

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated March 7, 2012 which denied the appellant's request for a Monthly Nutritional Supplement for additional nutritional items. The ministry held that the requirements of Section 67(1.1) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as:

- the additional nutritional items required to provide caloric supplementation to a regular dietary intake are not specified in the application
- there is no information provided to establish that the appellant requires additional nutritional items above a regular dietary intake to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67(1.1) and Schedule C, Section 7

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Application for Monthly Nutritional Supplement dated November 1, 2011 signed by the appellant's physician and stating in part that the appellant's severe medical condition is multiple sclerosis, that the onset was 2004, with "...quite aggressive course; required chemotherapy to stabilize"; in response to the question whether as a direct result of the chronic progressive deterioration in health, does the appellant display two or more symptoms, the symptom of significant neurological degeneration is indicated with the note "permanent disability due to M.S."; the vitamins or mineral supplements required are reported as "...Iron, Glucosamine, MSM, CMO, Thiamine, Niacin, Vitamin B, C, B6, B12, Zinc, Potassium, Riboflavin, etc.", that these items will alleviate the specific symptoms by "symptom improvement" and will prevent imminent danger to the appellant's life by "symptom improvement"; in response to a request to specify the additional nutritional items required, it is indicated "chronic" and in response to the question whether 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 indicates "...client prefers formulation for better absorption"; asked to describe how the nutritional items required will alleviate one or more of the symptoms described and provide caloric supplementation to the regular diet, the physician indicates "symptom improvement" and how the nutritional items will prevent imminent danger to the appellant's life, it is indicated "N/A" or not applicable and the additional comments are: "M.S. is a chronic, disabling disease, optimal nutrition can be beneficial."
- 2) Undated typewritten page from the appellant which states in part Vitamin or Mineral Supplementation and lists Calcium/Magnesium, Riboflavin, Vitamin B3, B6, B12, Zinc, Potassium, Proteins, Vitamin C, Camosine, Chloride and, under Dietary Supplement,: Calcium, Iron, Thiamine, Riboflavin, Niacin, Glucosamine, Chondroitin, MSM, CMO, and together all of these have helped to support brain function and mental focus, reduce fatigue, improve joint comfort and movement, reduce stress and depression, making life more fulfilling and easier to manage everyday tasks; since on these supplement, she is able to try to get a part-time job and without them she cannot walk without aid, has severe fatigue and memory loss, weak and non-feeling limbs, feelings of stress and depression; she cannot get these supplements in their amounts and forms from food eaten as these vitamin supplements must be taken in liquid or powder forms on a daily basis for them to work to improve life;
- 3) Letter from the ministry dated January 10, 2012 to the appellant denying her request and enclosing a copy of the decision summary;
- 4) Questionnaire signed by a physician February 21, 2012 which states in part that the physician agrees with the appellant's explanation of her symptoms, condition and need for vitamins and nutritional supplements, as set out in the undated typewritten pages, and comments "M.S. is a chronic, progressive deteriorating disease" "...without these supplements and vitamins there would be a marked deterioration in her health";
- 5) Undated typewritten pages from the appellant which states in part that the definition of M.S. is a chronic autoimmune disorder that affects the movements, sensations, and body functions, is very debilitating and can be very progressive disease; the appellant states she cannot afford any nutritional items and the supplements she is asking for would get her the vitamins and minerals which have been shown to alleviate the symptoms of M.S. and without these items her chronic disease progresses; without these additional nutritional items she continues to fall and also choke causing much damage to her body, organs, and health. Without daily vitamins and minerals, she has numbness throughout her body, cannot walk without aids, she has to drag her legs because they are too weak to hold her up, she has choking problems when trying to eat or drink which causes danger to her life and organs, and having balance problems causing numerous falls. Neurological degeneration causes muscle weakness (balance and walking issues), tremors or muscle spasms, problems with speech, difficulty with hearing, and memory problems. With certain vitamins and minerals, she is able to alleviate symptoms. The appellant states her symptoms include significant muscle mass loss, significant neurological degeneration, peripheral neuropathy, and significant deterioration of a vital organ (damage to her organs from the constant heavy choking when she eats and drinks). The appellant states she is asking for liquid form vitamins and minerals due to her choking problems as it is safer and less harmful to organs for her to swallow liquid than a hard pill; and,
- 6) Request for Reconsideration.

In her Notice of Appeal, the appellant states that she is trying to eat a Gluten free diet since after she cut out Gluten and dairy she could walk and look for work outside the home, and before she could not walk. The appellant states that she has not been able to afford the proper food for over 5 months and her legs are getting tingly and numb, and her fatigue is returning. A couple of years ago, she was in a wheelchair, using a scooter, canes and a walker and unable to walk unaided, she was choking when eating or drinking, and had numbness in hands, legs, and feet. The appellant states she is to have a Gluten free, dairy free diet and eat only certain meats and no processed foods and this keeps her M.S. symptoms away and makes her feel healthy. She has worked with nutritionists to change her diet, exercise and what vitamins and minerals she needs to take.

The ministry relies on its reconsideration decision which states that it has approved the appellant's request for vitamin/mineral supplements and has denied her request for additional nutritional items. The appellant is a Person With Disabilities in receipt of disability assistance. A medical practitioner has confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically Multiple Sclerosis (MS). A medical practitioner has confirmed that the appellant displays two symptoms as a result of her chronic, progressive deterioration of health, namely significant neurological degradation (in the application) and muscle mass loss (in the February 2012 Questionnaire). The ministry is satisfied that the appellant requires vitamin/mineral supplementation to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life. The medical practitioner does not specify the additional nutritional items required to provide caloric supplementation to a regular dietary intake. The appellant does not provide information from a medical practitioner that the additional nutritional items are required above a regular dietary intake to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry decision, which denied the appellant's request for a Monthly Nutritional Supplement for additional nutritional items because the requirements of Section 67(1.1) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 67(1.1) of the EAPWDR sets out the eligibility requirements which are at issue on this appeal for providing the additional nutritional supplement, as follows:

Nutritional supplement

- 67 (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.

Section 7 of Schedule C of the EAPWDR provides as follows:

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 ministry argues that the provisions of Section 67(1.1)(c) require that the additional nutritional items

required to provide caloric supplementation to a regular dietary intake must be specified in the request and that the medical practitioner has not specified these items. The ministry also argues that information has not been provided from the medical practitioner to establish that the appellant requires additional nutritional items above a regular dietary intake to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life, as required by Section 67 (1.1)(c) and (d).

The appellant's position is that she is trying to eat a Gluten free diet since after she cut out Gluten and dairy she could walk and look for work outside the home, and before she could not walk. The appellant argues that she has not been able to afford the proper food for over 5 months and her legs are getting tingly and numb, and her fatigue is returning. The appellant points out that a couple of years ago, she was in a wheelchair, using a scooter, canes and a walker and unable to walk unaided, she was choking when eating or drinking, and had numbness in hands, legs, and feet. The appellant argues she is to have a Gluten free, dairy free diet and to eat only certain meats and no processed foods and this keeps her M.S. symptoms away and makes her feel healthy. The appellant argues that the liquid form vitamins and minerals help with her choking problems as it is safer and less harmful to organs for her to swallow liquid than a hard pill.

Section 67(1.1)(c) of the EAPWDR requires that a request for supplements be completed by a medical or nurse practitioner and must specify in the request that the person requires one or more of the items set out in Schedule C, Section 7(a) being additional nutritional items that are part of a caloric supplementation to a regular dietary intake or Section 7(c) being vitamins and minerals. Whereas the medical practitioner has set out in the application dated November 1, 2011 the specific vitamins or mineral supplements required, namely "...Iron, Glucosamine, MSM, CMO, Thiamine, Niacin, Vitamin B, C, B6, B12, Zinc, Potassium, Riboflavin, etc.," in response to the request to specify the additional nutritional items required, the medical practitioner has noted "chronic." Although the appellant has provided a page which describes Dietary Supplement: as "Calcium, Iron, Thiamine, Riboflavin, Niacin, Glucosamine, Chondroitin, MSM, CMO", the panel finds that this page has not been endorsed by the medical practitioner and included as part of the request for the supplement, which the panel finds the ministry reasonably concluded is required by the legislation.

While the ministry acknowledges that a medical practitioner has confirmed that the appellant displays two symptoms as a result of her chronic, progressive deterioration of health, namely significant neurological degradation (in the application) and muscle mass loss (in the February 2012 Questionnaire), the ministry argues that it has not been shown that additional nutritional items (that are part of a caloric supplementation to a regular dietary intake) will alleviate these symptoms. In the application for the supplements, in response to the question whether 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 indicates "...client prefers formulation for better absorption" and asked to describe how the nutritional items required will alleviate one or more of the symptoms described and provide caloric supplementation to the regular diet, the physician indicates "symptom improvement." The appellant adds in the undated page listing the dietary supplements, which was not endorsed by the medical practitioner, that she "...cannot get these supplements in their amounts and forms from food eaten as these vitamin supplements must be taken in liquid or powder forms on a daily basis for them to work to improve life." In her Notice of Appeal, the appellant also states she is to have a Gluten free, dairy free diet and eat only certain meats and no processed foods and this keeps her M.S. symptoms away and makes her feel healthy. The panel finds that the appellant has modified her diet and that this has helped to alleviate her symptoms, she believes that supplements are best taken in liquid or powder form, and the medical practitioner has acknowledged that the appellant prefers a certain formulation and that it will provide "symptom improvement", but the medical practitioner has not indicated that additional nutritional items are required because the appellant is unable to absorb sufficient calories to satisfy daily requirements. The panel finds that the ministry was reasonable in concluding that it has not been confirmed by a medical practitioner that the appellant requires additional nutritional items above a regular dietary intake to alleviate her symptoms, as set out in Section 67(1.1)(c).

Section 67(1.1)(d) requires that the medical practitioner confirm that failure to obtain the nutritional items that

are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the person's life. The appellant states that the liquid form vitamins and minerals help with her choking problems as it is safer and less harmful to organs for her to swallow liquid than a hard pill and that without additional nutritional items she continues to fall and also choke causing much damage to her body, organs, and health, with which the medical practitioner agrees in the February 2012 Questionnaire. In the application dated November 1, 2011, when asked how the nutritional items will prevent imminent danger to the appellant's life, the medical practitioner indicated "N/A" or not applicable, with the additional comment that "...M.S. is a chronic, disabling disease, optimal nutrition can be beneficial." In the February 2012 Questionnaire, however, the medical practitioner adds a note that "...M.S. is a chronic, progressive deteriorating disease" "...without these supplements and vitamins there would be a marked deterioration in her health." The panel finds that the medical practitioner has clarified in the Questionnaire that nutritional supplements are more than just potentially beneficial but that without them and the vitamin supplements, for which the appellant was approved, there would be a marked deterioration in the appellant's health. The panel finds that the ministry reasonably concluded that the medical practitioner has not confirmed that without the requested additional nutritional supplements there is an imminent danger to the appellant's life, as is required by the legislation.

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a Monthly Nutritional Supplement for additional nutritional items because the requirements of Section 67(1.1) of the EAPWDR were not met, was reasonably supported by the evidence and the panel confirms the ministry's decision.