

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of August 12, 2015, which denied the appellant’s request for a Monthly Nutritional Supplement (MNS) for vitamins/minerals and additional nutritional items on the basis that the appellant did not meet the criteria set out in section 67(1.1) c and d of the *Employment and Assistance for Persons With Disabilities Regulation* (“EAPWDR”) and Schedule C, section 7(a). In particular, the ministry determined that the information provided did not demonstrate that the appellant’s medical practitioner had described how the specified items would alleviate a specific symptom set out in EAPWDR section 67(1.1)(b), as is required by EAPWDR section 67(1.1)(c), or that the failure to obtain the specified items would result in imminent danger to the appellant’s life as required by EAPWDR section 67(1.1)(d). In addition, the ministry determined that there was insufficient evidence to establish that the additional nutritional items were required as part of a caloric supplementation to a regular dietary intake as required by EAPWDR Schedule C section 7(a).

PART D – Relevant Legislation

EAPWDR, section 67 and Schedule C section 7

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Submission from the appellant's advocate dated July 28, 2015 (the "Reconsideration Submission")
- The appellant's Request for Reconsideration dated July 20, 2015
- Medical information provided by the appellant's family physician dated July 16, 2015 stating that the appellant's medical condition of Cauda Equina Syndrome (CES) has resulted in motor strength loss, sensory numbness, muscle atrophy, fecal incontinence, post flatulence incontinence, and sphincter dysfunction. The physician indicates that the appellant has the following other conditions: urinary function and bladder management, cervical fusion C5-C6-C7, upper extremity neurological difficulties, need for exercise and rehabilitation, previous low back injury with herniated discs, previous mood disorder, impotence, socially withdrawn and sexual function impacts. The physician indicates that the appellant requires vitamins and minerals and/or caloric supplements to his regular diet to alleviate the symptoms of significant muscle mass loss, significant neurological degeneration, and significant deterioration of a vital organ (the "Physician's Form")
- Application for Monthly Nutritional Supplement dated April 1, 2015 in which the appellant's physician diagnoses the appellant with Cauda Equina neuromuscular condition, providing the description of anal sphincter continence bowel routine/erectile dysfunction that influences colonic/ anal genitourinary system. The physician indicates that the appellant requires vitamin B12 and a variety of other vitamins/minerals, noting that the appellant self administers. The physician indicates that the appellant has adapted to a pelvic neurological condition and has found a balanced requirement of high fibre/natural foods and vitamins that allow maintenance of health and chronic neuromuscular dysfunction which is an ongoing condition (the "MNS Application").
- Letter from a medical specialist to the appellant's family physician dated February 2, 2015 indicating that the appellant has a congenitally narrow spinal canal, is a good candidate for two level anterior cervical discectomy, partial vertebrectomy and fusion instrumentation from C5 to C7
- Letter from a medical specialist to the appellant's family physician dated January 26, 2015 indicating that he appellant has decreased strength in his elbow extension and finger extension, walks with a normal gait, degenerative changes in his cervical spine, C7 cervical radiculopathy on the left side and that he will be put on the list for surgical intervention as he is quite disabled
- Medscape Reference regarding Cauda Equina and Conus Medullaris Syndromes

Additional information provided

The appellant's Notice of Appeal dated August 21, 2015 indicates that the appellant does not agree that the ministry understands how his medical condition requires provision for MNS.

At the hearing the appellant provided oral evidence regarding the appellant's spinal cord injury and the impact of his medical condition to his digestive system because and details of the consequent medical symptoms including loss of bowel function and bladder control, inability to absorb nutrients, functional limitations, social isolation, and sexual dysfunction. At the hearing the appellant also

presented to the panel 12 containers of assorted vitamins / supplements for the panel to observe stating the cost of approx. \$170.00 per month.

Admissibility of New Information

The panel has admitted the appellant's oral testimony and information in his Notice of Appeal as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information substantiates information about the appellant's medical condition and request for vitamins and nutritional supplements available at reconsideration.

The ministry relied on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant funding for a MNS for vitamins/minerals and additional nutritional items on the basis that the appellant did not meet the criteria set out in section 67(1.1) c and d and Schedule C, section 7(a) of the EAPWDR was reasonable. In particular, was the reconsideration decision in which the ministry determined that the information provided did not demonstrate that the appellant's medical practitioner had described how the specified items would alleviate a specific symptom set out in EAPWDR section 67(1.1)(b), that the failure to obtain the specified items would result in imminent danger to the appellant's life and that there was insufficient evidence to establish that the requested additional nutritional items were required as part of a caloric supplementation to a regular dietary intake was reasonable.

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, 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.

(B.C. Reg. 68/2010)

(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). (B.C. Reg. 68/2010)

EAPWDR Schedule C, Health Supplement - MNS

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.C. Reg. 68/2010)

(b) Repealed (B.C. Reg. 68/2010)

(c) for vitamins and minerals, up to \$40 each month. (B.C. Reg. 68/2010)

In the Submission and at the hearing the appellant and the advocate provided considerable information regarding the appellant's medical condition indicating that in their view a lack of understanding of the appellant's medical condition contributed to the reconsideration decision denying the appellant's MNS request. However, the reconsideration decision confirms that the ministry determined that EAPWDR section 67(1.1)(b) was met and that the medical information confirmed that the appellant displayed at least two of the symptoms set out in EAPWDR section 67(1.1)(b), namely significant muscle mass loss and significant neurological degeneration. Accordingly the panel's jurisdiction is limited to determining whether the reconsideration decision was reasonable with respect to EAPWDR sections 67(1.1)(c), (d) and Schedule C, section 7(a).

Vitamin Mineral Supplementation

The appellant's position is that the MNS Application, Physician's Form and Medscape Reference confirm that the appellant has a neurological medical condition and that the information provided satisfies the legislative criteria of EAPWDR section 67(1.1)(c) as the physician states that the appellant requires vitamins of Coenzyme Q-10, Acidophilus and Digestive Enzymes to alleviate significant muscle mass loss, significant neurological degeneration and significant deterioration of a vital organ. The appellant's position is that the legislative criteria of EAPWDR section 67(1.1)(d) is met as the Physician's Form states that the appellant requires vitamins and minerals and/or caloric supplementation to his regular diet to prevent imminent danger to the appellant's life.

The ministry's position is that the information provided is not sufficient to meet the legislative criteria because although the physician states that the specified vitamins and minerals are required to

alleviate the symptoms of significant muscle mass loss, significant neurological degeneration and significant deterioration of a vital organ the physician has not provided any information to describe how the vitamins or minerals will alleviate the symptoms. The ministry notes that the specified items are not vitamins and minerals in the same manner as other vitamins such as Vitamin B12, Ferrous Gluconate or Vitamin C and are better classified as aids to digestion. The ministry also states that the physician has not provided any information to confirm how failure to obtain vitamin/mineral supplements will result in imminent danger to life.

Panel Decision:

In the MNS Application, the physician indicates “*Patient self administers Vit B12 and variety of other vitamin/minerals*”. Where asked to describe how the item will alleviate the specific symptoms identified and prevent imminent danger to the appellant’s life the physician states “*see next page*”. Under “Additional Comments” the physician indicates that the appellant has adapted to a pelvic neurological condition and has found a balanced requirement of high fibre natural foods and vitamins that allow for maintenance of health and chronic neuromuscular condition that is an ongoing condition. In the Physician’s Form the physician provides additional information on the impacts of the appellant’s medical condition, specified the required vitamins or minerals of Coenzyme Q-10, Acidophilus and Digestive Enzymes to alleviate significant muscle mass loss, significant neurological degeneration and significant deterioration of a vital organ.

The ministry argues that the prescribed items of Coenzyme Q-10, Acidophilus and Digestive Enzymes are not true vitamins and the panel notes that the physician has not provided any further medical information confirming whether the recommended items are vitamins or minerals. The Merriam Webster dictionary defines Coenzyme Q-10 as a “*thermostable nonprotein compound that forms the active portion of an enzyme system after combination with an apoenzyme*” and www.medicinenet.com describes it as a compound that may be used for proper functioning of an enzyme. Acidophilus is defined as a bacteria and rather than a vitamin or mineral and Digestive Enzymes are defined as compounds used to assist digestion. The panel notes that the physician includes these items under a list of vitamins and minerals but it would be helpful to have further information from the physician confirming whether these items are in fact vitamins or minerals.

In addition, as the physician does not provide any information to indicate how the specified vitamins will alleviate the noted symptoms or how the specified vitamins will prevent imminent danger to the appellant’s health, the panel finds that the ministry was reasonable in determining that the criteria for a request for vitamins/minerals was not met.

Nutritional Items

The appellant’s position is that the information provided by the physician demonstrates that impacts of motor strength loss, sensory numbness, muscle atrophy, fecal incontinence, post flatulence incontinence and sphincter dysfunction impact the appellant’s ability to ingest nutrients in the body and that certain food styles help to mitigate that issue. The appellant’s position is that the Physician’s Form states that the appellant requires vitamins and minerals and/or caloric supplementation to his regular diet to prevent imminent danger to the appellant’s life.

The ministry’s position is that the information provided does not establish that the appellant requires

[]

additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating a symptoms referred to in EAPWDR section 67(1.1)(b) and that failure to obtain the requested items would result in imminent danger to the appellant's life.

The reconsideration decision notes that the physician indicates that the appellant has found a balanced requirement of high fibre/natural foods and vitamins that allows maintenance of health and chronic neuromuscular dysfunction but that the physician does not speak to the need for nutritional items to provide caloric supplementation to the appellant's regular dietary intake. The reconsideration decision notes that the physician did not, on the Physician's Form indicate that any of the other items noted, such as fresh pineapple cores, steel-cut oats or fresh vine ripened fruits are required as caloric supplements to the appellant's regular dietary intake.

The ministry notes that the physician did not confirm that the appellant is displaying a symptom set out in the EAPWDR section 67.1(b) that would indicate a need for caloric supplementation, such as malnutrition, underweight status, significant weight loss, or significant muscle mass loss (in the sense of muscle mass reduction, or wasting). The ministry's position is that the appellant's height and weight recorded in the application indicate that the appellant's BMI is within the overweight range.

The ministry's position is that the information provided does not describe a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirement through a regular dietary intake, a description of how the nutritional items required will alleviate one or more symptoms specified and provide caloric supplementation to the regular diet, or a description of how the nutritional items requires will prevent imminent danger to the appellant's life.

Panel Decision:

In the MNS Application, the physician has not specified the additional nutritional items that the appellant requires. Where asked to describe the appellant's medical condition resulting in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake the physician indicates "see below". Where asked to describe how the nutritional items required will alleviate one or more of the symptoms specified in question 3 of the MNS Application the physician indicates "see below". Where asked to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the physician indicates "see below". Under Additional Comments the physician indicates that the appellant has adapted to a pelvic neurological condition and has found a balanced requirement of high fibre natural foods and vitamins that allow for maintenance of health and chronic neuromuscular condition that is an ongoing condition. In the Physician's Form the physician provides additional information on the impacts of the appellant's medical condition indicating that the appellant has found certain food styles help to mitigate the various impacts that his medical conditions cause. The physician also indicates the vitamins and minerals that the appellant requires. However, the physician has not provided any information indicating the specified nutritional items that the appellant requires that are part of a caloric supplementation to a regular dietary intake as required or provided any information to describe how the nutritional items will alleviate the appellant's symptoms of significant muscle mass loss or significant neurological degeneration as required by EAPWDR section 67(1.1) (c) and Schedule C, section 7(a).

The panel finds that the physician has not provided information describing that the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirement through a regular dietary intake, a description of how the nutritional items required will alleviate one or more symptoms specified and provide caloric supplementation to the regular diet, or a description of how the nutritional items requires will prevent imminent danger to the appellant's life.

Although the physician states that the nutritional items are required to prevent imminent danger to the appellant's health, the physician has not identified what those nutritional items are and how those items will prevent imminent danger to the appellant's health. Accordingly, the panel finds that the ministry was reasonable in determining that the information provided did not meet the legislative criteria for the MNS of nutritional items.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision finding the appellant ineligible for MNS as the legislative criteria of EAPWDR section 67(1.1)(c), (d) and Schedule C, section 7(a) was not met was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.