

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated May 19, 2015 in which the Ministry denied the Appellant's request for the Monthly Nutritional Supplement (MNS) of vitamins/minerals and nutritional items. The Ministry determined that the Appellant's request did not satisfy the requirements of Sections 67(1.1)(b) and (d) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and Section 7 of Schedule C of the EAPWDR. The Ministry found that the Appellant's medical practitioner did not confirm that she displays two or more of the symptoms described in Section 67(1.1)(b) EAPWDR, that failure to obtain the items will result in imminent danger to her health as described in Section 67(1.1)(d) EAPWDR and did not confirm that the Appellant requires caloric supplementation to her regular diet as described in Section 7 of Schedule C, EAPWDR.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The Appellant was not in attendance at the hearing. After confirming that the Appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The evidence before the Ministry at reconsideration included:

- The Ministry's Monthly Nutritional Supplement Decision Summary, dated April 22, 2015.
- A copy of the Ministry's letter to the Appellant denying her request, dated April 22, 2015.
- The Appellant's Application for Monthly Nutritional Supplement dated February 23, 2015, in which her physician listed diagnoses of HCV "progressive disease", spinal stenosis "severe neck symptoms" and arthritis "left total hip replacement/R replacement [illegible]. In the section asking if the applicant is being treated for a chronic, progressive deterioration of health, the physician wrote "Urgent hep C treatment needed". In the section asking if the applicant displays two or more of the following symptoms as a direct result of the chronic, progressive deterioration of health, the physician put an "X" mark by "significant muscle loss" and wrote the word "liver" beside "significant deterioration of a vital organ (please specify)". In the section dealing with vitamin or mineral supplementation, the physician wrote "Indefinite vit A/B/C/D/K/Ca/[illegible]"; in the section below, "describe how this item will alleviate the specific symptoms identified", he wrote "Reverse deficiencies, partially related to food insecurity"; in the section "Describe how this item or items will prevent imminent danger to the applicant's life", he wrote "Prevent life threatening infections, bleeding + osteoporotic fractures". In the section headed Nutritional Items under "Specify the additional nutritional items required and expected duration of need", the physician wrote "Indefinite high protein diet"; in the section asking if the applicant 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 "HIV-related malabsorption + food insecurity"; in answering the question "Describe how the nutritional items required will alleviate one or more of the symptoms specified in Question 3 and provide caloric supplementation to the regular diet", he wrote "Slow down liver disease progression + restore nutritional deficiencies"; in reply to the question "Describe how the nutritional items requested will prevent imminent danger to the applicant's life", he wrote "Prevent life-threatening infections + liver decompensation". In the section asking for additional comments, the physician wrote "Combination of disabling neurologic, orthopedic + medical diseases, with synergistic effects threatening her health and life".
- The Appellant's Request for Reconsideration dated May 12, 2015.

The Appellant, in her Request for Reconsideration, stated that her physician failed to mention that the significant muscle mass loss he indicated represented a 20% loss over 12 – 18 months. In the Reasons for Appeal section of her Notice of Appeal to the Tribunal, the Appellant stated that her doctor did not write out her needs with enough detail and that he is willing to supply her with further documentation.

The Ministry argued that when the Appellant's physician completed section 3 of the application for Monthly Nutritional Supplement (MNS), which asks "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", he ticked two symptoms, "significant muscle mass loss" and "significant deterioration of a vital organ" but only explained one, significant deterioration of a vital organ, adding "liver". Therefore, the Ministry determined that s. 67(1.1)(b) of the EAPWDR, which requires that an applicant display two or more symptoms, was not satisfied because there was no description of the significant muscle mass loss. In response to questions from the Panel, the Ministry stated that with respect to nutritional items it cannot be determined from the application whether the Appellant's HIV-related malabsorption or her food insecurity affects her ability to absorb sufficient calories.

In the Reconsideration Decision, the Ministry stated that the Appellant's physician does not indicate that she

APPEAL #

requires caloric supplementation to her regular diet. The Ministry concluded that the Appellant's physician did not provide enough information to confirm that failure to obtain the requested vitamins and minerals and nutritional items will result in imminent danger to her life.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the decision of the Ministry of Social Development and Social Innovation (Ministry) dated May 19, 2015 in which the Ministry denied the Appellant's request for the Monthly Nutritional Supplement (MNS) of vitamins/minerals and nutritional items. The Ministry determined that the Appellant's request did not satisfy the requirements of Sections 67(1.1)(b) and (d) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and Section 7 of Schedule C of the EAPWDR. The Ministry found that the Appellant's medical practitioner did not confirm that she displays two or more of the symptoms described in Section 67(1.1)(b) EAPWDR, that failure to obtain the items will result in imminent danger to her health as described in Section 67(1.1)(d) EAPWDR and did not confirm that the Appellant requires caloric supplementation to her regular diet as described in Section 7 of Schedule C, EAPWDR.

Legislation

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, 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.

The Appellant's position, as described on her Notice of Appeal, is that she meets the criteria for provision of the MNS and vitamins and minerals, but her physician did not supply enough detail. The Appellant wrote that her doctor is willing to supply further information; however no further information was submitted.

The Ministry's position is that the Appellant's application cannot be approved because a medical practitioner did not confirm that she displays two or more of the symptoms as a direct result of a chronic progressive deterioration of health as described in Section 67(1.1)(b) EAPWDR, that he did not confirm that she requires the nutritional items as part of a caloric supplementation to her regular diet as described in s. 7 of Schedule C, EAPWDR, did not indicate what deficiencies the physician referred to and did not confirm that failure to obtain the items will result in imminent danger to her health.

Section 67(1.1)(b): Two or More Symptoms

The Panel notes that the Appellant's physician indicated on the application form that the Appellant displays both "significant muscle mass loss" and "significant deterioration of a vital organ". The Ministry's position was that, because the physician did not "describe in detail" the symptom of "significant muscle mass loss" and as there is no malnutrition or significant weight loss or underweight status, it could not count this as one of the two symptoms required by section 67(1.1)(b). Such a description may also assist the Ministry in assessing the requirements in section 67(1.1)(c) and (d). The Panel notes that significant muscle mass loss is not listed elsewhere in the application, in particular in the section dealing with how the requested items will alleviate the specific symptoms identified. As a result, the Panel finds that the Ministry reasonably determined that the

Appellant's application did not satisfy this requirement.

Schedule C, Section 7: Caloric Supplementation

The Ministry's position, as stated in the Reconsideration Decision, is that they are not satisfied that the Appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake, as required under s. 7 of Schedule C, EAPWDR. The Ministry wrote that the physician's report of "HIV related malabsorption and food insecurity" does not confirm that the Appellant has an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The Panel notes that the physician's report was in response to the question "Does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake? If yes, please describe." In answering this question with a description of "malabsorption", the physician has responded in the affirmative, thereby confirming that the Appellant's condition results in the inability to absorb sufficient calories. The Panel finds that the Ministry unreasonably determined that the Appellant's application failed to confirm this. However, in the section dealing with the additional nutritional items required, the physician wrote "indefinite high protein diet", which does not speak to caloric supplementation and, as the Ministry notes, the Appellant's body mass index (BMI) is within the normal range for the Appellant's height and weight. The Panel finds that the Ministry reasonably determined that this does not indicate that the Appellant requires caloric supplementation to her regular diet.

Section 67(1.1)(c): Imminent Danger to Person's Life

In relation to the requirement under section 67(1.1)(d), the Panel notes the use of the term "life threatening" by the Appellant's physician in response to the sections of the form asking for a description of how the requested items (either vitamins and minerals or nutritional items) will prevent imminent danger to the Appellant's health. As there is less indication of urgency in the term "life threatening" as compared with "imminent danger" as stated in the legislation, and because there are no details provided on the form to indicate a sense of immediacy and urgency to the threat to the Appellant's life, the Panel finds that the Ministry reasonably determined that the Appellant's physician did not provide enough information to confirm that failure to obtain the requested items would result in imminent danger to the Appellant's life.

The Panel therefore confirms the Ministry's decision as reasonably supported by the evidence.