

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated March 14, 2012 which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and 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:

- there is not sufficient information provided to establish that the appellant requires vitamins and minerals to alleviate the symptoms of his chronic, progressive deterioration of health and to prevent imminent danger to life; and,
- there is not sufficient information provided to establish that the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of his 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 December 6, 2011 signed by the appellant's physician and stating in part that the appellant's severe medical condition is depression, anxiety and panic attacks and chronic back pain secondary to osteoarthritis to facet joints, and that the appellant is being treated for a chronic, progressive deterioration of health; 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 symptoms of significant weight loss and significant muscle mass loss are indicated; the vitamins or mineral supplements required are reported as "...Centrum Forte, more fruits and vegetable and meat.", that these items will alleviate the specific symptoms by "...feels fatigued and low energy" and will prevent imminent danger to the appellant's life by "...there is no imminent danger to life"; in response to a request to specify the additional nutritional items required, it is indicated "...vitamins, fruits, vegetables, and meats and protein shakes" 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 "...nausea due to medication"; 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 "...will gain muscle mass and improve energy levels" and how the nutritional items will prevent imminent danger to the appellant's life, it is indicated "...no danger to life at present but if continues then could be a dangerous situation, supplements will help maintain a healthy weight."
- 2) Letter from the ministry dated January 28, 2012 to the appellant denying her request and enclosing a copy of the decision summary;
- 3) Questionnaire signed by a physician February 21, 2012 which states in part that the physician agrees with the statements that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, that he displays the symptoms of malnutrition, underweight, significant weight loss (weight loss of 25 lbs. within 5 months), and significant muscle mass loss (currently experiences weakness and easily fatigued); as a result of the symptoms identified, the physician agrees that the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake, that he requires protein drinks, a higher protein intake and a higher fruit and vegetable intake in order to maintain weight, nutritional status and prevent further muscle and weight wasting ("experiences nausea due to anxiety therefore requires additional calories to supplement his regular diet"), and that he requires vitamins and minerals to further prevent deterioration of health ("multivitamin especially Vitamin D"); the physician agrees that failure to obtain these items will result in imminent danger to the appellant's life in the future, that items are necessary for prevention ("if does not receive monthly nutritional supplement, deterioration will continue to progress"); the physician adds additional handwritten comments recommending "...nutritional supplement to prevent further deterioration of [the appellant's] health and prevent chronic health issues;" and,
- 4) Request for Reconsideration- Reasons prepared by an advocate on behalf of the appellant.

Prior to the hearing, the appellant provided a written submission prepared by an advocate, and the panel accepted it as argument.

The ministry relies on its reconsideration decision which states that the appellant is a Person With Disabilities in receipt of disability assistance. A medical practitioner confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of severe medical conditions, including depression, chronic back pain secondary to osteoarthritis of facet joints, anxiety and panic attacks. A medical practitioner confirmed that the appellant displays two symptoms as a result of his chronic, progressive deterioration of health, namely significant weight loss and significant muscle mass loss (in the application dated December 6, 2011) however the ministry is not satisfied that the appellant displays the symptoms of malnutrition or underweight status as set out in the document dated February 21, 2012 as the appellant's BMI indicates his weight is currently in the normal range. The medical practitioner specified the vitamin or mineral supplement required as Centrum Forte but does not describe how Centrum Forte will alleviate the specific symptoms of significant weight loss and significant muscle mass loss as he states "...feels fatigue and low energy." The

medical practitioner stated that failure to obtain the specified items will result in imminent danger to the appellant's life "in the future" and that he recommends nutritional supplement to prevent further deterioration of the appellant's health and prevent chronic health issues.

The medical practitioner reported, in the application, that the additional nutritional items required to alleviate symptoms are "...vitamins, fruits, vegetables, meat and protein shakes" and explained that the requested nutritional items will alleviate one or more symptoms and provide caloric supplementation to the regular diet as the appellant "...will gain muscle mass and improve energy level." There is no explanation for the need for additional calories over and above a regular dietary intake. The medical practitioner replied "nausea due to medication" to the question whether the appellant has a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The medical practitioner does not state that vomiting causes significant weight loss or significant muscle mass loss and nausea may deter consuming food altogether. The medical practitioner stated that there is no danger to life at present "...but if continues then could be a dangerous situation." In the document dated February 21, 2012, the medical practitioner stated that failure to obtain the specified items will result in imminent danger to the appellant's life "in the future", and he recommends nutritional supplement to prevent further deterioration of the appellant's health and prevent chronic health issues.

In the advocate's submission on behalf of the appellant, the advocate states that the ministry has acknowledged that the appellant suffers from severe medical conditions and a chronic, progressive deterioration of health. The advocate states that the ministry also acknowledges that the appellant displays two symptoms as a result of a chronic, progressive deterioration of health but does not accept the additional symptoms as set out in the February 21, 2012 information from the physician, of malnutrition and underweight status. The advocate states that the definition for "malnutrition", according to the World Dictionary, is "...lack of adequate nutritional resulting from insufficient food, unbalanced diet, or defective assimilation." The advocate states that this has nothing to do with actual weight and rather a lack of proper nutrition. The advocate states that the appellant's body mass index (BMI) is at the lower end of normal and, given that his health is in current deterioration, he is likely to continue losing weight and will shortly be within the underweight category status with the loss of a couple of extra pounds. The advocate states that the definition of "imminent" in the World Dictionary attends to the future and is impending or liable to happen soon. The advocate states that since the appellant is at the lower spectrum of normal using the BMI, further deterioration will put him in the underweight category wherein he will be in danger of his 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 and for vitamins and minerals 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 sufficient information has not been provided from the medical practitioner to establish that the appellant requires vitamins and minerals to alleviate the symptoms of his chronic, progressive deterioration of health and to prevent imminent danger to life, as required by Section 67 (1.1)(c) and (d). The

ministry argues that in describing how Centrum Forte will alleviate the symptoms of significant weight loss and significant muscle mass loss, the medical practitioner stated "...feels fatigue and low energy." The ministry also argues that the medical practitioner stated that there is no imminent danger to life and, in the February 21, 2012 document, that failure to obtain specified items will result in imminent danger to the appellant's life "in the future" and that he recommends nutritional supplement to prevent further deterioration of the appellant's health and "...prevent chronic health issues."

The appellant's position is that sufficient information has been provided to establish that vitamin/mineral supplementation is required to alleviate the appellant's symptoms of his chronic, progressive deterioration of health and to prevent imminent danger to life. The appellant's advocate argues that, in the original application, the medical practitioner indicated a need for Centrum Forte with more fruits, vegetables and meat due to the appellant's low energy and fatigue, therefore, vitamin/mineral supplementation will, in turn, alleviate weakness due to weight and muscle mass loss. The appellant's advocate argues that the appellant also has the symptom of malnutrition wherein the vitamins/minerals will supplement and assist with providing adequate nutritional items. The advocate argues that the medical practitioner indicated, in the February 21, 2012 document, "vitamins/minerals to further prevent deterioration of health" specifying a multivitamin especially Vitamin D and that he recommends nutritional supplement to prevent further deterioration of the appellant's health and prevent chronic health issues.

Section 67(1.1) of the EAPWDR requires that the medical practitioner confirm that, as a result of the chronic progressive deterioration of health, the person displays two or more of the symptoms listed in sub-section (b). 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 weight loss and significant muscle mass loss (in the original application), the ministry argues that it is not satisfied that the appellant demonstrates the symptoms of malnutrition or underweight status since the appellant is 6'1" in height and weighs 163.4 lbs., with a BMI of 21.6 and that his weight is within the normal range, even though he has lost 25 lbs. within 5 months. The advocate states that the definition for "malnutrition", according to the World Dictionary, is "...lack of adequate nutritional resulting from insufficient food, unbalanced diet, or defective assimilation" and that it has nothing to do with actual weight and rather with a lack of proper nutrition. The advocate argues that the appellant's body mass index (BMI) is at the lower end of normal and, given that his health is deteriorating, he is likely to continue losing weight and will shortly be within the category of underweight status with the loss of a couple of extra pounds. The panel finds that the medical practitioner has confirmed in the February 21, 2012 Questionnaire that the appellant displays the symptoms of malnutrition, underweight [status], significant weight loss and significant muscle mass loss. As the appellant's advocate acknowledges that the appellant's BMI is currently within the normal range, albeit at the lower end, the panel finds that the ministry reasonably concluded that the appellant does not currently display the symptom of underweight status. However, given the definition of malnutrition which includes lack of adequate nutrition as a resulting from defective assimilation, and the medical practitioner's confirmation that the appellant displays this symptom, the panel finds that the ministry was unreasonable in concluding that the appellant does not display this symptom.

Section 67(1.1) of the EAPWDR requires further that the medical practitioner confirm that for the purpose of alleviating a symptom referred to in sub-section (b), the appellant requires the vitamins and minerals as set out in Section 7 of Schedule C. In the application dated December 6, 2011, the medical practitioner indicates that the vitamins and minerals (Centrum Forte) will alleviate the specific symptoms (significant weight loss, significant muscle mass loss and malnutrition) by "...feels fatigued and low energy." In the February 21, 2012 Questionnaire, the medical practitioner clarifies that as part of the symptom of significant muscle mass loss the appellant currently experiences weakness and he is easily fatigued and the medical practitioner reports that the appellant requires vitamins and minerals to further prevent deterioration of health ("multivitamin especially Vitamin D"). The appellant's advocate argues that, in the original application, the medical practitioner indicated a need for Centrum Forte with more fruits, vegetables and meat due to the appellant's low energy and fatigue, therefore, vitamin/mineral supplementation will, in turn, alleviate weakness due to weight and muscle mass

loss. The panel finds that the medical practitioner has confirmed that weakness and fatigue are part of the symptom of significant muscle mass loss, and the ministry was not reasonable in concluding that there is insufficient information provided to confirm that vitamins and minerals (Centrum Forte) will alleviate the identified symptoms of malnutrition, significant weight loss, or significant muscle mass loss.

Section 67(1.1)(d) of the EAPWDR requires that the medical practitioner confirm that failure to obtain the vitamins and minerals (Centrum Forte) will result in imminent danger to the appellant's life. In the application dated December 6, 2011, in response to the request to describe how Centrum Forte will prevent imminent danger to the appellant's life, the medical practitioner indicated "...there is no imminent danger to life." In the February 21, 2012 Questionnaire, the medical practitioner reported that failure to obtain these items will result in imminent danger to the appellant's life in the future, that items are necessary for prevention ("if does not receive monthly nutritional supplement, deterioration will continue to progress"); the physician adds additional handwritten comments that he recommends "...nutritional supplement to prevent further deterioration of [the appellant's] health and prevent chronic health issues." Given that the medical practitioner specifically stated in the original application that there is no imminent danger to life with respect to the vitamins and minerals and, in the February 21, 2012 Questionnaire, he refers to the future situation ("in the future"), the panel finds that the ministry reasonably determined that there is not sufficient information to establish that failure to obtain the vitamins and minerals (Centrum Forte) will result in imminent danger to the appellant's life, pursuant to Section 67(1.1)(d) of the EAPWDR.

The ministry's position is that it is not satisfied that the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of a chronic, progressive deterioration of health and to prevent an imminent danger to the appellant's life. The ministry argues that the medical practitioner has identified vitamins, fruits, vegetables, meat and protein shakes as the additional nutritional items and that the appellant will gain muscle mass and it will improve energy level, but that these items are found in a regular diet and there is no explanation for the need for additional calories over and above a regular dietary intake. The ministry argues that the medical practitioner responds to the question whether the appellant has a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake with "nausea due to medication" and he does not state that vomiting causes significant weight loss or significant muscle mass loss, and nausea may deter consuming any food. The ministry argues that the medical practitioner states in the application there is no danger to life at present but "if continues then could be a dangerous situation" and, in the February 2012 document, that it will result in imminent danger to the appellant's life in the future and the nutritional items are recommended to prevent further deterioration of the appellant's health and prevent chronic health issues, but this does not substantiate that additional caloric supplementation in the form of fruits, vegetables and meat and protein shakes will prevent imminent danger to the appellant's life.

The appellant's position is that sufficient information has been provided by the medical practitioner to establish that the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of a chronic, progressive deterioration of health and to prevent an imminent danger to the appellant's life. The appellant's advocate argues that the medical practitioner indicates a need for vitamins, fruits, vegetables, meats, and protein shakes as "additional" nutritional items and, therefore, that he requires more of these items, above his regular dietary intake. The advocate argues that the appellant experiences nausea due to his chronic, progressive deterioration and his is unable to absorb sufficient calories to satisfy his daily requirements through regular intake. The advocate argues that it does not matter if nausea deters the consumption of food as the appellant is still lacking in the calories in his diet and requires more above his regular intake due to his nausea. The advocate argues that the medical practitioner confirms that additional nutritional items will alleviate muscle mass loss and improve his energy and will assist with maintaining a healthy weight for the appellant. The advocate argues that the appellant's BMI is at the lower spectrum of normal weight and, therefore, further deterioration will put him in the underweight category wherein he will be in danger of his life. The advocate argues that the legislative requirement is that the failure to obtain the items will result in imminent danger, implying "in the future", as it is not happening currently. The

advocate argues that the medical practitioner confirmed that failure to obtain these items will result in imminent danger to the appellant's life in the future and that the items are necessary for prevention. The advocate argues that the medical practitioner has recommended nutritional supplements to prevent further deterioration of the appellant's health and prevent chronic health issues and, in the original application, that it could be a dangerous situation if the deterioration continues. The advocate argues that significant weight should be given to the medical opinion set out in the February 21, 2012 Questionnaire and specifically to the use of the words "necessary" and "danger to life."

Section 67(1.1) of the EAPWDR requires that the medical practitioner confirm that for the purpose of alleviating a symptom referred to in sub-section (b), the appellant requires the additional nutritional items that are part of a caloric supplementation to a regular dietary intake (vitamins, protein shakes, fruits and vegetables and meats), as set out in Section 7 of Schedule C. In the application for the supplements, in response to the question in the original application 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 "...nausea due to medication" 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 "...will gain muscle mass and improve energy level." In the February 21, 2012 Questionnaire, the medical practitioner agrees that as a result of the symptoms identified, the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake, that he requires protein drinks, a higher protein intake and a higher fruit and vegetable intake in order to maintain weight, nutritional status and prevent further muscle and weight wasting ("experiences nausea due to anxiety therefore requires additional calories to supplement his regular diet"). The panel finds that the medical practitioner confirms that additional nutritional items are required ("...vitamins, fruits, vegetables, and meats and protein shakes") as part of a caloric supplementation to a regular dietary intake ("experiences nausea due to anxiety therefore requires additional calories to supplement his regular diet") to alleviate the identified symptoms (malnutrition, significant weight loss, and significant muscle mass loss) and that, with these additional nutritional items, the appellant "...will gain muscle mass and improve energy level." The panel finds that the ministry was unreasonable 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 his 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. In the application dated December 6, 2011, the medical practitioner responds to the question how the nutritional items will prevent imminent danger to the appellant's life, by stating "...no danger to life at present but if continues then could be a dangerous situation, supplements will help maintain a healthy weight." In the February 21, 2012 Questionnaire, the medical practitioner agrees that failure to obtain these items will result in imminent danger to the appellant's life in the future, that items are necessary for prevention ("if does not receive monthly nutritional supplement, deterioration will continue to progress"); the physician adds in handwritten comments that he recommends nutritional supplement to prevent further deterioration of the appellant's health and to prevent chronic health issues. The advocate acknowledges that the appellant's BMI is currently in the spectrum of normal weight, albeit at the lower end, and that further deterioration will put him in the underweight category wherein he will be in danger of his life. The panel finds that the use of the word "imminent" in the Section 67(1.1)(d) refers to an immediacy such that the danger to life is likely to happen soon. Although the advocate argues that significant weight should be placed on the February 21, 2012 Questionnaire, the panel has weighed this document equally with the original application as being the complete evidence of the medical practitioner. The panel finds that the ministry reasonably concluded that the medical practitioner's use of the words "in the future" in the Questionnaire when seen together with the statement in the application that there is "no danger to life at present" reflects a lack of immediacy to the danger. The panel finds that the ministry reasonably concluded that the medical practitioner has not confirmed that failure to obtain the requested additional nutritional supplements will result in imminent danger to the appellant's life, as is required by the legislation.

APPEAL #

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a Monthly Nutritional Supplement for additional nutritional items and vitamins and minerals 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.