

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated November 9, 2010 which denied the appellant's request for Monthly Nutritional Supplement (MNS) (additional nutritional items, vitamins and mineral supplementation) because he did not meet the legislative criteria.

PART D – Relevant Legislation

Employment and Assistance with Persons with Disabilities Regulation (EAPWDR), Section 67
Employment and Assistance with Persons with Disabilities Regulation (EAPWDR), Schedule C,
Section 7

PART E – Summary of Facts

The evidence before the Ministry at the time of the Reconsideration Decision included: (a) Request for Reconsideration dated 16 September 2010; (b) Letter from the Ministry denying request for MNS dated 10 August 2010; (c) Ministry MNS Decision Summary dated 10 August 2010; (d) One page (Page 2 of 3) of medical information with no date or signature; (e) Letter from appellant to Ministry dated 29 August 2010.

In the Reconsideration Decision, the Ministry stated the appellant applied for nutritional supplements and vitamins and minerals, advising they were necessary for his medical condition. To be eligible for this supplement, the applicant must be designated a Person with Disabilities, be in receipt of disability assistance, and be receiving treatment from a medical or nurse practitioner for a chronic, progressive deterioration of health due to a severe medical condition. The medical or nurse practitioner must confirm that the items requested must be required to alleviate specific symptoms listed in Section 67(1.1)(b) of the EAPWDR that are a direct result of the chronic, progressive deterioration of health, and are necessary to prevent imminent danger to life.

The Ministry confirms that the appellant is a Person with Disabilities in receipt of disability assistance. The specified form has been submitted in which a medical practitioner has confirmed the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically Celiac Disease and Agoraphobia. As a result of the chronic, progressive deterioration of health, symptoms of underweight status and significant weight loss are displayed. The Ministry is not satisfied that the appellant requires MNS to prevent an imminent danger to life as required in Section 67(1.1)(d) of the EAPWDR as the medical practitioner did not indicate this requirement in the application, and the medical practitioner indicates "N/A" (not applicable) with regard to preventing imminent danger to life by taking vitamins and minerals. With regard to the request for vitamin and mineral supplements, the Ministry states the medical practitioner notes the appellant requires a daily multivitamin, but the Ministry is not satisfied that the medical practitioner confirms the requirement of vitamins or minerals over a regular daily intake.

At the hearing, the Ministry acknowledged the appellant's chronic, progressive disease of Celiac, and that the appellant was required to modify his diet with essential and specified foods that are expensive. The Ministry further agreed that as stated by the medical practitioner, a daily multivitamin is required by the appellant, and would be a good thing to do as a life practice, but the Ministry stated there is no medical evidence to support imminent danger to life. The Ministry reviewed the relevant Ministry policy and legislation, and noted that the appellant was receiving an additional \$40 per month for a diet supplement based on the medical practitioners' recommendation.

The appellant provided evidence that he was diagnosed with Celiac Disease in 2009, and since then, has made efforts to see a Dietician and learn all that he can about the disease. The appellant provided material from the Canadian Celiac Association website and the Celiac Society online information site stating that a gluten free diet is essential for persons suffering from Celiac Disease and that proper foods are required or the health of the appellant will deteriorate to the point where he would suffer very serious consequences, such as, severe cramps, severe diarrhea, nausea, sweating, bloating, headache and blistering of the skin. The appellant says he experienced these symptoms within an hour of eating the wrong foods. The appellant confirmed he is receiving an

additional \$40 per month supplement for gluten free foods (diet supplement) based on the medical practitioners' recommendation. The appellant is an admitted drug and alcohol addict, and has now been alcohol free for 9 months since starting a gluten free diet. He has tried for a year to make his budget work by buying the foods required to maintain a disease free state, and says it is not possible because the foods and vitamins required to keep him healthy are specialty items and expensive. The appellant's mother attended the hearing and confirmed that it is absolutely necessary that he receive a gluten free diet due to the disease. She occasionally will provide him with probiotics and Vitamin C when she can. Multivitamins are not in his budget and he is not currently taking them. He is finding himself lethargic with weight going up and down. The appellant lost 45 pounds in 4 months, but has recently gained 10 pounds back. He listed the following symptoms that he personally has suffered from: recurring abdominal bloating and pain, chronic diarrhea, weight loss, pale foul-smelling stool, gas, bone pain, behavior changes, muscle cramps, fatigue, delayed growth, pain in the joints, seizures, pale sores inside the mouth, called aphthous ulcers, painful skin rash, called dermatitis herpetiformis, and tooth discoloration or loss of enamel.

When addressing this list of symptoms at the hearing, the Ministry was very concerned that the seizures listed by the appellant had not been included in the medical practitioners' report. The appellant explained that he had a single seizure a year and a half ago and did not even tell his medical practitioner, and that he has not had one since. When questioned about the incomplete medical practitioners' report provided in the Appeal Record, the appellant stated he had provided the complete report to the Ministry. He also stated that he has a complete copy of the medical practitioners' report but did not bring it to the hearing.

The panel finds that: a) the appellant suffers from a chronic, progressive deterioration of health on account of a severe medical condition, specifically Celiac Disease; b) as a result of this disease, the medical practitioner confirms the displayed symptoms of underweight status and significant weight loss; c) the appellant is making every effort to follow the dietary restrictions required to treat his Celiac Disease, and as a result, notices the change in his health; d) the appellant is finding it increasingly difficult to continue with the dietary restrictions required to maintain good health and prevent progressive deterioration due to the disease because of the high cost of the special diet required; e) there is no medical evidence to support the position that failure to obtain nutritional items and vitamins and minerals will result in imminent danger to the appellant's life.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry reasonably concluded that the appellant was not eligible for the requested Monthly Nutritional Supplement (MNS) benefits.

EAPWDR, Section 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 center,

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.

(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).

(3) The minister may provide a nutritional supplement for a period of 3 calendar months to or for a family unit if the supplement is provided to or for a recipient of disability assistance or a dependent child of a recipient of disability assistance if (a) the recipient or dependent child is not receiving a supplement under subsection (1) of this section or section 2(3) of Schedule C, and (b) a medical practitioner or nurse practitioner confirms in writing that the recipient or dependent child has an

acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from

- (i) surgery,
- (ii) a severe injury,
- (iii) a serious disease, or
- (iv) side effects of medical treatment.

EAPDWR, Schedule C, Section 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.

The Ministry's position is that there is no medical evidence to support that the failure to obtain nutritional items and vitamins and minerals will result in imminent danger to the appellant's life.

The appellant's position is that if he does not receive the requested nutritional items and vitamins and minerals, his health will continue to deteriorate to the point where he will suffer very serious consequences for not following the required dietary restrictions of Celiac Disease.

The panel finds that the appellant is designated a Person with Disabilities, in receipt of disability assistance, and is receiving treatment from a medical practitioner for a chronic, progressive deterioration of health due to a severe medical condition, specifically, Celiac Disease. The appellant has displayed at least two of the symptoms required to receive MNS, underweight status and significant weight loss. Due to the dietary restrictions of Celiac Disease, the appellant is required to eat a gluten free diet, consisting of expensive specialty items, and a regular diet of fresh produce. The panel finds there is no medical information to support the requirement in EAPWDR, Section 67(1.1)(d) that failure to obtain the supplements and other items set out in EAPWDR Section 7 of Schedule C will result in imminent danger to the appellant's life. The panel makes this finding because of the following:

- the partial medical report as included in the Appeal Record does not indicate that failure to obtain the supplements and other items set out in EAPWDR Section 7 of Schedule C will result in imminent danger to the appellant's life. Asked to "describe how this item (vitamin or mineral supplementation) will prevent imminent danger to the applicant's life", the report writer responds "N/A" (not applicable)
- the medical report as included in the Appeal Record is incomplete (no date or signature and only one of three pages included – page 2 of 3).

The panel finds that the Ministry's decision was reasonably supported by the evidence in the circumstances of the appellant, and confirms the decision.