

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated December 22, 2014 in which the ministry denied the appellant's request for a monthly nutritional supplement (MNS) for additional nutritional items and vitamin/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(1.1). The ministry found the appellant's physician reported her condition resulted in only one symptom, there was insufficient evidence to establish that the requested MNS were required to alleviate a listed symptom (as part of caloric supplementation to a regular dietary intake for additional nutritional items) and it was not established that failure to obtain the requested items would result in imminent danger to her life.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 67(1.1)
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), 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 September 11, 2014, in the name of the appellant completed by her physician. The physician diagnoses the appellant with “chronic symptoms secondary to head injury of severe nature.” Regarding her treatment he writes she is having a program directed to deal with symptoms from head injury and chronic anxiety. The physician does not indicate that she suffers from an inability to absorb sufficient calories to satisfy her daily requirements through regular dietary intake. The physician indicates she displays two symptoms as a result of her condition. She displays significant muscle mass loss with the physician noting “working on maintaining.” She also displays significant neurological degeneration with the physician noting “symptoms to head injury.” The physician writes that the additional nutritional items are required to optimize caloric intake to prevent weight loss and maximize neurological function. When asked to describe how the requested nutritional items will alleviate one or more of the symptoms described the physician writes, “no specific items.” When asked to describe how the requested nutritional items will prevent imminent danger to her life the physician writes, “maintaining more quality.”
- A letter written by the appellant’s physician regarding her supplements. He writes that the appellant has been diagnosed with Meniere’s disease elsewhere and has been advised to be on a low sodium and high protein diet. He advises that she take antioxidants in the form of omega 3.
- A medical imaging report for the appellant dated October 20, 2014. The report states, “The intracranial appearance is unremarkable apart from minimal bilateral frontal lobe atrophy. No infarction, hemorrhage or mass detected.”
- A self-report completed by the appellant dated December 8, 2014. The appellant writes she is on a fixed income and finds it difficult to provide herself proper nutrition to maintain her health. She writes she cannot afford supplements such as Boost or ensure. She believes her dizzy spells, possible seizures, and sleepless nights are due to hunger.

In her notice of appeal dated January 6, 2015 the appellant writes she suffers from multiple health conditions including arthritis and brain atrophy. She feels she would benefit from omega 3 and antioxidants but she requires the extra funds to afford them. The Employment and Assistance Act section 22 (4) allows the panel only to admit as evidence oral or written testimony in support of the information and records that were before the minister when the decision being appealed was made. Some of the evidence from this self-report was admitted as evidence as per the Employment and Assistance Act section 22 (4). The panel did not admit the evidence regarding arthritis because this condition was not included in the evidence that was presented to the ministry at the time of reconsideration. The panel finds that arthritis, and any related symptoms, is a new condition and the physician had not included these details in his letters or the original Application for Monthly Nutritional Supplement. The statements regarding her desire for antioxidants and her inability to pay for them was admitted because it is in support of information in the original application.

The appellant submitted new evidence with her notice of appeal. She submitted

- A letter dated February 5, 2015 written by her case manager at a brain injury support organization. The case manager writes that, although she is not a medical professional, she observes the appellant struggling with proper nutrition, which is affecting her health. She writes the food bank and meals-on-wheels do not provide a low sodium or high protein diet. She

believes that the appellant will require more advanced medical interventions for her health conditions if she doesn't begin receiving proper nutrition. The case manager introduces other medical conditions not diagnosed or discussed by the physician. These other conditions were not admitted as evidence because it was not before the ministry at the time of the reconsideration and because the case manager is not a prescribed professional as defined by the legislation.

- A letter from her physician dated February 3, 2015 regarding nutritional support. He writes the appellant is getting support from the brain injury support group. He writes that it is in the appellant's best interest to review her need for extra funding for nutritional items including a low sodium and high protein diet. He adds that she needs to optimize caloric support with a supplement such as Boost that contains vitamins and minerals for body and brain well being.

Some of the evidence from these letters was admitted as evidence as per the Employment and Assistance Act section 22 (4). The panel did not admit the evidence regarding the previously undiagnosed medical conditions because these conditions were not included in the evidence that was presented to the ministry at the time of reconsideration. The panel finds that arthritis, fibromyalgia, her inability to eat, degenerative hyper mobility, and any related symptoms, are new conditions that the physician had not included in his letters or the original Application for Monthly Nutritional Supplement. The panel found that the evidence regarding the case manager's observations and her opinion that the appellant would benefit from a nutritional supplement to be in support of evidence that was before the ministry at the time of the reconsideration and corroborates information in the original application. The letter from the physician reiterates information in the original application but makes specific recommendation for Boost as a nutritional supplement. The Employment and Assistance Act section 22 (4) allows the panel only to admit as evidence oral or written testimony in support of the information and records that were before the minister when the decision being appealed was made. The panel finds that this new evidence meets this criterion.

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 for additional 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 displaying two or more symptoms, (that the additional nutritional items are part of a caloric supplementation to a regular dietary intake to alleviate a chronic, progressive deterioration of her health), nor did she provide evidence demonstrating 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 extra money to buy nutritious food in order for her to maintain her 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**Request for Vitamins/minerals**

In the appellant's Application for Monthly Nutritional Supplement dated September 11, 2014, she applied only for Nutritional Items (Boost, low sodium, and high protein diet). In the reconsideration decision the ministry made a determination of the appellant's qualification for the criteria for a vitamin/mineral supplement as well. The ministry considered the physician's recommendation for antioxidants as a vitamin/mineral request. As the physician did not provide details about the appellant's need for vitamin/minerals such as how these will alleviate her symptoms, or how they will prevent imminent danger to her health, the panel finds the ministry was reasonable to determine that the criteria for a request for vitamins/minerals was incomplete and therefore not met.

Request for Nutritional Items

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.

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 that although the appellant's application lists both significant muscle mass loss and significant neurological loss as symptoms, the physician wrote a note that the appellant is "working on maintaining" her muscle mass. The ministry determined that it can't be determined that she is currently displaying this symptom as required by the legislation. The panel reviewed the evidence and considered that the physician wrote in the application that the nutritional item will "prevent weight loss" however there is no other detail regarding muscle mass loss. Considering the physician's notes regarding muscle mass loss and the lack of further details, 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.

Alleviating Symptoms

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 of how the requested items would alleviate her symptoms consisted of the physician's statements about the appellant's nutritional needs. This included that the appellant requires a high-protein and low sodium diet and that her diet needs to optimize caloric intake to prevent weight loss and maximize neurological function. In the initial application where the physician is asked about how the requested items will alleviate her symptoms the writes, "no specific items." In the physician's letter submitted with the request for appeal he writes that the appellant needs more protein and less sodium "as part of her brain nourishment" and he suggests "optimizing caloric support" from a supplement like Boost containing vitamins "for brain and body well being." The physician reported that the appellant did not display symptoms of significant weight loss, malnutrition, underweight status, low BMI, or an inability to absorb calories.

The panel finds the ministry was reasonable to determine that this criterion has not been satisfied. The physician suggests nutritional items, high protein, low sodium diet, and Boost, however the physician does not provide details of how these items will alleviate the symptoms that he listed in the application or that they are part of a caloric supplementation to a regular diet. He writes that the requested items are for "for brain and body well being" as well as "part of her brain nourishment." The panel finds that the ministry was reasonable to determine that it has not been established that these items will alleviate the listed symptom and that the appellant has not met EAPWDR 67(1.1)(c) and EAPWDR Schedule C section 7(a).

Imminent Danger

The panel considered the reasonableness of the ministry's determination that the appellant has not met the criteria of EAPWDR s. 67 (1.1)(d) 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, "maintaining more quality." The physician does not provide further details about the possible outcome of her condition, whether her condition is deteriorating, not 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 that the ministry was reasonable to determine that the evidence does 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

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confirms the ministry's decision