

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of May 22, 2014 wherein the ministry decided that the appellant was not eligible for a monthly nutritional supplement (“MNS”) – either for nutritional items for caloric supplementation or for vitamins and minerals. The basis for the decision was that while the ministry determined that the appellant satisfied the following legislative criteria:

- That the appellant was being treated for a chronic, progressive deterioration of health on account of a severe medical condition, as required by EAPWDR section 67(1.1)(a);
- That the appellant displayed two or more of the symptoms prescribed by EAPWDR section 67(1.1)(b);

the ministry concluded that the appellant did not satisfy the remaining eligibility criteria set out in section 67(1.1) and Schedule C, section 7 of the EAPWDR. In particular, the ministry found that the appellant’s physician had not confirmed:

- That the appellant required the MNS for the purpose of alleviating one or more of the prescribed symptoms as required by EAPWDR section 67(1.1)(c);
- That failure to obtain the MNS will result in imminent danger to the appellant’s life as required by EAPWDR section 67(1.1)(d); or
- That the appellant required caloric supplementation to a regular dietary intake as specified by EAPWDR Schedule C section 7(a).

## PART D – Relevant Legislation

EAPWDR Section 67 [*nutritional supplement*]  
Schedule C, section 7 [*monthly nutritional supplement*]

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the following:

- An Application for Monthly Nutritional Supplement form signed by the appellant's physician on December 10, 2013 (the "application form").
- The appellant's undated written reconsideration submission.
- Printouts of internet information on inflammatory bowel disease/ulcerative colitis and spinal cord injury, and the role that vitamins C and B12 and other supplements may play in their treatment.

The appellant is a person with disabilities in receipt of disability assistance and a \$40 monthly diet supplement under section 6 of Schedule C of the EAPWDR.

In the application form the appellant's physician diagnosed him with spinal cord injury, ulcerative colitis, and GERD (gastro esophageal reflux disease). The physician indicated that the appellant demonstrates three of the symptoms prescribed in EAPWDR section 67(1.1)(b): malnutrition (ulcerative colitis and GERD), significant muscle mass loss, and significant deterioration of a vital organ (spinal cord injury). He reported the appellant is 5'9" tall and weighs 200 pounds.

In response to a question asking him to specify the vitamin or mineral supplement(s) required and expected duration of need, the physician wrote "B12" and "Vit D + Ca". Asked to describe how the items will alleviate the identified symptoms, the physician wrote "promote healing of nerves + tissue + bone." In response to the question "Describe how this item or items will prevent imminent danger to the applicant's life", the physician wrote "What kind of question is this? It will help him heal."

In response to a question asking him to specify the nutritional items required and expected duration of need, the physician wrote "Needs good quality calories + protein to allow proper healing." When asked if 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 physician wrote "If his colitis flares this would be the case." In describing how the nutritional items will alleviate one or more of the identified symptoms, the physician responded "He needs better quality calories to promote good health and healing of his injuries." Asked to describe how the nutritional items will prevent imminent danger to the appellant's life, the physician provided no response.

In his reconsideration submission the appellant wrote that the physician was unable to specify a duration for the need for vitamins/minerals because "he knows it will be the rest of my life. As well, to predict imminent danger of life to a person is impossible for anyone especially a physician." The appellant described ulcerative colitis as an autoimmune disease which causes chronic inflammation and ulcers/open sores in the colon. The appellant wrote that even between flare-ups he still has bouts of diarrhea/constipation with blood, mucus, fever, gas, bloating and pain. He wrote that failure to obtain the identified vitamins and minerals can cause imminent danger to his life due to severe complications of:

- Ulcerative colitis including bleeding, perforated colon, severe dehydration, liver disease, and colon cancer.
- Spinal cord injury including loss of muscle tone (spasticity and flaccidity), loss of muscle mass, cardio vascular disease and others.

Prior to the appeal hearing, the appellant submitted a letter dated June 12, 2014 to the offices of the Employment and Assistance Appeal Tribunal. The letter is from a physician acting as a locum for the appellant's regular physician. In his letter, the locum physician wrote that:

- The appellant's spinal cord trauma causes him difficulty with walking, standing, sitting, attention to personal hygiene, and meal preparation.
- The appellant's attention to food preparation is "sadly lacking".
- The appellant suffers from ulcerative colitis which has not recently relapsed, but which could flare up at any time.
- The locum physician sees the appellant at the local swimming pool 3 times a week where he swims to maintain muscle mass. "He is an inspiration to us all."
- Nutritional supplementation would be of great benefit to the appellant in restoring his muscle mass so in the event of a relapse of ulcerative colitis he will be "ahead of the game and will not have as much muscle atrophy, this would then lessen the chances of him being admitted to the hospital for a prolonged stay thus saving the province the additional expense."
- Allowing the supplement for 2 years would provide great benefit after which the need could be revisited.

In his oral testimony on appeal the appellant said that he requires wheelchair-accessible accommodation, the rent for which uses up most of his disability assistance and leaves little for purchasing proper food. He goes swimming 6 or 7 times a week to maintain his muscle mass and his health, and relies on the food bank and free meals 3 times a week at a local church in order to get by. He said that his ulcerative colitis has recently flared up. The appellant, through his advocate, stated that he weighed 153 pounds when he got out of hospital after 6 months of treatment for his spinal cord injury, and that he has worked hard with swimming to try to rebuild muscle mass.

The panel has assessed the information provided by the appellant in the locum physician's letter and in his oral testimony as providing additional detail with respect to his nutritional needs, and has accepted it as evidence in support of the information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which held that the appellant is not eligible for a MNS, is reasonably supported by the evidence or whether it is a reasonable application of the applicable enactment in the circumstances of the appellant.

The applicable legislation is as follows:

### EAPWDR

#### 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 ...

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,

...

(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.

...

## 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;
- (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
- (c) for vitamins and minerals, up to \$40 each month.

\* \* \*

The appellant's position is that he satisfies the legislative criteria for MNS, and that he does not have enough money to pay for the nutritional items he needs unless he obtains the MNS. He argued that:

- the legislation does not require the physician to specify an expected duration for the MNS,
- the physician specified that the MNS would promote healing;
- it is not possible to specify when danger to life is imminent; and
- providing the MNS will keep the appellant out of hospital and will save the province money.

The ministry's position, as set out in its reconsideration decision, is that the appellant is not eligible for MNS as he has not satisfied the legislated criteria in EAPWDR sections 67(1.1)(c) and (d) and Schedule C, subsection 7(a). The ministry argued that there was insufficient evidence to establish that the requested vitamins/mineral will alleviate the identified symptoms and that failure to obtain them will result in imminent danger to the appellant's life. With respect to nutritional items, the ministry argued that the appellant's body mass index does not establish that he is underweight or in need of caloric supplementation.

### Panel Decision

Section 7 of EAPWDR Schedule C provides for two kinds of MNS:

- Up to \$165 per month for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, and
- Up to \$40 per month for vitamins and minerals.

In order for a person to be eligible for either or both MNS, section 67(7)(1.1) of the EAPWDR requires that a medical practitioner or nurse practitioner confirms the information required in each of paragraphs 67(1.1)(a) through (d). In addition, to be eligible for nutritional items, the evidence has to demonstrate that the person requires caloric supplementation to a regular dietary intake.

In the appellant's case, the ministry determined that the appellant satisfied the criteria in paragraphs 67(1.1)(a) [*appellant being treated by a practitioner for a chronic, progressive deterioration of health*] and 67(1.1)(b) [*appellant displays two or more prescribed symptoms*].

With respect to paragraph 67(1.1)(c), the physician commented that the requested vitamins/minerals would promote healing, but did not convincingly link it to one of the prescribed symptoms. Similarly

with respect to nutritional items, the physician referred to better quality calories promoting good health and healing, but did not specify how caloric supplementation (that is, a quantity of calories in addition to a regular dietary intake) would alleviate one or more of the symptoms.

With respect to paragraph 67(1.1)(d), the physician has not identified that failure to receive either MNS will result in imminent danger to the appellant's life. The term "imminent" connotes a degree of immediacy which is not supported by the evidence, which indicates that the appellant has regained a significant amount of weight and that he has an appropriate body mass index.

With respect to nutritional items, the panel acknowledges that the appellant's significant recovery of weight and muscle mass is due to his exemplary efforts and diligence. However, in order to be eligible for nutritional items under section 7 of Schedule C, a person must demonstrate that they require caloric supplementation. This refers to the quantity of calories as opposed to the "quality" or source of calories. The appellant's significant recovery of weight and his good body mass index do not demonstrate that the appellant requires caloric supplementation to a regular dietary intake. This conclusion is consistent with the evidence of the physician and the locum physician that while the appellant may be restricted in his ability to absorb calories when his ulcerative colitis is flaring, he has not experienced a flare-up in some time. The appellant stated that he has had a flare-up recently, but there is no medical confirmation of this and no evidence that the appellant has been unable to absorb sufficient calories as a result.

The legislation does not indicate that any particular duration for MNS must be specified by a practitioner. Based on the panel's review of the ministry's reconsideration decision, the physician's failure to provide this information does not appear to have been a substantial basis for the ministry's decision.

The panel is sympathetic to the appellant's circumstances. However, based on the evidence and for the above-noted reasons, the panel finds that the ministry's reconsideration decision to deny the appellant's request for MNS is a reasonable application of the legislation in the appellant's circumstances, and the panel accordingly confirms the ministry's decision.