

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision of December 13, 2016 in which the ministry denied the appellant the monthly nutritional supplement (MNS) of vitamins/minerals 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) (b), (c) and (d) and Schedule C, Section 7. Specifically, the ministry was not satisfied that a medical practitioner had confirmed that as a direct result of chronic, progressive deterioration of health the appellant displayed two or more of the symptoms set out in EAPWDR Section 67 (1.1), that she required one or more of the items set out in Section 7 of Schedule C to alleviate the symptoms, or that failure to obtain the 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), (1.1)
- Schedule C, Section 7

## PART E – Summary of Facts

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

- September 2, 2016 application for MNS completed by the appellant's general practitioner (gp) stating that:
  - the appellant has been diagnosed with the following severe conditions: heart disease, Down Syndrome, obesity, sleep apnea, and recent seizure disorder, and commenting: *"requires low salt diet with no processed food"*;
  - as a direct result of the appellant's chronic, progressive deterioration of health the appellant displays the following symptoms:
    - obesity;
    - significant muscle mass loss.
  - the appellant requires a vitamin or mineral supplement of Vitamin D 1000 10 and a multivitamin daily to alleviate her symptoms;
  - the items requested will prevent imminent danger to the appellant's life, noting: *"Improved cardiac function with weight loss and healthier diet"*.
- letter to the appellant from the ministry dated October 11, 2016 denying the appellant's request for MNS, with attached MNS decision summary;
- appellant's Request for Reconsideration received by the ministry on November 29, 2016.

### New Evidence

Prior to the hearing the appellant submitted the following documents for consideration by the panel:

1. May 26, 2015 email message from the appellant's pediatrician ("Dr. X") to the appellant's mother ("M") noting the following: *"The only danger from seizures is falling and hurting herself, so there should be precautions around height, water and fire. . . . Food is going to affect her seizures (avoid processed foods)"*.
2. December 27, 2016 letter from Dr. X stating that M requires assistance to provide healthy meals for the appellant because she is obese.
3. January 12, 2017 letter from the GP noting:
  - the vitamin/mineral supplement application is based on the appellant's unhealthy weight and poor nutrition;
  - the excess weight has contributed to irregular menses, severe sleep apnea and immobility;
  - the appellant had heart surgery as a child and continues to be followed by cardiologists;
  - excess weight is a detriment to her cardiac well-being;
  - progressive weight gain will increase her risk for premature death. She would benefit from extra funds to supplement her diet with nutrition, lower calories, low salt and no processed food.

During the hearing the appellant submitted two additional documents:

4. June 17, 2017 email message to M from Dr. X noting a number of treatment recommendations, some of which are not relevant to this appeal. The relevant recommendations are:
  - Omega 3 supplements 100 mg daily as flax seed powder 1 Tbsp daily in breakfast cereal or fish oil pills
  - Vitamin D 800 units for children and 100 units for adults
  - encourage regular exercise and limit foods to small amounts if giving food for reward.
5. October 16, 2015 letter from Dr. X listing the following diagnoses:

- 
- Trisomy 21 with developmental delay;
  - Congenital Heart Disease – Ventricular Septal Defect repaired in 2007;
  - Severe Obstructive Sleep Apnea;
  - Epilepsy.

At the hearing M, speaking on behalf of the appellant, stated that the appellant's heart function is deteriorating and she continues to have a ventricular septal defect. She added that persons with Down Syndrome struggle with low muscle tone and obesity problems all their lives, and poor nutrition – especially processed food – is a factor in shortening the appellant's life.

The ministry did not object to the admission of new documents 1 – 5. The panel finds that the new documentary evidence submitted by the appellant and the oral evidence of M is admissible under Employment and Assistance Act Section 22 (4) as evidence in support of the information before the ministry at reconsideration because they they provide additional corroborating details of the appellant's medical conditions and food requirements, which were before the ministry at the time of reconsideration.

The ministry relied on the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of December 13, 2016 in which the ministry denied the appellant the monthly nutritional supplement (MNS) of vitamins/minerals 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, the ministry was not satisfied that a medical practitioner had confirmed that as a direct result of chronic, progressive deterioration of health the appellant displayed two or more of the symptoms set out in EAPWDR Section 67 (1.1), that she required one or more of the items set out in Section 7 of Schedule C to alleviate the symptoms, or that failure to obtain the items would result in imminent danger to her life.

Relevant 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,

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):

- (c) for vitamins and minerals, up to \$40 each month.

The appellant argues that she suffers from several severe medical conditions that have led to a chronic, progressive deterioration of health, namely: Down Syndrome, congenital heart disease with continuing ventricular septal defect, severe obstructive sleep apnea, and epilepsy, and as a result of her health deterioration is showing symptoms of malnutrition and significant muscle mass loss, for which she requires a vitamin/mineral MNS.

The ministry accepts that the appellant is suffering from a chronic progressive deterioration of health as a result of severe medical conditions, but argues that there was insufficient information provided by the appellant's medical practitioner to satisfy the ministry that the appellant's symptoms of malnutrition and significant muscle mass loss are a direct result of a chronic, progressive deterioration of health. The ministry also argues that there was insufficient information provided by the medical practitioners to establish that the appellant requires a MNS of vitamins/minerals to alleviate the symptoms of malnutrition and significant muscle mass loss, or that failure to obtain the supplement will result in imminent danger to the appellant's life.

### **Panel Decision**

To qualify for a MNS for a vitamin/mineral supplement under EAPWDR Schedule C the applicant must meet the criteria set out in EAPWDR Section 67 (1) and (1.1). The ministry accepts that the appellant meets the requirements of Section 67 (1), namely that she is a PWD who does not have resources to pay the cost of a MNS. The ministry also accepts that the appellant has a chronic, progressive deterioration of health on account of severe medical conditions, as required by Section 1.1 (a).

[ ]

Having met the requirement of a chronic, progressive deterioration of health on account of a severe medical condition the applicant must then meet the remaining three criteria in Section 67 (1.1), which requires that a medical practitioner confirm that the applicant for a MNS:

- (b) as a direct result of the chronic, progressive deterioration of health **displays two or more** of the **symptoms** listed in (i) – (vii); and
- (c) requires **nutritional items** or a **vitamin/mineral supplement** to alleviate the symptoms in (b); and
- (d) failure to obtain either the nutritional items or vitamin/mineral supplement will result in **imminent danger to the person’s life**. (Emphasis added.)

The panel will address each of these criteria separately.

### **(b) Displays 2 or more Symptoms**

#### **Malnutrition**

In the initial application the GP notes that the appellant displays the symptom malnutrition, and comments “*obesity*”. She does not provide any additional information to explain why the appellant is overweight yet malnourished, and does not provide any information to establish that malnutrition is linked to the chronic, progressive deterioration of health. In her supplementary letter of January 12, 2017 the GP notes that the appellant’s excess weight has contributed to irregular menses, severe sleep apnea and immobility and that excess weight and progressive weight gain are a detriment to her cardiac well-being and will contribute to premature death, but does not provide additional information to establish the link between obesity and malnutrition.

Dr. X provides additional details concerning the appellant’s severe medical conditions but speaks only of the need to avoid processed food, which will negatively affect the appellant’s epilepsy. He does not mention the symptom malnutrition.

#### **Significant muscle mass loss**

In the MNS application the GP does not add any information to describe how or why muscle mass loss has occurred, and none of the new evidence from the GP or Dr. X refers to muscle mass loss. The panel accepts M’s oral evidence that poor muscle tone is present in individuals with Down Syndrome, but notes that her evidence is not that of a medical practitioner, as required by Section 67 (1.1).

Having considered all the evidence the panel finds that the ministry reasonably determined that there was insufficient evidence provided by a medical practitioner to establish that as a direct result of chronic, progressive deterioration of health the appellant displays 2 or more of the symptoms set out in Section 67 (1.1) (b) (i)-(vii).

### **(c) Requires a Vitamin/Mineral Supplement to alleviate the symptoms in (b)**

In the MNS application the GP writes that the appellant requires “*Vitamin D 1000 10 daily/ daily multivitamin*”. She does not explain how these items will alleviate the symptoms identified. In her supplementary letter of January 12, 2017 the GP writes that she has applied for “nutritional supplements” and notes that the appellant would benefit from extra funds to supplement her diet with nutrition, lower calories, low salt and no processed food. The panel notes, however, that the GP did not request a supplement for nutritional items in the MNS.

In his June 17, 2017 email message to M, Dr. X recommends Omega 3 supplements 100 mg daily as flax seed powder 1 Tbsp daily in breakfast cereal or fish oil pills and Vitamin D 800 units for children and 100 units for adults, but does not explain how these items will alleviate the identified symptoms of malnutrition and significant muscle mass loss.

The panel has already found that the ministry reasonably determined that the criterion of 2 or more specific symptoms set out in Section 67 (1.1) (b) (i) - (vii) was not met. The panel also finds that the ministry reasonably determined that there was insufficient evidence from the prescribed professionals to describe how a vitamin/mineral supplement would alleviate the symptoms identified.

d) **Failure to obtain the item(s) will result in imminent danger to the person's life:**

The panel finds that the ministry reasonably concluded that although the appellant is experiencing a chronic, progressive deterioration in her health as a result of several severe medical conditions, there is insufficient evidence from the appellant's prescribed professionals to indicate that failure to obtain a vitamin/mineral supplement will result in imminent danger to the appellant's life, for the following reasons:

1. in the MNS application the GP writes that the appellant will have "*improved cardiac function with weight loss and a healthier diet*". In her January 27, 2017 letter the GP writes that "*progressive weight gain will result in premature death*". Neither of these comments addresses imminent danger to the appellant's life.
2. in his May 26, 2015 email Dr. X notes: "*The only danger from seizures is falling and hurting herself, so there should be precautions around height, water and fire. . . . Food is going to affect her seizures (avoid processed foods)*". He does not refer to imminent danger to the appellant's life. Likewise, neither his October 16, 2015 nor his December 27, 2015 letter addresses imminent danger to life.

**Conclusion**

The panel acknowledges that the patient suffers from severe medical conditions, namely Down Syndrome, congenital heart disease, severe obstructive sleep apnea, and epilepsy, and that as a direct result of these conditions she is experiencing a chronic, progressive deterioration of health. The panel also acknowledges that the appellant's excessive weight is negatively affecting her health and that she should avoid a diet consisting of processed foods. However, the panel finds that the ministry reasonably determined that the medical practitioners failed to establish that:

1. the appellant is displaying 2 or more symptoms as a result of her chronic, progressive deterioration of health;
2. the appellant requires the specified Schedule C items (in this case, a vitamin/mineral supplement) to alleviate the symptoms identified; and
3. failure to obtain a vitamin/mineral supplement will result in imminent danger to the appellant's life.

The panel therefore finds that the ministry's determination that the appellant's request for a MNS of vitamin/mineral supplementation does not meet the eligibility criteria set out in EAPWDR subsections 67 (1.1) (b), (c) and (d) is reasonably supported by the evidence, and confirms the decision. The appellant is not successful in her appeal.