral neuropathy as well as epilepsy controlled by Gabapentin, Tegretol, she requires Folic Acid.

In her notice of appeal dated October 27, 2014, the Appellant wrote that it saddens her to know that she struggles each and every day just to try and stay as healthy as she can with her various diseases and disorders just to find out she is not eligible for the nutrition subsidy because she does not have a small parameter of diseases set out by the government. Her diseases are just as real and debilitating as ones set out in the guide lines. The Appellant stated that to judge her as not being under weight is totally without merit because from one day to the next she does not know how she will do. She wrote that she could start losing weight if her illness has a flare up.

At the hearing, the Appellant submitted a medical history summary with a list of various medical conditions and the specialists who treat her. She also described all of the medical conditions with which she stated she struggles each and every day; the same conditions described by the Appellant and doctor in the documents in the reconsideration record. The Appellant referred to the July 2014 and September 2014 information from her doctor, who she said she sees about once a week. She said that the doctor can only describe her conditions and weight at the time the doctor provides that information; however, if she has a flare up her weight drops. She stated she had lost 20lbs. since July. The Appellant also described the various ways she tries to stay healthy and how she tries to take care of her nutritional needs. She said she needs extra nutrition as preventative medicine and she cannot afford the costs of such nutrition.

The Panel finds that the information in the Appellant's notice of appeal, in the medical history summary and the Appellant's testimony at the hearing is consistent with and in support of the evidence the Ministry had at reconsideration. Therefore, the Panel admits all of the information under section 22(4) of the Employment and Assistance Act.

At the hearing, the Ministry reviewed the criteria in the EAPWDR for nutritional supplements and reaffirmed its reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision denying the Appellant a monthly nutritional supplement for nutritional items because the information did not establish that the requirements in EAPWDR section 67(1.1) and Schedule C section 7 were met, was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstance.

Applicable Legislation

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal.

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.

Schedule C Health Supplements – 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; (c) for vitamins and minerals, up to \$40 a month.

The Parties' Positions

The Appellant's position is that her doctor has confirmed that she struggles daily with several severe and debilitating medical conditions. She needs additional nutritional supplements to manage those conditions and she cannot afford the nutritional items that she needs.

The Ministry's position is that the information provided does not establish that a medical practitioner has confirmed that the Appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating a symptom referred to in section 67(1.1)(b) of the EAPWDR and that failure to obtain the requested items will result in imminent danger to the Appellant's life.

The Panel's Findings and Conclusion

The Ministry may provide a supplement for a nutritional item that is part of a caloric supplementation to a regular dietary intake if a medical practitioner confirms all of the information required in EAPWDR section 67(1.1) and Schedule C section 7. In this case, the Appellant's doctor, who she sees about once a week, is the medical practitioner. That doctor completed the Appellant's nutritional

supplement application in July 2014 and then provided additional information in the September 2014 letter.

The Panel finds that the information from the Appellant's doctor is very clear and specific. In the July 2014 application, the doctor indicated two symptoms in the Appellant's application, but significant weight loss was not one of them. In addition, in the section requiring a description of how the nutritional items required will alleviate one or more of the symptoms identified and provide caloric supplementation to the regular diet, the doctor wrote "N/A" [not applicable]. The doctor also specifically answered "no" to the question whether the Appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy the daily requirements through a regular dietary intake. The same doctor had the opportunity in September 2014 to address these specific issues and even to change the information provided, but did not do so. Therefore, based on the information provided by the Appellant's doctor, the Panel finds that the Ministry reasonably determined that the requirements in EAPWDR section 67(1.1)(c) and (d) and Schedule C Section 7(a) were not met.

Having considered all of the evidence and the applicable legislation, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence. Therefore, the Panel confirms that decision.