

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated July 24, 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 request was not in the form specified by the ministry and completed by a medical practitioner or nurse practitioner in which the practitioner has confirmed all of the relevant information; 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 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) Note dated April 26, 2012 from a physician indicating the appellant "...needs high protein diet, approx. \$150/ month;"
- 2) Application for Monthly Nutritional Supplement (MNS) dated May 7, 2012 signed by a physician and stating in part that the appellant's severe medical condition is chronic hepatitis C, that the appellant is being treated for a chronic, progressive deterioration of health, specifically "liver"; 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 significant deterioration of a vital organ ("liver"); in response to a request to specify the additional nutritional items required, it is indicated "...high protein diet" 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"; 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 "...needs high protein diet to maintain good liver function" and the physician has not indicated a response to the question how the nutritional items will prevent imminent danger to the appellant's life; this form was not signed nor dated by the appellant;
- 3) Summary of ministry notes of interactions on the appellant's file for the period May 11, 2012 through July 20, 2012;
- 4) Page printed May 17, 2012 from a Medical Report stating in part that the appellant has chronic hepatitis C and COPD, her goals are weight management and ideally should lose another 10% or 18 lbs. this year with regular aerobic exercise for one hour, no added salt cardiac style diet, daily weights, eating 3 meals daily no snacking, 5 foot 3 inches, 185 lbs., BMI 33, flabby skin upper arms thighs and abdomen having lost about 80 lbs.;
- 5) Application for MNS dated June 20, 2012 signed by a registered dietician and stating in part that the appellant's severe medical condition is chronic hepatitis C, 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 any symptoms, the dietician has noted malnutrition ("not consuming adequate protein due to low income, weight loss of 200 lbs. in 1.5 years, some intentionally, some unintentionally"), significant weight change, bone density loss ("self-reported osteoporosis") and significant deterioration of an organ ("liver disease"); in response to a request to specify the additional nutritional items, in addition to a normal dietary intake, required to alleviate the symptoms, it is indicated "...food- high protein items, daily diet of fresh fruit and vegetables for basic nutrient requirements; daily high protein foods for positive nitrogen balance and immune function and maintaining nutritional status"; and in response to the question whether the nutritional items will prevent imminent danger to the appellant's life, the dietician has responded "No"; the additional comments are that the appellant "...is unable to afford basic foods to maintain nutritional status and given her disease status, she has increased nutritional requirements;"
- 6) Letter dated July 6, 2012 from the ministry to the appellant approving her request for vitamins;
- 7) Letter dated July 6, 2012 from the ministry to the appellant denying her request for additional nutritional items and enclosing a copy of the original decision summary;
- 8) Letter dated July 16, 2012 from the appellant to the ministry which states in part that she has been given the vitamin supplement but she needs the food supplement and is entitled to it, that she knows many people that use the supplement to supply their addictions while she is sick and she needs it. The appellant states that she fired the doctor she had as he did not tell her she has Hep C, that she has been neglected for 2 years. The appellant states that the form from the physician should not have been used, that it was "illegal" because she did not sign or date it;
- 9) Telephone Log dated July 17, 2012 which states in part that the ministry called the appellant who asked that the form completed by the registered dietician be used, that she had been told by the ministry that it was OK to have the dietician fill out the form, that she had fired her physician because he knew she had Hepatitis C, Stage 4, for 2 years and did not tell her, that she wanted her file and now she is "black listed"

and no physician will see her, that her brother died of this disease and another brother is now dying from it, that she did not sign the form provided by the physician; and,  
10) Request for Reconsideration- Reasons.

In her Notice of Appeal, the appellant states that she needs a high protein diet and has handed in all the information, that she was unable to get a doctor so she had a dietician at the health unit fill out the form, that she was told that was OK. In her Request for Reconsideration, the appellant adds that the doctor stated he was treating her for chronic Hepatitis C but he never told her of the diagnosis or treated her for this, but he black listed her once she found out and she was unable to get another doctor. The appellant states that she had the form filled out by a dietician who reports that she needs the food supplement, that she is at Stage 4 in the liver disease and need a proper diet.

At the hearing, the appellant stated that the physician provided a note that she needs \$150 per month for a high protein diet because she has a number of medical conditions including fibromyalgia, arthritis, and a mass in her pancreas. The appellant said that she took the prescription in to the ministry and the ministry gave her a form to fill out, that she took it to the physician to have filled out, that she did not even look at it but dropped it off at the ministry. The appellant stated that the ministry gave her the form so that is the form that she used. The appellant stated that the physician never even told her that she had Hepatitis C and she found out when the ministry mailed back the form to her because she had not dated or signed it. The appellant stated that she will not date or sign the form the physician completed because she will not agree that he treated her for Hepatitis C and she does not agree with the way he filled out the form. The appellant stated that one of her brothers died from Hepatitis C in 1997 and another one is sick with the same disease. The appellant stated that she has a complaint against this doctor with the College of Physicians and Surgeons and he admits that he mistreated her. The appellant explained that she was supposed to be immunized for Hepatitis A & B but he did not make sure this was done. The appellant stated that the physician black listed her which means that she has been thrown out of medical clinics and doctors' offices because no doctor will see her. The appellant stated that the doctors talk and decide that they will not see a particular person. The appellant stated that she was told by the ministry that she could have a registered dietician complete the form since she could not get a physician. The appellant stated that she has been clean from her previous addiction issues for 4 years but she has many health issues because of her many years of drug use. In response to a question, the appellant stated that she had found a doctor but she will not be staying with her because she is a naturopath.

The ministry relies on its reconsideration decision which states that the appellant is a Person With Disabilities in receipt of disability assistance. On April 30, 2012, a physician sent in a medical note on a prescription pad stating the appellant "...needs high protein diet, approximately \$150 per month". On May 8, 2012, the physician submitted an application for MNS on the appellant's behalf, however this form was not signed by the appellant and, subsequently, the appellant did not want it used. On July 6, 2012, the appellant was approved for the MNS for vitamins based on this information. On June 20, 2012, the appellant submitted an application completed by a registered dietician on an old form that is no longer used by the ministry. On July 17, 2012, the ministry contacted the appellant who stated that she was given permission by the ministry to have the dietician complete the application since she was black listed and no physician would take her case. The ministry states that the appellant was told that the form had to be filled out by a medical practitioner or a nurse practitioner and that the appellant advised that she had found a new physician who would take her case. On July 18, 2012, the appellant told the ministry that she would be seeing her new doctor with all her medical files the next day and would have her sign off on the form completed by the dietician. The appellant then told the ministry that the new doctor would not sign off the form and for the ministry to go with the form completed by the dietician. The ministry states that the information provided by the dietician does not confirm that the appellant requires nutritional items to provide caloric supplementation in order to alleviate symptoms of a progressive deterioration of health or that failure to provide nutritional items will result in 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 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 appellant's request was not in the form specified by the ministry and was not completed by a medical practitioner or nurse practitioner in which the practitioner has confirmed all of the relevant information. The ministry points out that the form used by the appellant was an old form that the

ministry no longer uses. The ministry denies that it advised the appellant that the information from the dietician would be satisfactory. The appellant argues that she did not sign the first form submitted, that the ministry gave her the second form to have filled out. The appellant further argues that she could not get a medical practitioner to fill out the form because her previous physician black listed her and made it impossible to find a physician and the ministry told her that the information from a registered dietician would be satisfactory.

The panel finds that Section 67 (1.1) states that the request for a nutritional supplement under the section must be in the form specified by the ministry and completed by a medical practitioner or nurse practitioner. The panel finds that the information requested in the two forms is very similar and that although the form used by the appellant is an "old" form, it was specified by the ministry and provided to the appellant for use. Although the appellant states that the ministry told her it was satisfactory for the registered dietician to complete the form since the appellant could not find another physician to do so, the panel finds that the legislation requires either a medical practitioner or a nurse practitioner has confirmed the relevant information and the appellant did not provide evidence specifically about efforts to find a nurse practitioner to complete the form. The appellant stated she has issues with the procedure followed by the physician and his treatment of her file but she did not state that the information about the existence of her medical condition or its impact is incorrect. In the appellant's particular situation of being black listed and unable to find another physician, the panel considered the evidence from the dietician where it is not inconsistent with the evidence provided by the medical practitioner.

The ministry's position, in the alternative, is that there is not sufficient information provided by the dietician and the physician confirming 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 acknowledges that information provided by both the physician and the dietician confirms that the appellant has a severe medical condition of chronic Hepatitis C and that she is being treated for a chronic, progressive deterioration of health. However, the ministry argues that although the dietician indicates the appellant displays the symptom of malnutrition, the physician indicates the appellant is able to absorb sufficient daily nutrients since he responds with "no" to the question regarding mal-absorption. The ministry argues that the dietician indicates the appellant requires high protein items and a daily diet of fresh fruit and vegetables, which addresses the need for a balanced diet while the purpose of the supplement is to provide a caloric supplementation above a regular diet. The ministry argues that the symptom of underweight status has not been identified and the symptom of malnutrition could not be established with the information that "...weight loss of 200 lbs. in 1.5 years, some intentionally, some unintentionally." The ministry argues that the information provided is that the high protein items are not required to prevent imminent danger to life. The appellant's position is that sufficient information has been provided by the dietician 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 argues that the physician prescribed a high protein diet and the dietician indicates a need for daily high protein foods as "additional" nutritional items and, therefore, that she requires more of these items, above her regular dietary intake.

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, 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" and when 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 "...needs high protein diet to maintain good liver function." In the Application for MNS dated June 20, 2012, the dietician identifies malnutrition as "...not consuming adequate protein due to low income, weight loss of 200 lbs. in 1.5 years, some intentionally and some unintentionally" and that to alleviate the symptoms the appellant requires "...daily diet of fresh fruit and vegetables for basic nutrient requirements, daily high protein foods for positive

nitrogen balance and immune function and maintaining nutritional status." The panel finds that the ministry reasonably concluded that the information does not confirm that the nutritional items (high protein foods) are required as part of a caloric supplementation to a regular dietary intake but are, rather, needed to maintain a balanced regular diet, immune function and liver function.

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 May 7, 2012, the medical practitioner does not respond to the question how the nutritional items will prevent imminent danger to the appellant's life. In the June 20, 2012 application, the dietician responds "no" to the question whether the nutritional items are required to prevent imminent danger to the appellant's life. The panel finds that the ministry reasonably concluded that the information 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 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.