

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the Ministry”) reconsideration decision dated June 16, 2015 in which the Ministry approved the Appellant’s request for vitamin/mineral supplementation and denied his request for the Monthly Nutritional Supplement (“MNS”) of nutritional items. The Ministry found that the eligibility criteria for nutritional items under subsections 67(1), and section 7 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) were not met. Specifically, the minister was not satisfied the Appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of his chronic, progressive deterioration of health as set out in EAPWDR section 67(1.1) or that failure to obtain the nutritional items will result in imminent danger to his life as set out in subsection 7(a) of Schedule C.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 67 and Schedule C section 7

PART E – Summary of Facts

The evidence before the Ministry at the reconsideration consisted of:

1. A Request for Reconsideration signed by the Appellant on June 3, 2015 in which he stated he was providing the following documents to confirm that he meets the legislative criteria for MNS:

(a) A letter from his physician dated June 1, 2015 in which the physician reported that the Appellant continues to have a low Body Mass Index (“BMI”) indicating ongoing underweight status. He has persistent *Blastocystis Hominis* gastrointestinal infestation despite appropriate medical therapy suggesting a moderate suppression of his immune system. He was significantly malnourished for five years and his current diet which includes a number of supplements (“hemp hearts and flax seeds...Omega 3 and lecithin among others”) has effected some improvement in his clinical depression and sense of well-being. He requires MNS in order “to afford these helpful supplements” as part of the nutrition that is leading him toward recovery.

(b) The Appellant’s two page written submission dated June 2, 2015 in which he stated that his symptoms under EAPWDR subsection 67(1.1)(b) include underweight status, malnourishment, and moderate to severe immune suppression. He stated that he is at risk for “life threatening depression” if he does not receive the supplements. He has ended up in the emergency ward approximately a dozen times “to seek alleviation from severe depression and anxiety”. He has chosen nutritional supplements over medication, and nutritional treatment has been extremely successful. He is barely able to afford the nutrition he needs and has had to borrow money and use credit that he will not be able to repay.

(c) Three pages of Generalized Anxiety Disorder rating scales with the Appellant’s note stating that the forms were filled out in March 2015 [one month after implementing his new diet plan with “higher cost nutritional supplements and more expensive foods”] to show the improvements to his health and well-being due to the change in diet.

2. An application for MNS signed by the Appellant on March 24, 2015 and completed by his physician on April 2, 2015 who provided the following information:

◦ Under Diagnosis, the physician reported Depression described as “PH29 results [illegible]” sl.improvement”; “[illegible] Substance abuse” described as “Stopped cigarettes, Pot Sept. 2014”; and chronic low back pain.

◦ In response to whether the Appellant is being treated for a chronic, progressive deterioration of health due to his severe medical conditions, the physician wrote, “Health is stable, if not ideal. Still suffers with his mental state and coping with stress.”

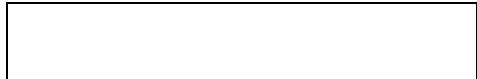
◦ When asked to indicate whether the Appellant displays two or more of the symptoms [listed in EAPWDR subsection 67(1.1)(b)] the physician reported:

- Malnutrition with the comment, “Diet was not fulfilling the food groups properly in past 5 years”;
- Underweight status with the comment; “BMI 18.5”; and
- Significant weight loss with the comment, “weight now stable, but is slightly underweight”.

◦ The Appellant's height was reported as 6.0' and his weight as 135 lbs.

◦ Under Nutritional Items, the physician specified “Omega 3, flax seed, hemp oil, lecithin”.

◦ In response 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, the physician wrote,



"depression, unemployability and unable to afford nutrition".

- When asked to describe how the nutritional items will alleviate one or more of the symptoms (previously specified) and provide caloric supplementation to the regular diet, the physician wrote, "General improvement in outlook and sense of well-being which should contribute to improved behavior and motivation".
- When asked to describe how the requested items will prevent imminent danger to the Appellant's life, the physician wrote, "His noted stability recently, and interruption of his physical decline and improvement with suicidal/ negative ideation is aided by improved ability to better sustain his nutrition".
- The section for Additional Comments was left blank.

Additional submissions:

The appeal proceeded via a written hearing with the consent of both parties. In its email to the tribunal of July 16, 2015, the Ministry stated that no submission would be provided as it was relying on its reconsideration decision. Information in the Ministry's decision record indicated that the Appellant is a Person with Disabilities in receipt of a disability allowance.

The Appellant's additional submission was his Notice of Appeal of June 26, 2015 in which he stated that he has been underweight for at least six years and these years correspond with his experience of heightened anxiety and his application for the disability allowance. Upon starting a new diet plan in March 2015, his weight increased from an average of one hundred and twenty-five pounds for the past six years, to one hundred and thirty-five pounds which puts him "just barely in the category of a healthy BMI" for his height. He now only experiences anxiety attacks when he deviates from his diet.

With regard to his inability to absorb sufficient nutrition and calories, he stated that his condition is associated with sensitivities to certain foods that cause gastric pain as well as heightened anxiety and depression. The specific cause of his diet-based health problems is indeterminable because several factors contribute to his overall condition including certain foods as well as the parasite *Blastocystis hominus* which is the only specific condition that was verified by lab tests. It does not respond to treatment for some people with a hypersensitivity, and therefore requires a change in diet to counteract the symptoms of low energy, "fogginess of mind", and anxiety.

The Appellant further stated that he cannot eat processed foods, starches, breads, rice, dairy products, or certain meats without triggering heightened depression and anxiety. To maintain a healthy caloric and protein intake, he needs to eat a large amount of fruits and vegetables, sprouts, hemp seeds, and almonds, and also take vitamin and mineral supplements.

The panel admits the Appellant's statements pursuant to section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the Ministry when the decision being appealed was made. In particular, the statements substantiate the Appellant's and his physician's information in the reconsideration record which outlined his medical conditions, symptoms, and the benefits derived from nutritional supplementation.

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PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of June 16, 2015 which held that the Appellant is not eligible for MNS of nutritional items because the criteria in EAPWDR section 67(1) and section 7 of Schedule C 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 following sections of the EAPWDR set out the eligibility criteria for MNS of nutritional items:

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.

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 Ministry accepted that some of the criteria for MNS of nutritional items in EAPWDR section 67 were met, in particular, the Appellant is in receipt of disability assistance, and his physician has confirmed that as a result of his medical conditions, he is being treated for a chronic, progressive deterioration of health, and he displays some of the legislated symptoms, including underweight status, moderate to severe immune suppression, and malnutrition. The panel's focus is on whether the Ministry reasonably determined that the following criteria for nutritional items were not met.

EAPWDR Schedule C section 7 and subsection 67(1.1)(c): Nutritional items required as part of a caloric supplementation to a regular dietary intake and to alleviate a symptom

Appellant's position

In his Request for reconsideration, the Appellant argued that the criterion in subsection 67(1.1)(c) is met because his physician (in the letter of June 1, 2015) explained that if the Appellant does not receive hemp hearts or other protein, the result will be malnourishment and immune suppression and the nutritional items are therefore required to treat these symptoms. In his appeal submission, the Appellant argued that his new "diet plan" has treated the symptom of chronic underweight status and that his sensitivities to certain foods as well as heightened anxiety and depression result in an inability to absorb sufficient nutrition and calories. Further, due to his hypersensitivity to a parasite that feeds on sugars, the Appellant has had to change his diet in order to counteract low energy and anxiety. He argued that he requires "a very specific, tried and tested diet of large amounts of fruits and vegetables and things like sprouts and hemp seeds and almonds along with the vitamin and mineral supplements" to maintain healthy caloric and protein intake. He cannot afford to pay for these items without MNS, nor can he afford the cost of further medical reports to support his eligibility for the supplement.

Ministry's position

The Ministry was not satisfied that the Appellant requires nutritional items as part of a regular dietary intake to alleviate his symptoms, arguing that the physician's statements regarding the Appellant's depression, financial need for MNS, and "general improvement" in the Appellant's health do not confirm that the Appellant requires nutritional items for caloric supplementation in order to alleviate the symptoms of a progressive deterioration of health as required under the EAPWDR.

Panel decision

Subsection 7(a) of Schedule C requires the requested nutritional items to be part of a caloric supplementation to a regular dietary intake and for the purpose of alleviating a symptom under EAPWDR subsection 67(1.1)(c). “Caloric supplementation” indicates a need for additional calories and the Appellant’s request for nutritional items is therefore a request for extra calories beyond those provided by his regular diet.

The evidence indicates that the Appellant does require additional calories due to his underweight status and that a combination of a nutritious diet, vitamins/minerals, and nutritional items has facilitated a stabilization in his weight since March 2015. However, the Ministry was not persuaded that nutritional items are required as part of a caloric supplementation to a regular dietary intake, and the panel finds that the physician’s information reasonably supports the Ministry’s position:

- First, there was no evidence that nutritional items such as hemp and flax seeds and lecithin provide the Appellant with additional calories beyond his regular diet or assist with absorption of calories. The physician’s statement in the MNS application was that the Appellant’s depression, unemployability, and inability to afford nutrition result in his inability to absorb sufficient calories; however, as noted by the Ministry, there is no explanation regarding how the prescribed nutritional items will assist with the absorption of calories.
- Second, while the physician’s most recent information of June 1, 2015 states that the Appellant’s current diet has resulted “in some improvement in his clinical depression and sense of well-being”, the letter contains no explanation as to how the specific nutritional items that were requested (hemp seeds, lecithin, etc.) provide caloric supplementation to alleviate the Appellant’s symptoms.
- Third, while both the Appellant and his physician cite the Appellant’s financial need for MNS, the panel notes that financial need is not an eligibility criterion for MNS under the EAPWDR. While the panel is sympathetic to the Appellant’s reported circumstance of having to pay for additional medical reports, both the Ministry and the panel are bound by the specific legislative criteria in the EAPWDR. Where the physician’s information does not confirm all of the criteria, including subsection 67(1.1)(c) and subsection 7(a) of Schedule C, the Ministry is not authorized to provide the supplement.

Given the above analysis, the panel finds that the Ministry reasonably determined that the information provided does not confirm that the Appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake for the purpose of alleviating a symptom. The Ministry therefore reasonably found that these criteria in EAPWDR subsection 7(a) of Schedule C, and subsection 67(1.1)(c) were not met.

EAPWDR subsection 67(1.1)(d): Failure to obtain the items will result in imminent danger to life

Appellant's position

In his Request for Reconsideration, the Appellant argued that he meets the legislative requirement of imminent danger to life because not receiving the nutritional item “hemp hearts (protein)” will result in immune suppression and malnourishment and heightened depression, all of which put him at risk for “life-threatening depression”. In February of this year, he had to go to the hospital emergency ward three times to avoid danger to his life due to the severity of his depression. The nutritional treatment has been extremely successful in improving his physical and mental health.

Ministry's position

The Ministry was not satisfied that the Appellant requires nutritional items to prevent imminent danger to his life, noting that while the physician's information indicated that nutritional items effect a “general improvement in outlook and sense of well-being”, there is no evidence of imminent danger to life if the Appellant does not receive the items. The Ministry argued that neither the physician's nor the Appellant's information from the original MNS application or the reconsideration confirms the legislative criteria in EAPWDR subsection 67(1.1)(d).

Panel decision

In order for the Appellant's request for MNS of nutritional items to fulfill the criteria in EAPWDR subsection 67(1.1)(d), the Ministry must be satisfied that failure to obtain the requested items will result in imminent danger to his life. The panel notes that the dictionary definition of “imminent” is “impending/ soon to happen” and there would need to be evidence that life-threatening consequences will occur very soon if the Appellant does not receive hemp or flax seeds and other nutritional items. Therefore, the purpose of subsection 67(1.1)(d) is to provide MNS only in circumstances where the failure to provide it will clearly result in life-threatening consequences.

While the evidence in the reconsideration record and the additional information provided on appeal confirm that nutritional items facilitate the Appellant's weight gain and reduce his depression and anxiety including “improvement of suicidal/ negative ideation” as noted by the physician in the MNS application, the physician did not provide any statement to confirm that failure to receive the nutritional items will result in imminent danger to the Appellant's life, thereby meeting EAPWDR subsection 67(1.1)(d). While the Appellant noted that he will be at risk for “life-threatening depression” if he does not receive hemp hearts or other protein, this was not confirmed by his physician.

Further, the Appellant is currently not facing any imminent danger as his condition has significantly improved due to a combination of a nutritious diet, vitamin/mineral supplements, and nutritional items. While he may be at risk for increased depression, the panel cannot find any statements in the record to confirm imminent danger to the Appellant's life if he stops receiving the nutritional items. While the Appellant argued that his physician explained (in the letter of June 1, 2015) that “not receiving these supplements [hemp hearts, etc.] will result in immune suppression and malnourishment and

heightened depression”, the panel notes that the letter does not contain any statements that connect specific nutritional items to the alleviation of life-threatening symptoms. While the physician noted the Appellant’s ongoing underweight status and immune suppression, he does not state that the Appellant’s life will be in imminent danger if he does not receive MNS for specific nutritional items.

Given the evidence the Ministry had at the time of the reconsideration and the Appellant’s additional submission on appeal, the panel finds that the Ministry reasonably determined that the “imminent danger” criterion in subsection 67(1.1)(d) of the EAPWDR was not met.

Conclusion

The Panel confirms the Ministry’s reconsideration decision as being reasonably supported by the evidence and a reasonable application of the legislation [EAPWDR section 67(1.1) and section 7 of Schedule C] in the circumstances of the Appellant.