

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision (RD) dated October 19, 2021 which determined that the Appellant was not eligible for a monthly nutritional supplement (MNS) for nutritional items.

The Ministry determined that the Appellant did not meet the eligibility criteria set out in the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) Section 67 and Schedule C, subsection 7(a), namely: the nutritional items are required to alleviate one of the listed symptoms; failure to obtain the items will result in imminent danger to the person's life; and the nutritional items are part of a caloric supplementation to a regular dietary intake.

The Panel notes that the Ministry did approve an MNS for vitamins and minerals. This decision will only address the Ministry's decision regarding nutritional items.

Part D – Relevant Legislation

EAPWDR Section 67 and Section 7 of Schedule C

The relevant legislation is provided in the Appendix

Part E – Summary of Facts

The Appellant is a person with disabilities (PWD) in receipt of disability assistance (DA).

The evidence before the Ministry when it made its RD includes the following:

- A request for reconsideration (RFR), complete on October 5, 2021 and signed by the Appellant, in which the Appellant indicates that they find the Ministry's original decision unjust and unfair, adding "*I am sick and not well and (the) doctor filled out (the) forms*"; and
- A copy of an application for MNS form (the Application Form) in the name of the Appellant, dated April 9, 2021 and signed by a medical practitioner (MP) and completed jointly by the MP and a nurse practitioner (NP), both of which are identified on the form as prescribed professionals. Details of the information contained in the Application Form are as follows:
 - In the section of the Application Form where a prescribed professional is asked to list the applicant's severe medical conditions, the MP has written "*Insulin dependant Type 2 Diabetes*" and "*Hypertension*";
 - In the section of the Application Form where a prescribed professional is asked if the applicant is being treated for a chronic, progressive deterioration of health, the MP has written "*Uncontrolled Type 2 Diabetes*". No other details or information on treatment is mentioned in the space provided;
 - In the section of the Application Form where a prescribed professional is asked what symptoms the applicant displays because of their chronic, progressive deterioration of health, the NP added additional information on August 4, 2021, indicating that the Appellant has experienced significant weight loss, adding "*weight loss of 30 lbs. April – Aug 2021 ... resulting in loss of strength/weakness*", and significant muscle mass loss.";
 - In the section of the Application Form dealing with nutritional items, the MP has written "*Mediterranean diet, ↑↑ vegetables*" where asked to specify which additional nutritional items are required, and "*Metformin is known to affect Vitamin B12 deficiency*" where asked if the Appellant has a medical condition that results in the inability to absorb calories to satisfy daily requirements through a regular dietary intake; and,
 - No information is provided by either prescribed professional where they are asked to describe how the nutritional items required will alleviate one or more of the Appellant's symptoms and provide caloric supplementation to a regular diet, and where they are asked to describe how the nutritional items requested will prevent imminent danger to the Appellant's life.

Additional Information Submitted after Reconsideration

Section 22(4) of the *Employment and Assistance Act* (EAA) says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision

under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In the Notice of Appeal (NOA), the Appellant says that they are appealing the Ministry's RD because they don't agree with the decision. No further details are provided.

Evidence Presented at the Hearing

The Appellant did not attend the hearing. After confirming that the Appellant was notified of the date, time and place of the hearing at least two business days before the hearing was to commence in accordance with the *Employment and Assistance Regulation* (EAR) Section 85(2), the Panel heard the appeal in the absence of the Appellant, as permitted under EAR section 86(b).

At the hearing, the Ministry relied on its RD.

In response to question from the Panel, the Ministry confirmed that it had found that the Appellant needed the vitamin and mineral supplements for the purpose of alleviating the Appellant's significant weight loss and significant muscle mass loss symptoms, and that failure to obtain those nutritional items will result in imminent danger to the Appellant's life, but that the medical professionals had not indicated in the Application Form that the Appellant required any additional nutritional items for that purpose.

In response to another question from the Panel, the Ministry confirmed that no information was received from a medical professional other than what appears in the appeal materials.

Admissibility of New Evidence

No new evidence was presented in the NOA or at the hearing.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision, which found that the the Appellant is not eligible for an MNS for nutritional items because they are not necessary to alleviate one of the listed symptoms of a progressive deterioration of health, and that failure to provide the requested nutritional items will result in imminent danger to the Appellant's life, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the Appellant's circumstances.

The Ministry's position is that the information provided in the Appellant's application does not confirm that they require nutritional items to provide caloric supplementation to alleviate symptoms of a progressive deterioration of health, or that failure to provide nutritional items will result in imminent danger to their life.

The Appellant's position is that they disagree with the RD and that the MP submitted the required forms.

The Panel's Decision

In the RD, the Ministry determined that many of the criteria that must be met for an applicant to receive an MNS for nutritional items were satisfied in the circumstances of the Appellant. The criteria that the Ministry determined were satisfied in the circumstances of the Appellant were:

- They are receiving disability assistance;
- They are not receiving another nutrition-related supplement;
- They do not have any resources available to pay the cost to obtain the necessary supplements; and,
- A medical practitioner has confirmed that they are being treated for a severe medical condition.

However, for the Ministry to be able to provide any other supplements, specifically nutritional items that are part of a caloric supplementation to a regular dietary intake, EAPWDR Section 67(1.1) requires that a prescribed professional must confirm that the applicant requires the additional nutritional items "*for the purpose of alleviating [at least one of the two identified symptom(s)] ...*" (significant weight loss or significant muscle mass loss, in this case), and that failure to obtain those nutritional items will result in imminent danger to the Appellant's life.

The Appellant's Application Form was jointly prepared by an MP and an NP, both of whom are considered medical professionals on whose assessments the Ministry can rely. The Application Form asks the prescribed professionals to describe how the nutritional items requested will alleviate one or more of the Appellant's symptoms and provide a caloric supplementation to a regular diet. The Panel notes that no answer is provided to this question by either of the prescribed professionals. The Application Form also asks the prescribed professionals to describe how the nutritional items requested will prevent imminent danger to the Appellant's life. Again, no answer is provided to this question by either of the prescribed professionals. The Panel confirmed with the Ministry at the hearing that no additional information on whether these two conditions had been met was presented to the Ministry by either of the prescribed professionals, therefore the Panel finds that the Ministry reasonably determined that these two required conditions had not been met in the circumstances of the Appellant.

As two of the required conditions set out in the legislation have not been met, the Panel finds that the Ministry reasonably determined, based on the available evidence, that the Appellant did not qualify for additional nutritional items that are part of a caloric supplementation to a regular dietary intake.

Conclusion

The Panel finds that the Ministry's decision that the Appellant is not eligible for an MNS for nutritional items was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the Appellant. Therefore, the Ministry's decision is confirmed. The Appellant is not successful in their appeal.

APPENDIX – LEGISLATION

EMPLOYMENT AND ASSISTANCE FOR PERSONS 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, ...

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, ...

(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

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

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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)

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

Part H – Signatures

Print Name

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2021/11/18

Print Name

Kim Read

Signature of Member

Date (Year/Month/Day)

2021/11/18

Print Name

Roy Wares

Signature of Member

Date (Year/Month/Day)

2021/11/18