

PART C – Decision under Appeal

In a Reconsideration Decision dated September 24, 2010, the ministry has denied the appellant's request in relation to an amount for a Monthly Nutritional Supplement (MNS) that is above the allowable \$40.00 limit set out in legislation for vitamin/mineral supplementation under EAPWDR section 67(1.1). Specifically, the appellant is receiving the maximum allowable limit of \$40.00 and there is no provision in legislation to provide a supplement that is over the allowable limit.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 57, 66, 67, 69
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C

PART E – Summary of Facts

The evidence before the ministry at the time of the Reconsideration Decision included: (a) Request for Reconsideration, dated September 13, 2010; (b) Letters from prescribed professional (physician) dated August 18 and September 9, 2010; (c) Letter from appellant to ministry dated August 22, 2010; (d) photocopy of vitamin supplement with price \$67.99.

For this written hearing, the ministry has relied on the reconsideration summary which includes that the appellant is in receipt of the maximum allowance for MNS vitamin/mineral of \$40.00 (since 2008). The appellant's physicians have indicated that the appellant requires this iron supplementation, namely Floradix at \$67.99 per month, as it would alleviate the symptoms created by chronic low iron anemia and as it is the only iron supplement that the appellant is able to tolerate (as per Letter dated September 9, 2010). The physician also indicates in that same letter that associated dizziness and fainting could potentially be life-threatening in certain circumstances such as operating or walking near motor vehicles, or a fall from height especially onto a hard surface. The physician indicates that the appellant has suffered significant concussions due to those falls.

In a written submission dated November 5, 2010, the appellant has reiterated the seriousness of her medical conditions and that the iron supplement is critical. The appellant confirms that this is the only iron supplement that she is able to tolerate due to her many allergies and sensitivities. The appellant stated that, "I am in a terrible position, and my health, my brain functioning, my independence, and potentially my life all depend on it".

The facts of this case are not in dispute.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry's reconsideration decision dated September 24, 2010 which advised the appellant that she was not eligible to receive Monthly Nutritional Supplements (MNS) specifically, vitamin and mineral supplementation, above the legislated amount of \$40.00 that she is already receiving as per EAPWDR, section 67.1 and Schedule C, section 7. There is no provision in legislation to provide over and above the maximum amount allowed.

EAPWDR, Schedule C section 7, provides that the amount of a nutritional supplement that may be provided under section 67 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, \$165.00 each month;
- (c) for vitamins and minerals, \$40.00 each month.

EAPWDR, section 67(3) outlines that the ministry may provide a nutritional supplement for a period of 3 months to or for a family unit if the supplement is provided: (b) if a medical practitioner confirms in writing that the recipient has an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering (iii) a serious disease.

EAPWDR, section 66 provides that the ministry may not provide a diet supplement to a person who is receiving a supplement under section 67(1).

EAPWDR, section 57 provides that the ministry may not provide a crisis supplement for the purposes of obtaining a supplement described in Schedule C or any other health care good or service.

EAPWDR, section 69 provides that a supplement may be granted by ministry if the person faces a direct and imminent life threatening need, there are no resources to available to meet that need, and the health supplement is necessary to meet that need, provided that the supplement is listed under Schedule C, section 2.

EAPWDR, Schedule C, section 2(1) and (1.1) provides that medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

The ministry's position is that the appellant does receive the maximum supplement for MNS as per legislation under EAPWDR section 67(1) and Schedule C section 7. There is no legislation that would allow supplements in excess of the legislated allowable limits.

The appellant's position is that although she is currently receiving the maximum amount allowed by legislation for MNS (additional nutritional items and vitamins/minerals), she is, as per her prescribed professional's letters of August 18, September 9, 2010, requiring this additional iron supplement. The appellant states that she cannot afford this supplement at \$67.99 per month and is therefore seeking assistance through whatever legislation that will work. The appellant is arguing that without this iron supplement she is facing a life-threatening situation as supported by her physician in his letters.

Regarding EAPWDR, Schedule C section 7, the appellant is receiving the maximum allowable limit for her MNS (\$165. for dietary supplement and \$40. for vitamin/mineral supplements). As such, even though there may be evidence submitted by the physician (Letters dated August 18, September 9, 2010) stating that the appellant should have this iron supplement to prevent dizziness, falls, subsequent concussions, possible life threatening outcomes from the falls, there is no ability or provision within legislation to exceed the maximum limit amount given. Therefore, the panel finds that as the appellant is already receiving the maximum allowable supplement, the ministry in its determination that the appellant is unable to receive an additional supplement exceeding the maximum allowable limit was reasonable.

As the appellant is receiving a diet supplement under EAPWDR section 67(1), EAPWDR, section 66 provides that the ministry may not provide a diet supplement to a person who is receiving a supplement under section 67(1). Therefore, the panel finds that the ministry in its determination that the appellant is unable to receive a diet supplement under EAPWDR section 66 as she is already receiving supplements under EAPWDR section 67(1) was reasonable.

Regarding EAPWDR, section 67(3), the appellant's needs have been documented by a physician but the evidence provided that the appellant's needs for this vitamin supplement is for a long term, chronic condition of low iron induced anemia. With the evidence provided by the physician, the panel concluded that the ministry was reasonable in it's determination that the criteria for this legislation (recovering from a short term illness or surgery) was not met.

Regarding EAPWDR, section 57 and 69, as the appellant is already receiving the maximum legislated amounts for MNS, provided by EAPWDR Schedule C, the appellant may not receive any supplements under section 57 as there has been no evidence submitted that this was an unexpected need. Also, section 57 may not be provided for the purpose of obtaining a supplement described in Schedule C. As the appellant is receiving a supplement under EAPWDR 67, for an item described in Schedule, section 57 does not apply. Additionally, section 69 provides that if the person faces a direct and imminent life threatening need, there are no resources to available to meet that need, and the health supplement is necessary to meet that need, provided that the supplement is listed under Schedule C, section 2. Although the appellant may meet the requirements of life threatening need as per her physician, no resources with which to pay for the supplement which the panel would accept as fact; the vitamin supplement is not listed in section 2 (General Health Supplements). Therefore the panel has concluded that the ministry was reasonable in it's determination that the criteria for this legislation have not been met.

The panel finds that the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.