

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated August 21, 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 March 4, 2012 signed by the appellant's physician and stating in part that the appellant's severe medical conditions are diabetes mellitus, hypertension, hyperlipidemia and a personality disorder, and there is no further information provided regarding whether 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 physician has noted malnutrition ("normal weight is 200 lbs."), underweight status ("he is now at 165 lbs., he has been down to 135 lbs."), significant weight loss ("yes"), significant muscle mass loss ("yes") significant neurological degeneration ("peripheral neuropathy hands and feet") and significant deterioration of a vital organ ("function of diabetes mellitus"); the vitamins or mineral supplements required are reported as "...vitamin supplementation is useful in Type II diabetes mellitus.", that these items will alleviate the specific symptoms by "...Ensure 1 bottle T/D to supplement diet" and will prevent imminent danger to the appellant's life by "...a good diet would greatly enhance this patient's quality of life and its duration"; in response to a request to specify the additional nutritional items required, it is indicated "...Ensure & Vitamin Supplementation indefinitely" 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 "...no mal-absorption syndrome"; 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 "...a marginal diet will be assisted by caloric supplementation and vitamin supplementation" and how the nutritional items will prevent imminent danger to the appellant's life, it is indicated "...this will enhance his quality of life and encourage longevity."
- 2) Letter from the ministry dated June 26, 2012 to the appellant denying his request and enclosing a copy of the decision summary;
- 3) Supplemental Medical Opinion signed by a physician August 20, 2012 which notes in part with respect to symptoms that may be a direct result of the appellant's medical conditions: underweight status ("no"), malnutrition ("no"), significant weight loss ("has lost weight since diabetic"), significant muscle mass loss ("yes"), significant neurological degeneration ("numbness of feet and fingers"), moderate to severe immune suppression ("mild immune suppression"), and significant deterioration of a vital organ ("yes"); the physician agrees with the statement that foods that provide additional caloric supplementation above a normal diet would be helpful in preventing further deterioration of the appellant's health and disagrees with the statement that the appellant's failure to obtain vitamins and minerals will result in imminent danger to his life with the further comment that the appellant "...has lost significant weight since being diagnosed diabetes mellitus and it is a progressively debilitating disease and supplementation will help as he is living alone;" and,
- 4) Request for Reconsideration- Reasons prepared by an advocate on behalf of the appellant.

The appellant provided his consent to observers from both the advocate and the ministry offices attending the hearing. The appellant's advocate stated that the appellant has been designated as a Person With Disabilities (PWD), that he is single and lives alone. The appellant requested a monthly nutritional supplement (MNS) for vitamins and minerals as well as for additional nutritional items, specifically for the product "Ensure". The advocate stated that the ministry acknowledged that the appellant is being treated for a chronic, progressive deterioration of health as he suffers from severe medical conditions, that he has been diagnosed with diabetes mellitus, hypertension, and hyperlipidemia, or high cholesterol. The advocate stated that the appellant requires supplementation to his diet, through Ensure, to obtain the nutrients to prevent some of the possible outcomes of his medical conditions, including myocardial infarction, angina and stroke. The advocate stated that the ministry also acknowledges that the appellant displays two symptoms as a result of a chronic, progressive deterioration of health, namely significant neurological degeneration and significant deterioration of a vital organ. The advocate stated that the appellant currently experiences diabetic neuropathy, or a numbness and pain in extremities, his feet and hands. The advocate pointed to the Application for MNS in which the physician notes that "vitamin supplementation is useful in Type II Diabetes Mellitus" and that one

bottle of Ensure per day will supplement the appellant's diet. The advocate explained that there is a special formula of Ensure for diabetics called "Glucerna," which contains many needed vitamins, minerals and nutrients. The advocate also pointed to the Supplemental Medical Opinion dated August 20, 2012 in which the physician comments that the appellant "...has lost significant weight since being diagnosed Diabetes Mellitus and it is a progressively debilitating disease and supplementation will help as he is living alone." The appellant added that he has been diabetic for 10 years, that he used to be 220 lbs., that he lost weight but more recently he has started gaining weight again. The appellant stated that he experiences the neuropathy mostly in his fingers and toes. The appellant commented that this is a new doctor that does not know him that well.

The ministry relies on its reconsideration decision which states that the appellant is a PWD 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 a severe medical condition, specifically diabetes mellitus, hypertension, hyperlipidemia and a personality disorder. In the application for MNS, the medical practitioner confirmed that the appellant displays the symptoms of numbness of feet and fingers, significant deterioration of a vital organ, significant weight loss and mild immune suppression. Although the ministry points out that the appellant's BMI (body mass index) is in the normal range and the appellant's immune suppression is not in the required moderate to severe range, the ministry acknowledges that the appellant has two symptoms as a result of his chronic, progressive deterioration of health, namely significant neurological degeneration and significant deterioration of a vital organ. The medical practitioner specified the vitamin or mineral supplement required as "vitamin supplementation" but does not specify the vitamin or mineral supplements required and does not describe the expected duration of the need. The physician reports that "Ensure" will help alleviate the specific symptoms identified. In response to the question how the Ensure will prevent imminent danger to the appellant's life, the medical practitioner stated in the MNS application that "...a good diet would greatly enhance this patient's quality of life and its duration." In the Supplemental Medical Opinion, when asked if the appellant's failure to obtain vitamins and minerals will result in imminent danger to his life, the physician has responded "no." The appellant has been receiving a monthly diet supplement of \$35.00 because he has diabetes.

The medical practitioner reported, in the application, that the additional nutritional items required to alleviate symptoms are "...Ensure and Vitamin supplementation indefinitely." The physician reports that the appellant does not have mal-absorption syndrome and there is no confirmation 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. When describing how the nutritional item Ensure will alleviate one or more of the symptoms described, the physician reports that a marginal diet will be assisted by caloric supplementation and vitamin supplementation, however the appellant has not been diagnosed with malnutrition, underweight status or significant weight loss or significant muscle mass loss or moderate to severe immune suppression. The physician indicates that Ensure will enhance the appellant's quality of life and encourage longevity but does not indicate that Ensure will prevent imminent danger to the appellant's 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 specific 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 it is not clear how Ensure, a nutritional supplement, would help alleviate the symptoms of significant neurological degeneration and significant deterioration of a vital organ. The ministry also argues that the medical practitioner stated in the Supplemental Medical Opinion that failure to obtain vitamins and minerals will not result in imminent danger to the appellant's life.

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 "vitamin supplementation" which is then specified as one bottle of Ensure per day to alleviate the specific symptoms identified. The advocate points out that there is a special formula of Ensure for diabetics called "Glucerna" which contains many needed vitamins, minerals and nutrients. The advocate argues that although the physician has responded negatively in the Supplemental Medical Opinion regarding imminent danger to the appellant's life, that the details of the physician's comments must also be considered, which identifies Diabetes Mellitus as a progressively debilitating disease resulting in many serious potential impacts such as myocardial infarction, angina and stroke. The advocate also argues that the medical practitioner agrees that foods that provide additional caloric supplementation above a normal diet would be helpful in preventing further deterioration of the appellant's health.

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 vitamins and minerals as set out in Section 7 of Schedule C. In the application dated March 4, 2012, the medical practitioner indicates that the vitamins and minerals required are "vitamin supplementation" which is "useful in Type II Diabetes Mellitus" and that it will alleviate the specific symptoms (significant neurological degeneration and significant deterioration of a vital organ) by "Ensure", that one bottle per day is required to supplement his diet. The appellant's advocate argues that there is a special formulation of Ensure for diabetics (Glucerna) that contains many needed vitamins, minerals and nutrients. The panel finds that the medical practitioner has confirmed that Ensure is required as a vitamin supplementation or mineral supplementation, to supplement the appellant's marginal diet and thereby alleviate the symptoms, and the ministry was not reasonable in concluding that there is insufficient information provided to confirm that vitamins and minerals (Ensure/Glucerna) will alleviate the identified symptoms of significant neurological degeneration and significant deterioration of a vital organ.

Section 67(1.1)(d) of the EAPWDR requires further that the medical practitioner confirm that failure to obtain the vitamins and minerals (Ensure/Glucerna) will result in imminent danger to the appellant's life. In the application dated March 4, 2012, in response to the request to describe how Ensure will prevent imminent danger to the appellant's life, the medical practitioner indicated "...a good diet would greatly enhance this patient's quality of life and its duration." In the August 20, 2012 Medical Opinion, the medical practitioner reported that the failure to obtain these items will not result in imminent danger to the appellant's life and the physician adds additional handwritten comments that the appellant "...has lost significant weight since being diagnosed Diabetes Mellitus and it is a progressively debilitating disease and supplementation will help as he is living alone." The appellant stated that he was diagnosed with diabetes 10 years ago, that he has lost weight since then but more recently had started gaining weight again. Although the advocate argues that the medical practitioner has confirmed that the appellant's diabetes is a "progressively debilitating disease", the evidence demonstrates that there have been fluctuations in the appellant's condition over the years and that the medical practitioner is assessing the appellant's current condition and provides an opinion that there is no imminent danger to the appellant's life without the vitamins and minerals. The panel finds that the ministry reasonably determined that there is not sufficient information to establish that failure to obtain the vitamins and minerals (Ensure/Glucerna) 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 Ensure as the additional nutritional items but the appellant does not have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake as the medical practitioner also notes "no malabsorption syndrome." The ministry argues that the medical practitioner states in the application that Ensure "will enhance his quality of life and encourage longevity" but this does not substantiate that Ensure 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 (Ensure) 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.

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 (Ensure), as set out in Section 7 of Schedule C. 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 "...no malabsorption syndrome", 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 "...a marginal diet will be assisted by caloric supplementation." In the August 20, 2012 Medical Opinion, the medical practitioner agrees that foods that provide additional caloric supplementation above a normal diet would be helpful in preventing further deterioration in the appellant's health, however does not specify how caloric supplementation alleviates the related symptoms. The panel finds that the ministry reasonably concluded that there is not sufficient information from the medical practitioner to confirm that additional nutritional items are required as part of a caloric supplementation to a regular dietary intake to alleviate related symptoms, as set out in Section 67(1.1)(c) of the EAPWDR.

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 March 4, 2012, the medical practitioner responds to the question how the nutritional items will prevent imminent danger to the appellant's life, by stating "...this will enhance his quality of life and encourage longevity." It is not disputed that the appellant is in receipt of a monthly diet supplement of \$35.00 to help address his diabetes. 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 and 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.

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.