

### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated May 18, 2012 which held that the appellant was not eligible to receive a Monthly Nutritional Supplement (MNS), for additional nutritional items as he has failed to meet all of the eligibility requirements set out in section 67 (1.1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), and Schedule C section 7. Specifically the ministry determined that the appellant does not require nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate symptoms of a chronic, progressive, deterioration of health, or to prevent imminent danger to his life.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67 (1), (1.1) and Schedule C section 7.

## PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was duly notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

Information and Records before the ministry at the time of Reconsideration include the following:

1. Application for Monthly Nutritional Supplement signed by the appellant's physician and dated February 24, 2012.
2. Letter to the ministry from the appellant's physician dated March 6, 2012 which states that the appellant is unemployed at the present time and in need of financial assistance.
3. Health Assistance Branch Monthly Nutritional Supplement Decision Summary Dated March 16, 2012.
4. Denial letter from the ministry to the appellant dated March 16, 2012.
5. Letter from the appellant to the ministry dated March 22, 2012, asking that they accept this letter as his written Request for Reconsideration.
6. The appellant's Request for Reconsideration Section 3 completed by his physician dated May 7, 2012.

Ministry records included in the file indicate that the applicant is a person with disabilities and meets the eligibility requirements to apply for a Nutritional Supplement. The appellant has submitted a completed request, in the form specified by the ministry, in which his physician states that he is currently being treated for a chronic, progressive deterioration of health on account of a severe medical condition. The appellant has been diagnosed with coronary artery disease, peripheral artery disease, hiatus hernia, and anemia. The appellant displays two symptoms as a result of a chronic progressive deterioration of health, malnutrition and significant weight loss. The physician states that due to a recent onset of anemia, resulting in weight loss, the appellant was being investigated by a specialist, however no new information was provided prior to the Reconsideration Decision being made.

In the MNS application completed by the appellant's physician dated February 24, 2012, he confirms that the appellant is being treated for a chronic progressive deterioration of health on account of a severe medical condition, specifically coronary artery disease- stents 1999, bypass 2007, peripheral artery disease, femoral bypass 2007, and hiatus hernia. In Section 3 the appellant's Request for Reconsideration, completed by the same physician, he notes an additional diagnosis of anemia due to the appellant's recent weight loss, which is being investigated by a specialist.

The appellant's physician indicates that as a direct result of his chronic progressive deterioration of health, he displays malnutrition and significant weight loss. The physician provides no accompanying narrative. The appellant is reported to be 5 feet 11 inches tall and weighs 154 pounds. In the Additional Comments Section of the MNS application, the physician writes that the appellant requires high fiber and easily digestible food and low cholesterol.

In Section 3 of the Request for Reconsideration dated May 7, 2012, the appellant's physician states that due to a recent onset of anemia, resulting in weight loss, the appellant is being investigated by a specialist.

In the appellant's Notice of Appeal dated May 21, 2012, he states that his weight loss has been 3 pounds per week, and that the food he buys is not maintaining his weight. He states that he has no money to buy correct foods and that he is under weight, with a loss of 40 pounds.

At the hearing the ministry stood by the information and records contained in the Appeal File. No new evidence was presented.

The panel finds that the new written information provided by the appellant in his Notice of Appeal is in support of the information and records that were before the ministry at the time of reconsideration. The panel therefore admits the new written information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

The panel made the following finding of fact:

1. The appellant is a PWD receiving disability assistance.
2. The appellant has applied for the Nutritional Supplement on the form prescribed by the ministry.
3. The appellant's physician has confirmed that he is being treated for a chronic progressive deterioration of health on account of a severe medical condition, specifically coronary artery disease, stents 1999, bypass 2007, peripheral artery disease, femoral bypass 2007, and hiatus hernia. The appellant has also been recently diagnosed with anemia due to his recent weight loss.
4. The appellant's symptoms include malnutrition and significant weight loss.
5. The appellant is 5 feet 11 inches tall and weighs 154 pounds

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was not eligible to receive a Monthly Nutritional Supplement for additional nutritional items as he has failed to meet all of the eligibility requirements. Specifically the ministry determined that the appellant does not require nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate symptoms of a chronic, progressive, deterioration of health, or to prevent imminent danger to his life. In arriving at its decision the ministry relied upon the following legislation:

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 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)

There is no dispute by either party that the appellant meets the following legislative criteria:

- The appellant is a person with disabilities and meets the requirements set out in EAPWDR section 67 (1).
- The appellant is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition. The appellant has been diagnosed with coronary artery disease, peripheral artery disease, hiatus hernia, and anemia, there by meeting the requirements set out in EAPWDR section 67 (1.1)(a).
- The appellant displays two symptoms as a result of a chronic progressive deterioration of health, malnutrition and significant weight loss, there by meeting the legislative criteria set out in EAPWDR section 67 (1.1)(b).

The ministry's position is that based on the evidence provided, the appellant does not require nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate symptoms of a chronic, progressive,

deterioration of health, or to prevent imminent danger to his life as set out in EAPWDR section 67 (1.1)(C) and (D) and Schedule C, subsection 7(a).

The appellant's position as stated in his Notice of Appeal dated May 21, 2012, is that his weight loss has been 3 pounds per week and that the food that he buys is not maintaining his weight. The appellant further states that he has no money to buy correct foods and that he is under weight with a loss of 40 pounds.

The panel finds that no evidence is presented by the physician who completed the MNS application dated February 24, 2012, or by the appellant indicating that he is requesting Vitamin or Mineral Supplementation. The panel further finds no response is offered by the physician to questions in the MNS application indicating what additional nutritional items the appellant requires as part of a caloric supplementation to a regular dietary intake to alleviate symptoms of a chronic, progressive, deterioration of health, or to prevent imminent danger to his life.

In Section 3 of the appellant's Request for Reconsideration, dated May 7, 2012, the appellant's physician states that due to a recent onset of anemia resulting in weight loss the appellant is being investigated by a specialist, however no additional information was provided prior to the Reconsideration Decision or prior to, or at the hearing, indicating that the appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate symptoms of a chronic, progressive, deterioration of health, or to prevent imminent danger to his life, as set out in EAPWDR section 67 (1.1)(C) and (D) and Schedule C, subsection 7(a).

As such, the panel finds the evidence reasonably supports the ministry's decision, and that there has been a reasonable application of the section 67 (1.1) of the Employment and Assistance for Persons with Disabilities Regulation, and Schedule C section 7, in the circumstances of the appellant, and confirms the ministry's decision that the appellant is not eligible to receive a Nutritional Supplement.