

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry)'s Reconsideration Decision dated April 17, 2012 which denied the appellant's request for monthly nutritional supplements. In particular the Reconsideration Decision states that the minister is not satisfied that the appellant requires 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 his life, as required by section 67(1.1) (c) and (d) and Schedule C, section 7(a) of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation.

PART D – Relevant Legislation

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

PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- 1) Request for Reconsideration completed March 29, 2012 in which the appellant states that he has Type 2 Diabetes, a brain tumor, chronic irritable bowel syndrome and chronic hypopituitarism. The appellant states that he has had three surgeries and now he has no function of the pituitary gland and hypothalamus. He also states that he has high triglycerides and cholesterol as a result of the surgeries and proton radiation treatment.
- 2) Letter from the ministry to the appellant dated March 22, 2012 advising him that the ministry had approved his request for vitamins and minerals not to exceed \$40 monthly but denying the appellant's request for nutritional items.
- 3) Ministry of Social Development Health Assistance Branch Monthly Nutritional Supplement Decision Summary dated March 21, 2012 (the "Summary") indicating that the ministry was satisfied that the appellant has a severe medical condition and that as a direct result of the severe medical condition he was being treated for a chronic, progressive deterioration of his health. The Summary also indicates that the ministry was satisfied that the appellant displayed two or more symptoms as a direct result of a chronic, progressive deterioration of health, namely significant neurological degeneration and significant deterioration of a vital organ (brain). The Summary indicates that the requested nutritional items suggested a specific dietary complement rather than a need for caloric supplementation. The Summary notes that the appellant has a BMI of 43.2 and does not support a need for caloric supplementation. The Summary also states that the physician has not confirmed that failure to obtain the nutritional items would result in imminent danger to life.
- 4) Application for Monthly Nutritional Supplement completed by a doctor dated February 22, 2012 in which the doctor provides the following diagnosis: craniopharyngioma (brain tumor), hypopituitarism, hypothalamic obesity and glucose impairment. The doctor states that the appellant is being treated for the following chronic, progressive deterioration of health due to the following conditions: brain tumor, glucose impaired, hypothalamic obesity and pituitary failure. The doctor states that the appellant displays significant neurological degeneration and significant deterioration of the brain and pituitary gland. The doctor states that the appellant requires nutritional supplements of unrefined carbohydrates, whole grains, proteins and oils, nuts and seeds, olive oil, walnut, fiber and flax due to pituitary failure. The doctor indicates that the appellant's pituitary failure is a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The doctor indicates that the appellant has a life condition and needs special diet and supplements to "...improve obesity, CVD, glucose, etc". The doctor states that the nutritional supplements will prevent imminent danger to the applicant's life by lowering glucose and cholesterol levels.

In his Notice of Appeal dated April 24, 2012, the appellant states that he has severe immune suppression and takes medication to function. He also states that he is borderline diabetic and is taking metformin to counter the diabetes. He also states that he has sleep apnea as well as several other hormonal conditions that have been diagnosed and for which he takes daily medication. The appellant also states that he takes synthroid as his thyroid gland does not function.

With the Notice of Appeal the appellant also provided a note from a medical clinic indicating that he has severe endocrinopathy and that he needs increased protein and full grain carbohydrate, multivitamins, fruit and carbohydrates.

The appeal proceeded by way of written hearing.

At the appeal, the ministry relied on the Reconsideration Decision.

The appellant's advocate provided written submissions (the "Submissions") attaching information from a medical center indicating that the most common symptoms of pituitary gland failure include sudden severe headache with nausea, vomiting, double vision, change in mental status, loss of eye muscle control and meningismus. The Submissions state that the appellant has hypothalamic obesity and included information from a health institute indicating that hypothalamic obesity is caused by various metabolic and hormonal imbalances and not from over eating.

Based on the evidence, the panel's finding of facts are as follows:

- The appellant is a Person with Disabilities in receipt of disability assistance; and
- The appellant has the following medical conditions: craniopharyngioma (brain tumor), hypopituitarism, hypothalamic obesity and glucose impairment.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry reasonably concluded that the appellant did not meet all of the requirements of Section 67(1.1)(c) and (d) and Schedule C, Section 7, or whether the ministry's decision was a reasonable application of the legislation in the appellant's circumstances.

The relevant sections of the EAPWD Regulation provides as follows:

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.

(B.C. Reg. 68/2010)

(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). (B.C. Reg. 68/2010)

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.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's position is that the requested nutritional supplements are components of a regular dietary intake and not a caloric supplementation as contemplated by section 7 of Schedule C of the EAPWD therefore the appellant does not satisfy the criteria of Section 67(1.1)(c) of the EAPWD Regulation.

The ministry's position is that the information provided does not indicate that the appellant requires extra calories over and above those found in his regular diet. The ministry's position is that the appellant's doctor does not indicate that the appellant is displaying the symptoms of malnutrition, underweight status, significant weight loss, or significant muscle mass loss which would demonstrate a need for caloric supplementation. The ministry's position is that the nutritional items identified by the doctor represent components of a regular dietary intake rather than caloric supplementation to a regular dietary intake. The ministry's position is that although the doctor noted that the nutritional items requested will prevent imminent danger to the appellant's life by lowering his glucose and cholesterol levels, the requested nutritional items are components of a dietary regime recommended by the appellant's doctor rather than caloric supplementation to a regular dietary intake, which is the intention of the legislation.

The appellant's position is that the doctor's information confirms that the extra nutritional calories will prevent imminent danger to the applicant's life by lowering glucose and cholesterol levels. The appellant's position is that the Reconsideration Decision was not a reasonable application of the legislation in his circumstances.

The Submissions state that one must assume that the appellant's doctor read the questions before completing the form and that the medical doctor has indicated that the appellant requires extra

calories in the form of unrefined carbohydrates (whole grains), proteins and oils, nuts and seeds, olive oil, walnuts, fiber and flax. The appellant's advocate states that the doctor said that the appellant needed extra calories and the doctor specified those extra calories to come from the noted recommended nutritional supplements.

Although the Summary indicates that the appellant has a BMI of 43.2 which is well above the normal range, the appellant's doctor states that 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 panel finds that while the requested nutritional supplements can be part of a regular dietary intake they accept the Submissions that the nutritional supplements recommended by the appellant's doctor can also be used for caloric supplementation and that the ministry's decision that the nutritional supplements were not an item set out in Section 7 of Schedule C of the EAPWD was not reasonable.

As the panel found that the requested nutritional supplements were an item set out in Section 7 of Schedule C of the EAPWD, the panel finds that the ministry's decision that the appellant's request did not meet Section 67(1.1)(c) was not met was not reasonable.

In responding to the question six on the Application for Monthly Nutritional Supplements which asks for a description of how the nutritional items requested will prevent imminent danger to the applicant's life, the appellant's doctor states that the items will lower glucose and cholesterol levels. In the Submissions, the appellant's advocate states that we must use good faith and presume the doctor read the preamble before filling in the two blank areas. The panel accepts that the doctor read the preamble before filling in the two blank areas but that the doctor's response is not sufficient to satisfy the required criteria of Section 67(1.1)(d). The doctor states how the nutritional items will affect the appellant, but the doctor does not describe the imminent danger to the appellant's life or how lowering glucose and cholesterol levels will prevent imminent danger to the appellant's life.

The panel finds that the ministry's decision that Section 67(1.1)(d) of the EAPWD was not met was reasonable and the panel confirms the ministry's decision.