

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision of March 26, 2015 in which the ministry denied the appellant the monthly nutritional supplement (MNS) of vitamins/minerals and nutritional items because her application failed to meet the eligibility criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67 (1), (1.1) (c) and (d) and Schedule C Section 7, specifically that the appellant did not satisfy the ministry that she required either of the Section C supplements (as part of caloric supplementation for the nutritional items) to alleviate a specific symptom of her medical condition or to prevent imminent danger to her life.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):

- Section 67 (1), (1.1)
- Schedule C, Section 7

PART E – Summary of Facts

The patient is a single recipient of PWD benefits.

The evidence before the ministry at the time of reconsideration included:

- appellant's application for monthly nutritional supplement (MNS) dated December 18, 2014 in which the physician (Dr. C) stated that the appellant:
 - suffers from two severe medical conditions: chronic pancreatitis, with increasing pain and a need for easily digested food and Type 2 Diabetes Mellitus – low glycemic index;
 - is experiencing an increasing inability to digest food;
 - displays one symptom, namely moderate to severe immune depression, as a result of the chronic, progressive deterioration of her health. None of the other six symptoms (malnutrition, underweight status, significant weight loss, significant muscle mass loss, significant neurological degeneration or significant deterioration of a vital organ) was noted by Dr. C;
 - requires multi-vitamins;
 - requires high protein/ low fat protein powder when asked to specify nutritional items medically essential to provide caloric supplementation to a regular dietary intake and required to prevent imminent danger to the applicant's life;
 - has a medical condition, namely chronic pancreatitis, that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.
- May 13, 2014 diagnostic imaging report of an abdominal sonogram of the appellant's abdomen, which noted the following:

“The liver is slightly echogenic, compatible with some mild fatty infiltration. There is again evidence of two small calculi within a dilated pancreatic duct, in the region of the body of the pancreas. These calculi measure between 4.5 and 5.5 mm in size. No pancreatic mass is seen. No significant change in the appearance of the pancreas is noted since the previous examination.

The spleen is normal in size. The kidneys are unremarkable.

IMPRESSION:

 1. Calcifications are present within the body of the pancreas, as well as some dilation of the pancreatic duct. The appearance is unchanged from the examination of November 26, 2013 and is consistent with chronic pancreatitis.
 2. Mild fatty infiltration of the liver.”;
- February 17, 2015 letter from the ministry to the appellant denying her application for a MNS;
- January 30, 2015 letter from an internal medicine specialist addressed “To Whom It May Concern” stating that the appellant has a chronic pancreatitis and requires a special diet;
- March 2, 2015 letter from a nurse practitioner supporting the appellant's request for a MNS because of her chronic pancreatitis and diabetes mellitus type 2, and adding that the appellant has recurrent episodes of severe pain, bloating, nausea and passes undigested food through her stool and a result she requires a high protein, low glycemic diet for her health;
- appellant's request for reconsideration received by the ministry March 6, 2015 to which was attached a two page letter written by the appellant in support of her request for reconsideration of the ministry's decision. In the letter the appellant states that:
 - she is being treated by a physician for a chronic, progressive deterioration of health due to a severe medical condition;
 - as a result she displays significant deterioration of a vital organ and moderate to severe immune suppression;

- the disease is rare and can cause severe abdominal pains, fever, vomiting, internal bleeding, infection, tissue scarring and organ failure;
- she has waited more than 2 years to see a specialist regarding the growths in her pancreas and her pancreas is now compromised, with calcification and inflammation;
- the ducts of the pancreas have become dilated and inflamed;
- the growths have turned to stones which block the functioning of the pancreas;
- she needs to be on a low fat, high protein diet, meat is hard to digest, and she must take medication before she eats any food;
- she is in constant pain in varying degrees, and gets attacks frequently which involve nausea, vomiting, diarrhea, pain under shoulder blades, in stomach, liver area, and the pain is sometimes so severe that emergency assistance is required;
- morphine is usually administered for these painful episodes;
- after an attack she can eat only clear fluids and powdered shakes;
- the liver, gallbladder and spleen are often compromised with this disease;
- she is concerned about developing cancer;
- she will progress from type 2 diabetes to type 1;
- this is an auto-immune disease in which the pancreas “eats” itself.

In her Notice of Appeal dated April 2, 2015 the appellant stated that she has lost 17 pounds, and she qualifies for the MNS according to the stipulations. Attached to the Notice of Appeal were three documents:

1. March 26, 2015 note from the patient's physician stating: "To whom it may concern: has idiopathic pancreatitis and type 2 diabetes".
2. March 24, 2014 from a dietician stating that the appellant requires a low fat/high protein diet to control blood glucose levels and to prevent further wasting from pancreatitis, a chronic condition that involves deterioration of her pancreatic functions and malnutrition/malabsorption and recommending that the appellant use a protein powder and Boost for diabetics between meals as well as vitamin supplementation to correct deficiencies.
3. March 9, 2015 note from another physician stating that the appellant has a diagnosis of idiopathic pancreatitis which is a life threatening condition.

At the hearing the appellant pointed out that 3 medical practitioners have stated that she requires a special diet. She added that her weight loss fluctuates because at times the bloating causes her to put on weight, but when she is in severe pain she cannot eat and loses weight. She explained that a liquid nutritional supplement would go straight into her bloodstream and provide some nutrition directly.

In response to questions from the panel the appellant responded that she asked a doctor to request the abdominal ultrasound that took place on May 5, 2014 because she wanted to see if there had been any changes since the November 2013 ultrasound. She also reported that she is not yet on insulin for her diabetes and has not yet been referred to an endocrinologist.

The panel finds that the documents submitted by the appellant with her Notice of Appeal and the oral evidence of the appellant is admissible under Employment and Assistance Act Section 22 (4) as evidence in support of the information before the ministry at reconsideration because they add additional details and clarification in corroboration of the documents before the reconsideration officer.

APPEAL #

The ministry representative relied on the reconsideration decision of March 26, 2015.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of decision of March 26, 2015 in which the ministry denied the appellant the monthly nutritional supplement (MNS) of vitamins/minerals and nutritional items because her application failed to meet the eligibility criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67 (1), (1.1) (c) and (d) and Schedule C Section 7, specifically that the appellant did not satisfy the ministry that she required either of the Section C supplements (as part of a caloric supplementation for the nutritional items) to alleviate a specific symptom of her medical condition or to prevent imminent danger to her life.

The relevant legislation is as follows:

EAPWDR:

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,

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.

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.

The appellant argues that she suffers from a chronic, severe deterioration of health due to chronic pancreatitis, and as a direct result of her pancreatitis she suffers from significant deterioration of her pancreas and moderate to severe immune suppression. She adds that the physician who completed the application for a MNS and a nurse practitioner have stated that she requires a high protein, low fat diet, and that her physician also states that she needs multivitamins to alleviate her symptoms. She also argues that her dietician says she requires a low fat/high protein diet to control blood glucose levels and to prevent further wasting from pancreatitis, a chronic condition that involves deterioration of her pancreatic functions and malnutrition/malabsorption and recommending that the appellant use a protein powder and Boost for diabetics between meals as well as vitamin supplementation to correct deficiencies. She argues further that she has lost 17 pounds since her weight was recorded on the MNS application and that her weight goes up and down depending on bloating or severe attacks of pain that render her unable to eat.

The ministry argues that the MNS is provided to eligible PWD recipients who have a severe medical condition causing a chronic, progressive deterioration of health with symptoms of wasting. It is

intended to prevent imminent danger to the person's life by providing essential, specified items to supplement regular nutritional needs. The appellant has met the requirements of EAPWDR Section 67 (1.1) (a) in that she is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, and (b) that as a direct result of the chronic, progressive deterioration she displays two of the required symptoms, namely significant deterioration of a vital organ and moderate to severe immune suppression.

The ministry argues further that it is not satisfied that the appellant requires vitamin/mineral supplementation to alleviate a symptom described in paragraph (b) and to prevent imminent danger to life because:

- the doctor who completed the application (Dr. C) indicates that the appellant requires multiple vitamins;
- Dr. C does not describe how the requested vitamin/mineral supplements will alleviate the specified symptom; and
- Dr. C. does not describe how the vitamin/mineral supplements will prevent imminent danger to the appellant's life.

The ministry is also not satisfied that the appellant requires nutritional items as part of a caloric supplementation to her regular dietary intake to alleviate a symptom described and to prevent imminent danger to life because:

- Dr. C. specified that a high protein/low fat diet and protein powder are required which is a specific dietary recommendation as opposed to caloric supplementation to a regular diet;
- Dr. C. does not confirm that the appellant is underweight or has shown significant weight loss or muscle mass loss that indicates a need for caloric supplementation to a regular diet;
- the appellant's BMI at the time of the application was in the overweight range;
- Dr. C does not describe how the nutritional items will alleviate the appellant's symptoms and provide caloric supplementation to her regular diet;
- Dr. C does not indicate how the nutritional items will prevent imminent danger to the appellant's life; and
- the letters from the internal medicine specialist and the nurse practitioner indicate the need for a specialized diet rather than caloric supplementation to a regular diet.

Panel Decision

To qualify for a nutritional supplement or a vitamin/mineral supplement the application must meet the criteria set out in EAPWDR Section 67 (1) and (1.1). The ministry has found that the appellant has met the criteria of EAPWDR 67 (1), (1.1) (a) and (b). Therefore the panel will not discuss these, but will review the reasonableness of the ministry's decision that found that the appellant failed to meet the two remaining criteria: (c) and (d).

EAPWDR Section 67 (1.1)(c)

EAPWDR Section 67 (1.1)(c) states that for the purpose of alleviating a symptom referred to in paragraph (b) the person must require one or more of the items set out in Section 7 of Schedule C, namely vitamins and minerals or nutritional items, that are part of a caloric supplementation to a regular dietary intake.

Vitamins or minerals:

In Part 5 (“Vitamin or Mineral Supplementation”) of the MNS application Dr C states that the appellant requires multivitamins, but does not describe how they will alleviate the specific symptoms identified in (b). The appellant’s dietician has stated that she requires vitamins “to correct deficiencies” but does not specify that the vitamins are required to alleviate the specific symptoms identified in (b).

Nutritional items that are part of a caloric supplement:

In Part 6 (“Nutritional Items”) Dr. C has stated that the appellant requires high protein/ low fat nutrition items and protein powder to alleviate one or more of the specific symptoms identified in (b) but has not addressed how these nutritional items will alleviate her symptoms or will provide caloric supplement to her regular diet. Also, an internal medicine specialist has stated that she requires a “special diet” but has not explained why she requires this diet or that she needs a caloric supplement to her regular diet. The nurse practitioner states that a high protein/low glycemic index diet “for her health” but does not address the alleviation of specific symptoms or state that this diet is a caloric supplement to her regular diet.

In her letter of March 24, 2014 the dietician advises that the appellant should be on a high protein/low fat diet to prevent further wasting and recommends that the appellant use an unflavoured protein powder and Boost for diabetics between meals, but does not state that these items will alleviate the deterioration of a vital organ or the appellant’s moderate to severe immune suppression.

The panel therefore finds that the ministry reasonably determined that the appellant did not establish that a vitamin/mineral supplement or nutritional items that are part of a caloric supplementation to a regular diet will alleviate a symptom identified in EAPWDR 67 (1.1) (b) as required by Section 67 (1.1)(c).

EAPWDR Section 67 (1.1) (d)

EAPWDR Section 67 (1.1) (d) states that a medical practitioner must confirm that failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person’s life. In Part 6 of the application (“Nutritional Supplements”) Dr. C leaves this question blank. He also does not confirm that the patient is underweight or has experienced significant weight loss or muscle wasting. There is additional evidence from medical and nurse practitioners that chronic pancreatitis is a life-threatening condition, but none of the evidence before the ministry at reconsideration states that the failure to obtain nutritional items or vitamin/mineral supplements will result in imminent danger to the appellant’s life.

The appellant states that she has lost 17 pounds since the time of her application (not confirmed by a medical practitioner) but also states that her weight fluctuates depending on whether she becomes bloated or is unable to eat due to severe pain. She has not provided evidence that she has experienced an ongoing significant weight loss that requires caloric supplementation to her regular diet in order to prevent imminent danger to her life.

The panel also notes that the diagnostic imaging report states that “the appearance [of the pancreas] is unchanged from the examination of November 26, 2013 and is consistent with chronic pancreatitis” which is not consistent with a finding that the appellant’s life is in imminent danger.

The panel therefore finds that the ministry reasonably determined that the appellant did not establish that failure to obtain a vitamin/mineral supplement or nutritional items that are part of a caloric

supplementation to a regular diet would result in imminent danger to the appellant's life.

In conclusion the panel finds that the ministry's decision to deny the appellant's request for a monthly nutritional supplement of vitamins/minerals or nutritional items that are part of a caloric supplementation to a regular diet because she did not meet the criteria set out in EAPWDR Sections 67 (1.1) (c) and (d) is reasonably supported by the evidence, and confirms the decision.