

## PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision of December 29<sup>th</sup>, 2011 wherein the ministry denied the appellant's request for the Monthly Nutritional Supplement (MNS) - for additional nutritional items that are part of a caloric supplementation to a regular dietary intake - as required under Schedule C, section 7 Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and to prevent imminent danger to the appellant's life as set out in section 67(1.1)(d) EAPWDR.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62, 67(1.1), Schedule C section 7

## PART E – Summary of Facts

The evidence before the ministry at reconsideration:

- Request for Reconsideration dated December 13<sup>th</sup>, 2011.
- Application for Monthly Nutritional Supplement (MNS) dated July 21<sup>st</sup>, 2011 completed by the appellant and the appellant's physician (AP).
- Health Assistance Branch (HAB) Decision Summary dated October 4<sup>th</sup>, 2011.
- Letter from ministry to the appellant dated October 4<sup>th</sup>, 2011 regarding approval of vitamins/minerals.
- Letter from AP to ministry dated November 20<sup>th</sup>, 2011 providing further rationale to support the appellant's MNS application.

The appellant has a Persons with Disabilities (PWD) designation and has applied for a Monthly Nutritional Supplement. The appellant's physician (AP) has diagnosed the appellant with Seizure Disorder, severe Osteoarthritis, Anxiety, Depression, Developmental Delay and Fetal Alcohol Syndrome. In the application the AP indicated that the appellant is being treated for a chronic, progressive deterioration of health and that as a result of these medical problems displays symptoms of moderate to severe immune suppression and significant deterioration of a vital organ, brain. The AP indicated the appellant is taking medications for anxiety/depression which may cause weight gain and metabolic increased weight gain aggravates the osteoarthritis of hip. In the application the AP indicated the appellant displays underweight status, significant weight loss, significant muscle mass loss, significant neurological degeneration and moderate to severe immune suppression, however, the AP did not complete the height/weight area in the application nor did he provide any history/information regarding the appellant's weight gain/loss. In the application, the AP indicated the higher quality protein and fresh fruit and vegetables will provide caloric supplementation to a regular dietary and that the appellant does not have a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. In describing how the nutritional items will alleviate one or more of the appellant's symptoms, the AP wrote "prevent B12, calcium and Vitamin D deficiency, prevents protein malnutrition" and in describing how the nutritional items required will prevent imminent danger to applicant's life, the AP wrote "prevent loss of muscle mass and pneumonia". In a letter of November 20<sup>th</sup>, 2011 the AP wrote "In order to purchase higher quality protein and lower carbohydrate items, she requires a dietary financial supplement...because she is not able to earn enough money to quality proteins, fresh vegetables and fruits, as recommended in the Canadian Food Guide".

At the hearing, the appellant presented a letter from her AP dated January 20, 2012 as new evidence for the panel to consider.

- The letter from the AP dated January 20<sup>th</sup>, 2012 reiterated the AP position in the letter of November 20<sup>th</sup>, 2011. The AP again stated the appellant needed financial assistance to be able to purchase enough food of a standard consistent with Canada's food rules so that she not be allowed to become deficient in calcium, high-quality protein, vitamin's and vegetables and fruits. The AP stated she is at risk for a number of conditions including premature osteoarthritis, cerebral degeneration, unfavorable lipid state and impairment of glucose tolerance if she gains weight because of the medications. Therefore, the provision of an allowance for so-called nutritional supplements would go some distance towards enabling this person to remain on some-type of suitable diet relative to her medical condition, with resultant reduction in disease in the future.

The ministry had no objection to the letter being admitted as new evidence stating the letter has not changed the ministry's position relative to the appellant meeting the legislated guidelines for the supplement.

The panel finds the AP's letter is admissible under section 22(4) Employment and Assistance Act (EAA) as it contains information that was before the ministry when the decision being appealed was made.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of December 29<sup>th</sup>, 2011 wherein the ministry denied the appellant's request for the Monthly Nutritional Supplement (MNS) - for additional nutritional items that are part of a caloric supplementation to a regular dietary intake - as required under Schedule C, section 7 Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and to prevent imminent danger to the appellant's life as set out in section 67(1.1)(d) EAPWDR.

Legislation considered: EAPWDR

### Nutritional supplement

#### 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).

Schedule C

### Monthly nutritional supplement

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

The ministry argued that the appellant already receives a monthly supplement for Vitamins/Minerals under Schedule C, section 7 to assist her with her calcium, B12 and other mineral deficiencies and that the legislation within the section 67(1) EAPWDR for MNS states that the applicant must meet all the requirements of section 67(1) and 67(1.1)(a to d) EAPWDR and Schedule C, section 7(a) EAPWDR to receive a MNS for nutritional items.. The ministry agrees the appellant's request for a MNS for nutritional items has met the requirements in section 67(1) and 67(1.1)(a), (b) and (c) EAPWDR but has not meet the requirements of s. 7 of Schedule C and section 67(1.1)(d). The ministry argued that in the appellant's application the AP indicated the appellant does not have a medical condition that results in the appellant's ability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake and ministry argued the AP did not provide additional information to indicate that the appellant requires caloric supplementation- extra calories – over and above those found in a regular diet which the appellant should be following. The ministry agreed that a regular diet of higher quality of protein and lower carbohydrates will probably benefit the appellant but that the physician's evidence established the need for appropriate food choices within the appellant's regular diet rather than caloric supplementation to dietary intake and that failure to provide the MNS to the appellant will not result in imminent danger to the appellant's life.

The appellant argued that her AP supports her application/need for MNS in his letter of November 20<sup>th</sup>, 2011 and further in his letter of January 20<sup>th</sup>, 2012 stating that "the supporting diagnoses are seizure disorder and fetal alcohol syndrome. Both of these are associated with a significant disorder of the brain. She has been taking the antiepileptic drug for many years, due to her seizure disorder. This drug may have deleterious effects on her liver over time, which might be mitigated by a nutritious diet, high in proteins and lower in carbohydrates, to meet to prevent the development of fatty liver." The appellant argued the AP further stated, "she is not able to earn enough money to purchase quality proteins, fresh vegetables and fruits", which are more expensive than carbohydrates, but which items she needs in order to prevent further deterioration of her brain. Her present supplement does not provide her with sufficient funds to purchase these food items. The appellant argued her AP recommended that "the provision of an allowance for so-called nutritional supplements would go some distance towards enabling this person to remain on some-type of suitable diet relative to her medical condition, with resultant reduction in disease in the future." The appellant argued that without the financial assistance of the MNS she cannot afford to purchase high protein, fruits and vegetables that her AP is recommending that will improve her medical conditions.

The panel finds the AP stated that the appellant has severe medical conditions and needs quality proteins, fresh fruit and vegetables and a lower carbohydrate diet in order to prevent further deterioration of her brain. The ministry does not disagree that the diet (quality protein, fresh vegetables and fruits) recommended by the AP would not benefit the appellant, but the AP has not provided sufficient evidence to indicate that the appellant requires extra caloric supplementation over and above that found in a regular diet and, that if the ministry failed to provide the MNS that it would present an imminent danger the appellant's life. The panel finds the appellant position is that she needs financial assistance to obtain the nutritional supplements (quality protein, fruits and vegetables) recommended by her AP, a position that is supported by her AP and that she (her and her spouse) spends about \$300 per month on food. The ministry's position is that the appellant should be choosing the foods recommended by her AP as part of her regular diet that there is insufficient

evidence to support that if the ministry did not provide the additional nutritional items that are part of a caloric supplementation to a regular dietary intake (MNS) that this would result in imminent danger to the appellant's life.

The panel finds that the evidence from the AP does not speak to the imminent danger the appellant will be in if the MNS is not provided and that in the AP's written evidence the AP addresses appellant's medical conditions and the need for the ministry to provide additional financial support to the appellant to meet her dietary needs but the AP does not address the issue "failure to provide the supplement will prevent imminent danger to the appellant's life".

The panel finds the ministry reasonably determined that there is not sufficient information to support that if ministry did not provide the appellant with a Monthly Nutritional Supplement that it would result in imminent danger to the appellant's life.

In reference to Schedule C, section 7 the panel finds the ministry's position is that the AP did not indicate that the appellant requires caloric supplementation; or that the appellant displays the symptoms of malnutrition; or that the appellant has a medical condition that results in an inability to absorb sufficient calories to satisfy the requirements through a regular dietary intake; and that a diet of quality protein and fresh vegetables and fruits may prevent further deterioration of the appellant's conditions. The panel finds the appellant's position is that financial support is needed to purchase the items recommended by AP. The panel finds the ministry agrees the appellant needs to maintain a proper diet but the AP does not indicate that the appellant requires extra calories – caloric supplementation – over and above those that should be found in the appellant's regular diet.

Therefore the panel finds that the lack of information to support that the appellant suffers from malnutrition, severe weight and underweight status that the ministry reasonably determined there is insufficient information/evidence to support that the appellant requires further nutritional items that are part of a caloric supplementation to a regular dietary intake as required in Schedule C, section 7 EAPWDR to alleviate symptoms and prevent imminent danger to life.

The panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision and confirms the decision pursuant to section 24(1)(b) and section 24(2)(a) of the Employment and Assistance Act.