

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated February 28, 2020 where the ministry denied the appellant's request for the Monthly Nutritional Supplement (MNS) of vitamin/mineral supplements and nutritional items because the appellant failed to meet the criteria for MNS set out in Section 67 and Schedule C, section 7 of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 67(1), (1.1) and (2)
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, section 7.

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration:

1. The appellant is designated as a person with disabilities (PWD).
2. On January 9, 2020, the appellant applied for the MNS of vitamin/mineral supplements and nutritional items. The section of the application form completed by the medical practitioner cited the following required information:
 - a. The applicant's severe medical condition is a major depressive disorder, recurrent with moderate-severe episode.
 - b. In response to the question requiring the listing of treatments for a chronic/progressive deterioration of health, the medical practitioner noted: "On medication treatment i.e. Bupropion XR 150 mg daily".
 - c. Asked what symptoms the appellant displays, the medical practitioner did not list any symptoms.
 - d. The applicant's height and weight are listed as 6' and 150 lbs.
 - e. Asked to specify the vitamin or mineral supplement(s) required and expected duration, the medical practitioner noted: "ca, vit b12, flax oil, vit d., indefinite".
 - f. Asked to describe how this item will alleviate the specific symptoms identified, the medical practitioner noted: "Alleviates digestive system. Increase appetite".
 - g. Asked to describe how the item will prevent imminent danger to the applicant's life, the medical practitioner noted: "Prevent the appellant from losing weight and getting depressed".
3. On January 30, 2020 the ministry denied the appellant's request.
4. On February 13, 2020 the appellant signed a Request for Reconsideration of that decision, in which the following was noted: "Appellant is unable to digest meat. Appellant has lost 60 lbs due to inadequate funding to purchase adequate foods, protein powder and vitamins recommended. The psychiatrist assessed appellant and repeated appellant requires more money for food to manage appellant's depression. Appellant's severe depression is related to inability to purchase adequate foods appellant can digest and maintain a reasonable weight. Appellant is over 6' tall and appellant believes appellant is now about 135 lbs". Panel notes substituting "appellant" for the personal pronoun used in the document.
5. On February 28, 2020 the ministry completed its review of the Request for Reconsideration and denied the appellant's request.

Notice of Appeal

On March 3, 2020, the appellant signed a Notice of Appeal stating the appellant "has many symptoms of vitamin/mineral deficiency causing chronic progressive deterioration of health including depression, hair loss, fatigue, weakness, loss of appetite, irritability and mood swings. I require vitamins and minerals to fix these issues. My body does not digest meat properly, so I follow a plant based diet. Vitamins and minerals and fruit and vegetables are very important component in my brain health, after experiencing a brain injury".

Hearing

The panel conducted a teleconference hearing at the request of the appellant on April 8, 2020. In attendance at the hearing were the panel and ministry representative. The appellant did not attend. After an appropriate delay to allow time for the appellant to join the call and establishing that service of the documents confirming the date and time of the hearing to the appellant was made, the hearing was conducted in the appellant's absence as allowed by the Employment and Assistance Regulation, section 86(b).

The panel notes that there was no new additional information submitted subsequent to the reconsideration decision.

During the hearing the ministry representative stated that the basis for the decision to deny the appellant's request for the MNS lies in the absence of the two or more symptoms the medical practitioner is required to list from the prescribed list of acceptable symptoms on the application form. As these are required by the legislation to approve an application, the request was denied.

Panel member requested clarification of certain information in the package which dealt with non material items and the ministry provided the required clarifications.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's decision to deny the applicant's request for the MNS of vitamin/mineral supplements and nutritional items because the appellant failed to meet the criteria for MNS set out in the Employment and Assistance for Persons with Disabilities Regulation is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Ministry Position

The ministry position at reconsideration is that while the appellant is designated as a person with disabilities (and so satisfies that requirement under the legislation), the appellant's request for an MNS for vitamin/mineral supplements and nutritional items fails to meet all of the required legislated requirements of EAPWDR Section 67 and Section C, section 7. These require that a completed request in the form specified be submitted in which a medical practitioner, nurse practitioner or dietician confirms that the person with disabilities to whom the request relates is being treated by a medical practitioner or nurse practitioner for a chronic, progressive deterioration of health on account of a severe medical condition and as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the listed symptoms (malnutrition, underweight status, significant weight loss, significant neurological degeneration, significant degeneration of a vital organ, moderate to severe immune suppression), and for the purpose of alleviating a specified symptom, the person requires one or more of the items set out in section 7 of Schedule C and specified in the request.

The ministry acknowledges the appellant has submitted a completed request in the form specified in which a medical practitioner:

1. Confirms the appellant's severe medical condition is diagnosed as a recurrent major depressive disorder described as "moderate – severe episode".
2. As a result of the severe medical condition, confirms treatment for the chronic, progressive disorder of health consists of medication treatment.
3. In respect of symptoms resulting from the chronic, progressive deterioration of health, the ministry notes the medical practitioner does not indicate on the form provided any of the symptoms specified. In respect of the specific symptom of weight loss raised in the appellant's submissions, the ministry notes that the appellant's body mass index appears to be in the normal range and the ministry is not able to substantiate indications of lower body weight and weight loss contained in the appellant's submission based on the information submitted. Specifically, there is nothing to indicate the information is provided by the medical practitioner involved or another qualified individual as required. Because there is no indication in the medical practitioner report that the appellant displays two or more of the symptoms required to be present, as is required, the ministry determines the appellant is not eligible for the MNS under EAPWDR Section 67(1).
4. The medical practitioner specifies the appellant's height at 6' and weight of 150 lbs.
5. The medical practitioner specifies the required vitamin or mineral supplement required and expected duration to alleviate the symptoms supplied in question 3., the failure of which will result in imminent danger to the appellant's life: Calcium, vitamin b-12, vitamin d and flax oil: indefinite duration. The medical practitioner notes these items will alleviate the specified symptoms identified by alleviating his digestive system and will prevent imminent danger to the appellant's life: "prevent appellant from losing weight and getting depressed". The ministry notes here that they are unsatisfied with this as there are no symptoms to which the prescribed vitamins/mineral supplements may be gauged as an effective treatment to alleviate the chronic, progressive medical condition and suggest an imminent threat to life.
6. Medical practitioner specifies the nutritional items required to alleviate symptoms specified and duration of need as being fruits and vegetables, no duration indicated. To the question of 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 medical practitioner writes, "Yes. Does not eat meat so doesn't get adequate proteins". Asked to describe how the nutritional items will alleviate one of the indicated symptoms and how this will prevent imminent danger to life, the medical practitioner is silent. The ministry notes that the medical practitioner's diagnosis does not indicate how the appellant's medical condition prevents the ability to absorb sufficient calories but rather the inability to absorb sufficient protein is attributable to the choice not to eat meat. The ministry once again points to the lack of indicated symptoms, as required by EAPWDR Section 67 (1.1) (b) means the appellant is not eligible for the MNS.

Appellant Position**In written submissions, the appellant notes that:**

1. The appellant has many symptoms of vitamin/mineral deficiency causing chronic progressive deterioration of health including depression, hair loss, fatigue, weakness, loss of appetite, irritability and mood swings. "I require vitamins and minerals to fix these issues. My body does not digest meat properly, so I follow a plant based diet. Vitamins and minerals and fruit and vegetables are very important component in my brain health, after experiencing a brain injury".
2. "Appellant is unable to digest meat. Appellant has lost 60 lbs due to inadequate funding to purchase adequate foods, protein powder and vitamins recommended. The psychiatrist assessed appellant and repeated appellant requires more money for food to manage appellant's depression. Appellant's severe depression is related to inability to purchase adequate foods appellant can digest and maintain a reasonable weight. Appellant is over 6' tall and appellant believes appellant is now about 135 lbs"

Panel Decision

The panel notes that the ministry reconsideration decision to deny the appellant's request for the MNS rests on an analysis of the request form that is required by the legislation to determine eligibility and support the appellant's request. The panel concurs that the form specified by EAPWDR, Section 67 is crucial in determining eligibility as it mirrors the requirements of eligibility specified by the legislation.

The ministry's analysis initially confirms:

1. that the appellant satisfies the requirement that the applicant is a person with disabilities required under EAPWDR Section 67 (1)(a).
2. Confirms that the required form has been prepared and signed by the medical practitioner and confirms that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition termed a recurrent major depressive disorder, indicated by the medical practitioner to be "moderate- severe episode" in accordance with the requirements of EAPWDR Section 67 (1.1) and Section 67 (1.1)(a).

The panel concurs with this part of the ministry analysis which satisfies required elements of EAPWDR Section 67. The ministry then indicates that the medical practitioner has failed to indicate on the form required, two of any of the specific symptoms present in the applicant as required by the legislation. The ministry goes on to assert that the failure to satisfy this essential requirement of the legislation dictates the appellant's request must fail. The panel confirms that EAPWDR Section 67(1.1)(b) requires the medical practitioner to identify two or more of the symptoms listed (malnutrition, underweight status, significant weight loss, significant neurological degeneration, significant degeneration of a vital organ, moderate to severe immune suppression) as a result of the chronic, progressive deterioration of health. None of the symptoms have been indicated by the medical practitioner and the panel agrees with the ministry determination that this requirement is not fulfilled.

In respect of the requirement under EAPWDR Section 67 (2), the ministry notes it is difficult to determine the need for the vitamin/mineral supplements prescribed to alleviate the appellant's symptoms in the absence of the required symptoms. The panel confirms the ministry view. A determination of symptoms for a severe condition seems to be a necessary precondition to a prescription of treatment and determination of an imminent threat.

The reconsideration decision points to the lack of any of the required symptoms as the essential failure of the appellant's request. The panel agrees with this determination. While the medical practitioner asserts there is a chronic, progressive and severe medical condition and indicates a prescribed vitamin/supplement and nutritional items to alleviate the symptoms, there is no connection between the two in terms of the specific symptoms required by the legislation. This forms the basis for denial and the panel concurs with this determination.

The panel notes that the appellant's submissions allude to significant weight loss and underweight status which could conceivably be two of the required symptoms had they been listed by the medical practitioner. However, the statement of the medical practitioner does not list these as symptoms. The panel concurs with the ministry's reasonable determination that the evidence does not support the appellant's request.

Conclusion

The panel confirms the ministry reconsideration as it was a reasonable application of the legislation in the appellants circumstances. The appellant is not successful upon appeal.

Legislation

Employment and Assistance for Person with Disabilities Regulation**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 family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who:

- (a) is a person with disabilities, and,
- (b) is not described in section 8 (1) [people receiving special care] of Schedule A, unless the person is in an alcohol or drug treatment centre as described in section 8 (2) of Schedule A, 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 another nutrition-related supplement,
- (e) Repealed.
- (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, nurse practitioner or dietitian, in which the practitioner or dietitian has confirmed all of the following:

- (a) the person with disabilities to whom the request relates is being treated by a medical practitioner or nurse 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, nurse practitioner or dietitian other than the medical practitioner, nurse practitioner or dietitian who completed the form referred to in subsection (1.1).

Schedule C Health Supplements**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.
- (c) for vitamins and minerals, up to \$40 each month.

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2020-00087

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Keith Lacroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/04/09

PRINT NAME

Jean Lorenz

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/09

PRINT NAME

Robert Kelly

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/09