

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated April 24, 2017 which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and additional nutritional items. The ministry found that the requirements of Section 67(1.1) and Section 7 of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as there is not sufficient information to establish that a medical practitioner or nurse practitioner has confirmed:

- as a direct result of a chronic, progressive deterioration of health , the appellant displays two or more of the symptoms listed in Section 67(1.1)(b);
- the appellant requires vitamins and minerals to alleviate a symptom of his chronic, progressive deterioration of health and to prevent imminent danger to life, pursuant to Section 67(1.1)(c) and (d); and,
- the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake, pursuant to Section 7 of Schedule C, to alleviate a symptom of his chronic, progressive deterioration of health and to prevent imminent danger to life, under Section 67(1.1)(c) and (d).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67(1.1) and Schedule C, Section 7

PART E – Summary of Facts

Neither the appellant nor the ministry attended the hearing. After confirming that the appellant and the ministry were notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

- 1) Application for Monthly Nutritional Supplement (MNS) dated February 9, 2017 in which the appellant's medical practitioner (MP) reported:
 - the appellant's severe medical conditions are pre DM [diabetes mellitus], severe hypertension, and personality disorders “on and off;”
 - in response to the question whether as a direct result of the chronic progressive deterioration in health, does the appellant display two or more of the symptoms listed in section 67(1.1)(b) of the EAPWDR, the MP indicated the symptoms of malnutrition (note: “yes”), significant muscle mass loss (note: “yes”), moderate to severe immune suppression (note: “yes”), and significant deterioration of a vital organ (note: “BP [blood pressure] increased, energy low”) were displayed;
 - the appellant's height and weight are recorded;
 - in response to a request to specify the vitamin or mineral supplements required and the expected duration of need, the MP wrote “vitamin D, calcium, and vitamin C for 3 years;”
 - asked to describe how the item will alleviate the specific symptoms identified, the MP wrote “will help patient bone and general health;”
 - in response to the request to describe how the vitamins and minerals will prevent imminent danger to the appellant's life, the MP wrote “patient will be more energetic, decreased weight and decreased blood sugar;”
 - in response to a request to specify the additional nutritional items required, the MP wrote: “more fish, vegetables, lean meat and fruits;”
 - in response to the question 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 MP responded “yes, BS [blood sugar] and cholesterol and BP [blood pressure] may increase;”
 - asked to describe how the nutritional items required will alleviate one or more of the symptoms described and provide caloric supplementation to the regular diet, the MP noted “more vegetables will decrease blood sugar and cholesterol;”
 - in response to a request to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the MP wrote “patient will be healthier, more energetic and blood sugar and A1c [glycated hemoglobin test] will decrease;”
- 2) Letter dated April 5, 2017 in which the MP wrote that the appellant was assessed and his preDM is now transitional in Type 2 diabetes with hypertension and right foot skin ulcerations;
- 3) Request for Reconsideration dated April 6, 2017.

In his Request for Reconsideration, the appellant wrote:

- His MP has monitored his health for over 12 years. The MP has clearly stated the MNS is severely needed in his medical case. He has had two blood infections due to his diabetes within the last 30 days. Intravenous therapy was completed April 3, 2017.
- His monthly diet allowance was stopped July 2016 for no apparent reason.
- He needs these extra funds to eat nutritionally so he will not die of this disease that took his mother's life in 2013

Additional information

In his Notice of Appeal dated May 2, 2017, the appellant expressed his disagreement with the ministry reconsideration decision and wrote that this decision is not fair with his medical history. His mother died of this diabetes disease. He has further information coming from his doctor after his appointment on May 9, 2017.

No additional materials were received by the Tribunal from either party on the appeal.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry decision, which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and additional nutritional items because the requirements of Section 67(1.1) of the EAPWDR were not met, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 67(1.1) of the EAPWDR sets out the eligibility requirements which are at issue on this appeal for providing the additional nutritional supplement, as follows:

Nutritional supplement

- 67** (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.

Section 7 of Schedule C of the EAPWDR provides as follows:

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 acknowledged that the MP confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically Type 2 diabetes, severe hypertension and personal disorder “on and off,” pursuant to Section 67(1.1)(a) of the EAPWDR.

Symptoms

The ministry wrote in the reconsideration decision that while the MP indicated the symptoms of malnutrition, significant muscle mass loss, moderate to severe immune suppression, and significant deterioration of a vital organ, he did not provide information to explain the degree or severity of the symptoms identified, such as the amount of weight loss and the period of time in which it occurred. The ministry considered that in response to the question whether the appellant displays two or more of the symptoms listed in section 67(1.1)(b) of the EAPWDR, the only narrative provided by the MP is in regard to the deterioration of a vital organ, for which he commented that the appellant has high blood pressure. The panel notes that the MNS application asks that the symptoms are described “in detail” and finds that the ministry is reasonable to require further information from the MP to show that the muscle mass loss is “significant” and the immune suppression is “moderate to severe” and which vital organ has had “significant deterioration.” Although the appellant wrote in his Notice of Appeal dated May 2, 2017 that further information would be forthcoming from his doctor, there was no additional information provided on the appeal. Therefore, the panel finds that the ministry was reasonable to conclude that the MP has not confirmed that the appellant displays two or more of the symptoms listed in section 67(1.1)(b) of the EAPWDR that are as a direct result of the chronic progressive deterioration of health.

Vitamins and Minerals

In the reconsideration decision, the ministry wrote that there was not sufficient information from the MP to show that, for the purpose of alleviating one of the symptoms referred to in sub-section (b), the appellant requires the vitamins and minerals as set out in Section 7 of Schedule C. The ministry considered that the MP wrote in the MNS application, in response to a request to specify the vitamin or mineral supplements required: “vitamin D, calcium, and vitamin C for 3 years,” and asked to describe how the item will alleviate the specific symptoms identified, wrote: “will help patient bone and overall health.” The panel finds that the ministry reasonably determined that these comments by the MP do not sufficiently explain or describe how the vitamins and minerals specified would alleviate one of the listed symptoms of malnutrition, significant muscle mass loss, moderate to severe immune suppression or significant deterioration of a vital organ. The panel finds that the ministry reasonably concluded that sufficient information had not been provided from the MP to establish that the appellant requires specific vitamins and minerals to alleviate a symptom of his chronic, progressive deterioration of health, as required by Section 67 (1.1)(c) of the EAPWDR.

The ministry considered that in response to the request to describe how the vitamins and minerals will prevent imminent danger to the appellant’s life, the MP wrote “patient will be more energetic, decreased weight and decreased blood sugar.” In his Request for Reconsideration, the appellant wrote that he has had two blood infections due to his diabetes within the last 30 days and he needs the extra funds to eat nutritionally so he will not die of diabetes. In his letter dated April 5, 2017, the MP wrote that the appellant has right foot skin ulcerations. Given that there are no words of urgency used by the MP to denote ‘imminent danger,’ and no further information provided from the MP on the appeal, the panel finds that the ministry reasonably concluded that there is not sufficient information from the MP to establish that failure to obtain the vitamins and minerals will result in imminent danger to the appellant’s life, pursuant to Section 67(1.1)(d) of the EAPWDR.

Additional Nutritional Items

In the reconsideration decision, the ministry wrote that it is not satisfied that the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate a symptom of his chronic, progressive deterioration of health and to prevent an imminent danger to the appellant's life. The ministry wrote that the MP indicated in the MNS Application that the appellant needs "more fish, vegetables, lean meat and fruits" and this demonstrates that the appellant needs to eat specific foods as part of a balanced diet. The ministry reasonably determined that the MP made diet recommendations that involve appropriate food choices within his regular dietary intake, rather than caloric supplementation to his dietary intake. In his Request for Reconsideration, the appellant wrote that his monthly diet allowance was stopped July 2016 for no apparent reason and that he needs these extra funds to eat nutritionally so he will not die of this disease that took his mother's life in 2013. Neither the appellant nor the ministry attended the hearing and it was not possible for the panel to clarify whether the appellant had previously been in receipt of the MNS, or potentially one of the other diet supplements, such as that for a person who has diabetes.

In response to the question 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 MP responded "yes, BS and cholesterol and BP may increase," and the ministry wrote that while the MP reported that this "may" occur, there was no information to explain how often this occurs. The ministry wrote that as it has not been established that the appellant is displaying a listed symptom, it cannot be established that the appellant requires nutritional items to alleviate a symptom. As previously discussed, the panel finds that the ministry's conclusion that the MP has not confirmed that the appellant displays two or more of the listed symptoms was reasonable. The ministry wrote that the statement by the MP that "more vegetables will decrease blood sugar and cholesterol" does not establish how nutritional items would alleviate a specific symptom. The panel finds that the ministry was reasonable to conclude that there is insufficient information from the MP to confirm that the appellant requires specified additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate a related symptom, as set out in Section 67(1.1)(c) of the EAPWDR.

Section 67(1.1)(d) requires that the MP confirm that failure to obtain the nutritional items that are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the person's life. The ministry wrote that the statement by the MP that the appellant "will be healthier, more energetic and blood sugar and A1c will decrease" is insufficient evidence to establish that the appellant requires nutritional items as a caloric supplementation to prevent imminent danger to the appellant's life. In his Request for Reconsideration, the appellant wrote that he has had two blood infections due to his diabetes within the last 30 days and he needs the extra funds to eat nutritionally so he will not die of diabetes. In his letter dated April 5, 2017, the MP wrote that the appellant has right foot skin ulcerations. Given that there are no words of urgency used by the MP to denote 'imminent danger,' and no further information provided from the MP on the appeal, the panel finds that the ministry reasonably concluded that the MP has not confirmed that failure to obtain nutritional items that are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the appellant's life.

Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a MNS for vitamins and minerals and additional nutritional items because the requirements of Section 67(1.1) of the EAPWDR were not met, was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant's appeal, therefore, is not successful.