

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 8 January 2015 determined that the appellant was not eligible for the monthly nutritional supplement (MNS) for vitamin/mineral supplementation under section 67(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because it was not established that the requested vitamins and minerals would alleviate the symptoms of a chronic, progressive deterioration of health and prevent imminent danger to life under s. 67(1.1)(c) and (d) of the EAPWDR.

The ministry however determined the appellant was eligible for a monthly nutritional supplement (MNS) for nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of his chronic progressive deterioration of health and to prevent an imminent danger to his life as set out in s. 67(1.1) and Schedule C, subsection 7(a) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 67;
EAPWDR, Schedule C, s. 7.

PART E – Summary of Facts

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

- The appellant is a person with disabilities who receives disability assistance and persons with disabilities (PWD) benefits.
- An Application for Monthly Nutritional Supplement dated 15 November 2014 completed and signed by the appellant's physician indicating that:
 - The appellant suffers from chronic low back and neck pain and depression.
 - As a result of the severe medical condition of the appellant, he is being treated with "physio" and analgesics.
 - Section 3 of the form titled "As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms? If so, please describe in detail" and there is a list of 7 symptoms but the section was not completed and left blank.
 - The physician recommends Vitamin D for bone support and to prevent fractures.
 - The nutritional items would alleviate symptoms related to anorexia and depression and would prevent further weight loss.
- In his request for reconsideration dated 10 December 2014, the appellant indicates that his physician wrote that the problems were associated with malnutrition and weight loss for both of which he added "looks underweight, poor dietary intake", significant weight loss of 10 lbs in less than 1 year and significant muscle mass loss - "was very lean before; lost 10 lbs muscle mass". Both the appellant and his physician signed the document.
- Along with the request for reconsideration, the appellant submitted a copy of the Application for MNS dated 15 November 2014 in which the originally blank section 3 had been filled as follows:
 - Malnutrition and underweight status: "looks and is malnourished"
 - Significant weight loss: "10 lb in one year"
 - Significant muscle mass loss: "Over 18 [months] weakened ++"

In his Notice of Appeal dated 2 January 2015, the appellant wrote that his physician misunderstood and that he bought his own calcium with vitamin D and that the physician supports his need for a vitamin supplement. Further, he stated that his physician told him he did not complete those forms often and that he had made a mistake. Along with his Notice of Appeal, the appellant provided a prescription dated 13 January 2015 signed by his physician to the effect that he needed multivitamins 50+, daily for 1 year.

The ministry did not object to the admissibility of the prescription and the panel determined the additional documentary evidence was admissible under s. 22(4) of the EAA as it was in support of the records before the minister at reconsideration, specifying exactly what vitamins the physician intended to prescribe, the dose and for how long.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for the monthly nutritional supplement for vitamin/mineral supplementation under section 67(1) of the EAPWDR because it was not established that the requested vitamins and minerals would alleviate the symptom of a chronic, progressive deterioration of health and prevent imminent danger to life under s. 67(1.1)(c) and (d) of the EAPWDR, was a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation is section 67 of the EAPWDR that states:

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 ...

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).

Also applicable is s. 7 (Monthly Nutritional Supplements), Schedule C of the EAPWDR:

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)
- (c) for vitamins and minerals, up to \$40 each month.

The ministry argued that the evidence did not demonstrate the relationship between the vitamins and the symptoms that the appellant experienced as a result of a chronic deterioration of health and did not provide an explanation as to why he needed bone support or that failure to obtain those vitamins would result in imminent danger to his life.

The appellant argued that the doctor misunderstood the issue and was not keen in completing those forms for the ministry and that resulted in the ministry being misinformed. He argued that his physician wanted him to have the best care possible and that vitamins were necessary in this respect. He indicated the prescription dated 13 January 2015 completed the evidence he wanted to provide and that it confirmed the need for the vitamins.

The panel notes that the appellant's physician prescribed multivitamins in order to provide bone support to the appellant to prevent fractures. According to the evidence the symptoms were malnutrition, underweight status, significant weight loss of 10 lbs in 1 year and significant muscle loss, "weakened ++" over 18 months. The ministry accepted this evidence to confirm the appellant needed nutritional items as part of a caloric supplementation to a regular dietary intake but did not find a relationship between bone support and alleviating any of the symptoms the physician had identified. The panel finds the evidence is far from convincing that any of the symptoms described by the physician are related to bone support and that the new evidence, the prescription dated 13 January 2015, while specifying what vitamins are prescribed and for how long, does not address the issue of the relationship between bone support and such vitamins. The panel finds the ministry reasonably determined it was not satisfied this nutritional supplement, vitamins, would alleviate any of the symptoms described by the medical practitioner.

Further, while the physician mentioned the vitamins could prevent fractures, there is no evidence of whether failure to obtain the vitamins would result in imminent danger to the appellant's life. The panel cannot speculate on what the consequences of "preventing fractures" could be and acknowledges that the appellant should get the best care possible but must look at the reasonableness of the ministry's decision under the legislation and based on the evidence provided. Thus, the panel comes to the conclusion that the ministry could reasonably determine that the evidence provided by the medical practitioner did not demonstrate that failure to obtain those vitamins would result in imminent danger to the appellant's life. Consequently, the panel finds the ministry reasonably determined the appellant was not eligible for vitamin/mineral supplementation under s. 67(1.1) of the EAPWDR.

APPEAL #

In conclusion, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.