

PART C – Decision under Appeal

The decision being appealed is the Ministry's March 3, 2011 reconsideration decision determining that the Appellant was not eligible for a monthly nutritional supplement for nutritional items because the Appellant did not meet the eligibility requirements in section 67(1.1) the EAPWDR. Specifically the Ministry determined that:

1. The Appellant does not require nutritional items as part of a caloric supplement to a regular dietary intake to alleviate the symptoms of a chronic, progressive deterioration of health as required by section 67(1.1)(c); and
2. Failure to obtain the items will not result in imminent danger to the Appellant's life as required by section 67(1.1)(d) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67(1) and Section 67(1.1).

PART E – Summary of Facts

The Ministry did not appear at the hearing. The Panel confirmed that the Ministry was provided notice of the hearing and then proceeded in its absence pursuant to section 86(b) of the Employment and Assistance Regulation.

For its reconsideration decision the Ministry had the following evidence which is in the appeal record:

1. Ministry records indicating the Appellant is a PWD receiving disability assistance.
2. Appellant's application for a monthly nutritional supplement completed by a physician on November 10, 2010. The Appellant requested the supplement for vitamins/minerals and for nutritional items for caloric supplementation.
3. Ministry letter to the Appellant dated December 30, 2010 advising the Appellant that she received approval for a monthly nutritional supplement for vitamins/minerals starting on December 30, 2010.

In the nutritional supplement application the physician described the Appellant's diagnosis as severe connective tissue disease involving heart, lungs, nerves and muscles, and side effects from medication. In response to the question whether the Appellant is being treated for chronic progressive deterioration of health, the physician indicated that the Appellant sees multiple doctors at the hospital and she receives chemotherapy.

The physician indicated that as a direct result of the chronic progressive deterioration of health the Appellant displays significant muscle mass loss, significant neurological degeneration, moderate to severe immune suppression, has heart problems, and has gluten and lactose intolerance. The specific vitamin or mineral supplements required are calcium, vitamin D and iron. These help with bones and muscles, and general well being. Under the section for nutritional items the physician wrote gluten-free, lactose-free and low salt diet. The physician did not indicate how the nutritional items will alleviate any of her symptoms, provide caloric supplementation or prevent imminent danger to her life.

At the hearing the Appellant reviewed her medical conditions. She said she has chemotherapy every 3-4 weeks and she experiences nausea even before the treatments, so she needs to take Boost for caloric intake. The Appellant also stated that in April 2011 she asked the physician who completed her original November 2010 application form to provide more information in that original form. The physician filled in additional sections and the Appellant submitted that revised form at the hearing. In that revised form, the physician wrote that the Appellant needs Boost or Ensure because of vomiting secondary to medications and chemotherapy. As to how the items will alleviate her symptoms, the physician wrote that they will allow greater absorption of nutrients and therefore will enhance muscle function, neurologic and immune status. In describing how the nutritional items will prevent imminent danger to the Appellant's life the physician wrote they will keep her in proper electrolyte and chemical balance.

The Panel finds that Appellant's oral testimony and the revised application form are both related to her medical conditions and need for nutritional items. Therefore the Panel admits both the oral testimony and the revised application form as being in support of evidence that was before the Ministry pursuant to section 22(4) of the Employment and Assistance Act.

The Panel makes the following finding of fact which are not in dispute:

1. The Appellant is a PWD receiving disability assistance.
2. The Appellant is being treated for severe connective tissue disease.
3. The Appellant has the following symptoms: significant muscle mass loss, significant neurological deterioration, moderate to severe immune suppression, heart problems, and gluten and lactose intolerance.
4. The Appellant needs Boost and Ensure to allow greater absorption of nutrients to enhance muscle function, neurologic and immune status, and to keep her in proper electrolyte and chemical balance.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was ineligible for a monthly nutritional supplement for additional nutritional items because the Appellant did not meet the eligibility requirements in section 67(1.1) the EAPWDR. Specifically the Ministry determined that:

1. The Appellant does not require nutritional items as part of a caloric supplement to a regular dietary intake to alleviate the symptoms of a chronic, progressive deterioration of health as required by section 67(1.1)(c); and
2. Failure to obtain the items will not result in imminent danger to the Appellant's life as required by section 67(1.1)(d) of the EAPWDR.

The following sections of the EAPWDR apply to this appeal:

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 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.

The Appellant's position is that she needs Boost and Ensure for caloric supplementation because of the vomiting brought on by her medications and chemotherapy treatments. According to her physician the supplements will enhance her muscle function, neurologic and immune status, and will keep her in proper electrolyte and chemical balance without which she faces imminent danger to her life.

Since the Ministry did not appear at the hearing, the Panel considers its position to be as set out in the reconsideration decision. The Ministry was not satisfied that the physician had made a recommendation for a caloric supplement as required by EAPWDR section 67(1.1)(c), and was not satisfied that he indicated that nutritional items were needed by the Appellant to prevent imminent danger to life as required by EAPWDR section 67(1.1)(d).

Section 67(1.1) of the EAPWDR sets out specific criteria to be confirmed by a medical practitioner or nurse practitioner for a PWD to be eligible for a monthly nutritional supplement. The Panel finds that there is no dispute that the Appellant meets the requirements in sections 67(1.1)(a) and (b) of the EAPWDR. Regarding section 67(1.1)(c), the Panel finds that in November 2010 the physician did not specify any nutritional items needed by the Appellant to alleviate one or more symptoms of her chronic health conditions. Then in April 2011 the Panel finds that the physician identified Boost and Ensure as the dietary supplements needed for that reason. Therefore, the Panel finds that based on the evidence it was not reasonable for the Ministry to determine that the Appellant did not need nutritional items to alleviate one or more of the symptoms described in the Summary of Facts.

As to the requirement in section 67(1.1)(d) the Panel finds that the physician wrote that the nutritional items will alleviate the Appellant's symptoms by allowing greater absorption of nutrients and therefore enhance her muscle function, neurologic and immune status. In addition, the Panel finds that in April 2011, in describing how the nutritional items will prevent imminent danger to the Appellant's life, the physician wrote that they will keep her in proper electrolyte and chemical balance. The Panel therefore finds that based on the evidence it was not reasonable for the Ministry to determine that the Appellant did not meet the requirement in 67(1.1)(d) for a supplement for nutritional items.

The Panel finds that, based on the whole of the evidence and the applicable enactments, the Ministry's reconsideration decision was not reasonably supported by the evidence. Therefore the Panel rescinds and overturns that decision in favour of the Appellant.