

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated January 27, 2015 in which the Ministry approved the Appellant's request for the Monthly Nutritional Supplement (MNS) for nutritional items and denied her request for vitamin/mineral supplements. The Ministry found that two criteria for the MNS vitamin/mineral supplement as set out in section 67(1.1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) were not met:

The Ministry was not satisfied that a medical practitioner has confirmed that:

1. For the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more items set out in section 7 of Schedule C and specified in the request [EAPWDR section 67(1.1)(c)]; and that
2. Failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life [EAPWDR section 67(1.1)(d)].

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 reconsideration consisted of:

1. A Request for Reconsideration signed by the Appellant on January 16, 2015. In an attached four page submission, the Appellant summarized her medical conditions and symptoms including pain in her ankles and tail bone causing dehydration, weight loss, loss of muscle mass, and malnutrition. She requires surgery for a broken hand; has significant neurological degeneration exacerbated by a lack of nutrition; and her PTSD contributes to her being underweight.
2. Four x-ray images of the Appellant's foot and ankle showing screws and other metal components.
3. A letter to the Ministry from the Appellant dated November 20, 2014 in which she describes serious injuries that cause nutritional depletion when she walks. She experiences weight loss; has a fast paced metabolism; and requires MNS to maintain a healthy body weight and address weight loss from her PTSD.
4. An Application for Monthly Nutritional Supplement signed by the Appellant on November 5, 2014 and completed by her family physician on October 8, 2014. The physician reported that the Appellant has Hepatitis C and PTSD, and is recovering from fractures. She is being treated for a chronic, progressive deterioration of health due to being underweight and in continuous pain. As a direct result of her chronic, progressive deterioration of health, she displays the symptoms of *underweight status*, and *significant deterioration of a vital organ* due to Hepatitis C.

For item number five in the application, *Vitamin and Mineral Supplementation*, there are three bullets with the physician's responses as follows:

- When asked to specify the vitamin or mineral supplement(s) required and expected duration of need, the physician wrote "multivits".
- When asked to describe how this item will alleviate the specific symptoms identified, the physician wrote "prevent deterioration of health".
- When asked to describe how this item or items will prevent imminent danger to the Appellant's life, the physician provided no response and left the space blank.

5. Two letters from the Appellant's family physician addressed "To whom it may concern" and dated November 20, 2014 and January 5, 2015. In these letters, the physician stated that the Appellant urgently requires additional nutritional support to heal from her injuries and serious surgeries. She was extremely underweight and remains at a low weight.

Neither the Appellant nor the Ministry submitted additional information for the written hearing. The Ministry relied on its reconsideration decision. In a letter to the Appellant dated January 27, 2015, the Ministry stated that upon reconsideration of the information provided, the Appellant is eligible for the MNS of nutritional items at \$165 per month, effective January 27, 2015. However, the Appellant is not eligible for the requested vitamin/mineral supplement.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of January 27, 2015 which held that the Appellant is not eligible for MNS vitamin/mineral supplements because the criteria in EAPWDR sections 67(1.1)(c) and 67(1.1)(d) were not met, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

The sections of the EAPWDR that set out the eligibility criteria for MNS are as follows:

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 dated February 15, 2015, the Appellant submitted that her application was not done correctly the first time and she needs a vitamin/mineral dietary program for all her ailments, allowing her progression in her daily activities.

Ministry's position

The Ministry accepted that the information from the Appellant's physician confirms that she is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, and that she displays the symptoms of *underweight status* and *significant deterioration of a vital organ*. The Ministry argued, however, that the physician's information that multivitamins will "prevent deterioration of health" does not explain how the vitamins will alleviate the symptoms and does not confirm that the Appellant requires vitamin/mineral supplementation to alleviate the symptoms as required under EAPWDR section 67(1.1)(c). The Ministry further argued that the physician provided no information to describe how the prescribed multivitamins will prevent imminent danger to the Appellant's life as set out in EAPWDR section 67(1.1)(d).

Panel's decision

The panel acknowledges the Appellant's submissions regarding her conditions and symptoms including the x-rays she provided to confirm her foot/ankle problems which cause her a lot of pain, and her nutritional depletion from walking. However, while the Appellant's submissions provide context for the panel's consideration, the panel can give them little weight: the legislation clearly states (in EAPWDR section 67(1.1)) that a medical practitioner or nurse practitioner must confirm that the requested vitamin/mineral supplements are required to alleviate a symptom and that failure to obtain the supplements will result in imminent danger to the Appellant's life.

The panel notes that the criteria in EAPWDR section 67(1.1) are cumulative and all of them must be met in order to authorize the Ministry to provide MNS for vitamins/minerals. With regard to how vitamin/mineral supplementation will alleviate the symptoms that were confirmed by the physician (underweight status, and deterioration of an organ) the physician wrote “prevent deterioration of health”. The panel finds that the Ministry was reasonable in concluding that “prevent deterioration of health” does not explain how the symptoms will be alleviated and does not confirm that multivitamins are required to alleviate the symptoms.

Further, the two letters from the Appellant’s physician do not confirm that multivitamins are required to alleviate the Appellant’s symptoms. The panel notes that the letters focus on the Appellant’s need for healthy foods to increase her nutrition and neither letter makes any mention of vitamin/mineral supplementation. Given that there is a lack of evidence to confirm that multivitamins are required to alleviate the Appellant’s symptoms, the panel finds that the Ministry reasonably determined that the criterion in EAPWDR section 67(1.1)(c) was not met.

With regard to whether failure to obtain the prescribed multivitamins will result in imminent danger to the Appellant’s life, the panel finds that the Ministry was reasonable in concluding that the physician did not provide any information to explain an imminent danger to life. Under item number five in the MNS application, the physician left the “imminent danger” section blank. Further, the letters from the physician do not state that the Appellant will experience imminent danger if she does not receive the vitamin/mineral supplement. As noted, the letters do not address vitamin/mineral supplementation at all. Given that there is no evidence regarding imminent danger to the Appellant’s life, the panel finds that the Ministry reasonably determined that the “imminent danger” criterion in EAPWDR section 67(1.1)(d) was not met.

Conclusion

The panel finds that the Ministry reasonably determined that the Appellant is not eligible for MNS for vitamins/minerals because all of the criteria in EAPWDR section 67(1.1) were not met. The panel confirms the Ministry’s reconsideration decision as being reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the Appellant.