

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated September 6, 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 to establish that:

- the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition
- as a direct result of the chronic, progressive deterioration of health, the appellant displays two or more of the listed symptoms
- the appellant requires vitamins and minerals to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life; and,
- 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) Application for Monthly Nutritional Supplement dated May 3, 2012 signed by the appellant's physician and stating in part that the appellant's severe medical conditions are Transverse Myelitis (mental deterioration, weakness, fatigue), depression (fatigue, low motivation), and morbid obesity (overweight, fatigue); in response to the question of whether the appellant is being treated for a chronic, progressive deterioration of health, the doctor has written "vitamin supplements, multi-vitamins, Zinc, folate, exercise-cardiovascular"; 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 ("needs better food quality- fish, vitamins"), and significant neurological degeneration ("Transverse Myelitis, Depression"); the vitamins or mineral supplements required are reported as "...multi-vitamins, Zinc, folate, B-complex, fish", with no indication of the expected duration of need, but that these items will alleviate the specific symptoms by giving the appellant "...more energy and improved healing" and will prevent imminent danger to the appellant's life by "...patient's alertness should improve, less weakness, less falls, more energy, more exercise, better cardiovascular fitness"; in response to a request to specify the additional nutritional items required, it is indicated "...fish, lean chicken, lean goat" with no indication of the expected duration of the need 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 "...depression- low appetite"; 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 "...patient requires quality proteins in diet, lower carbohydrate foods, lower fat, less processed foods" and how the nutritional items will prevent imminent danger to the appellant's life, it is indicated "...patient will have more efficient physiology to improve mental alertness, energy;"
- 2) Letter from the ministry dated July 26, 2012 to the appellant denying her request and enclosing a copy of the decision summary;
- 3) Prescription dated August 21, 2012 for reading glasses;
- 4) Supplemental Medical Opinion signed by a physician August 21, 2012 which notes in part that the appellant has medical conditions including depression, morbid obesity, Transverse Myelitis, and thyroid disorder, that she is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition and that, as a result, the appellant displays the following symptoms: malnutrition, muscle mass loss due to Transverse Myelitis, bone density loss due to arthritis in her left hand, neurological degeneration due to Transverse Myelitis, significant deterioration of an organ, and moderate to severe immune suppression; the physician agrees with the statement that the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake, such as Ensure drinks, a higher protein intake such as chicken, fish and a higher fruit and vegetable intake, and she requires vitamins and minerals such as multi-vitamins, B12, folic acid and Zinc, and the physician does not agree with the statement that the appellant requires a caloric intake over and above a regular intake as her body has poor absorption, and the physician agrees that failure to obtain these items will result in imminent danger to the appellant's life "...such as progressively deteriorating his (sic) conditions; with the items she will prevent the rate of deterioration of her health;" and,
- 5) Request for Reconsideration.

Prior to the hearing, the appellant provided additional documents as follows:

- 1) Medical Imaging Report dated September 30, 2012 regarding the appellant's right foot and left elbow (summary of: "5th metatarsal base fracture");
- 2) Medical Imaging Report dated October 10, 2012 regarding the appellant's left scapula (summary of: normal exam), left shoulder ("Type III acromion process ?impingement"), lumbar spine ("thinning of the disc interval at L5-S1, but all other findings are unremarkable") and left femur ("normal exam");
- 3) Supplemental Medical Opinion signed by the appellant's physician October 16, 2012 which states in part that the appellant is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition and that "...this shall be concluded by the minister to be defined as her symptoms of chronic deterioration of health are a result of her severe conditions listed in the

previous report", that her chronic deterioration of health is caused by her severe conditions such as morbid obesity, thyroid disorder specifically Hypothyroidism, and Transverse Myelitis, and, as a result, the appellant displays various symptoms, including bone density loss as evidenced by a fracture on her left elbow and a fracture on her right foot; the physician agrees with the statement that the appellant requires vitamins and minerals such as multi-vitamins, B12, folic acid and Zinc, and the physician does not agree with the statement that the appellant requires a caloric intake over and above a regular intake as her body has poor absorption, and the physician agrees that failure to obtain these items will result in imminent danger to the appellant's life "...such as progressively deteriorating her conditions; with the items she will prevent the rate of deterioration of her health;

- 4) Letter dated October 16, 2012 from the appellant's physician 'To Whom It Concerns' stating in part that the appellant fell on September 30, 2012 while walking down one small step, that it was likely due to her weakness and poor coordination caused by her chronic condition of Transverse Myelitis; it was shown in hospital that she had fractured a bone in her foot and her left forearm near the elbow; on October 2, 2012, the appellant reported that since the fall she has pain in her left ankle, left shin, left shoulder region, and lower back and she was diagnosed with left ankle sprain and possible Type III acromion process impingement, and an X-Ray of the lower back showed a thinned or compressed disc at L5-S1; as of October 16, 2012, the appellant continues to ambulate slower than normal, with limited range of motion and limited left arm and shoulder strength;
- 5) Letter dated October 16, 2012 from the appellant's physician 'To Whom It Concerns' which repeats much of the information in the physician's first letter and adds that due to Transverse Myelitis, chronic fatigue, thyroid disease, even with medicine, the appellant cannot walk more than one city block per day and some days cannot leave her home.

The ministry did not raise an objection to the admission of these documents into evidence. The panel reviewed the documents and admitted them, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail regarding the appellant's medical conditions, and being in support of information that was before the ministry on reconsideration.

The ministry relies on its reconsideration decision which stated that the appellant is a Person With Disabilities (PWD) in receipt of disability assistance. The appellant submitted a completed request in the form specified and signed by a physician on May 3, 2012. The diagnoses are Transverse Myelitis, depression and morbid obesity (5'8" and 250 lbs.). In reply to the question "...as a direct result of the severe medical conditions, is the applicant being treated for a chronic progressive deterioration of health?", the physician answered "...vitamin supplements, multivitamins, Zinc, folates, and exercise- cardiovascular." In the application for MNS, the medical practitioner confirmed that the appellant displays the two symptoms of malnutrition (needs better food quality- fish, vitamins) and significant neurological deterioration (Transverse Myelitis- depression). In the new document dated August 21, 2012, the physician stated that the appellant also suffers from muscle mass loss due to Transverse Myelitis, bone density loss due to arthritis in left hand, significant deterioration of an organ and moderate to severe immune suppression. The ministry points out that the appellant is diagnosed as morbidly obese and her BMI is 38.0. The ministry acknowledges that the appellant has two or more symptoms but is not satisfied these are as a result of a chronic, progressive deterioration of health. The medical practitioner specified the vitamin or mineral supplement required as "...multivitamins, Zinc, folate, B complex and fish" and that these items would alleviate the specific symptoms by "giving patient more energy and improved healing." In response to the question how the items will prevent imminent danger to the appellant's life, the medical practitioner stated in the MNS application that "...patient's alertness should improve, less weakness, less falls, more energy, more exercise, and better cardiovascular fitness." No further information was provided in the document dated August 21, 2012.

The medical practitioner reported, in the application, that the additional nutritional items required to alleviate symptoms are "...fish, lean chicken and lean goat." The physician does not provide information on how the requested nutritional items are required as a caloric supplementation to the regular diet, but instead states that due to depression the appellant has low appetite. It appears that the appellant is not currently eating a regular

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diet and therefore more food would not be required. The physician stated that the appellant needs "quality proteins in diet, lower carbohydrate foods, lower fat and less processed foods" and these items are specific foods. The physician does not confirm that the appellant requires a caloric intake over and above a regular intake as her body has poor absorption. The physician indicates that these items will give the appellant more efficient physiology and improve her mental alertness and energy but does not indicate that without them the appellant will experience a direct and 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's position is that sufficient information has not been provided from the medical practitioner to establish that the appellant is being treated for a chronic, progressive deterioration of health on account of a

severe medical condition, pursuant to Section 67(1.1)(a) of the EAPWDR. The ministry argues that the diagnoses in the Application for MNS are Transverse Myelitis, depression and morbid obesity (5'8" and 250 lbs.) and, in reply to the question "...as a direct result of the severe medical conditions, is the applicant being treated for a chronic progressive deterioration of health?", the physician answered "...vitamin supplements, multivitamins, Zinc, folates, and exercise- cardiovascular." The ministry argues that no explanation was provided with the new information received from the appellant and while the appellant's medical conditions may be severe, there is no information to establish that a chronic, progressive deterioration of health on account of a severe medical condition exists. The appellant's position is that there is sufficient information from her physician to establish that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition.

Section 67(1.1)(a) of the EAPWDR requires that a medical practitioner confirm that the PWD is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition. In the Application for MNS, the physician lists the appellant's severe medical conditions with an accompanying description as Transverse Myelitis (mental deterioration, weakness, fatigue), depression (fatigue, low motivation), and morbid obesity (overweight, fatigue) but does not properly respond to the question whether the appellant is being treated for a chronic, progressive deterioration of her health. However, Transverse Myelitis is described by the physician in the Application as involving mental deterioration and causing the symptom of significant neurological degeneration. As well, in both of the Supplemental Medical Opinions, dated August 21, 2012 and October 16, 2012, the physician agrees with the statement that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition. The panel finds that the ministry's conclusion that there is not sufficient information to establish that the appellant is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition, pursuant to Section 67(1.1)(a) of the EAPWDR, was not reasonable.

The ministry's position is that sufficient information has not been provided from the medical practitioner to establish that as a direct result of the chronic, progressive deterioration of health, the appellant displays two or more of the listed symptoms, pursuant to Section 67(1.1)(b) of the EAPWDR. The ministry argues that the medical practitioner initially gave two symptoms of malnutrition (needs better food quality- fish, vitamins) and significant neurological deterioration (Transverse Myelitis- depression) and, in the new document dated August 21, 2012, the physician stated that the appellant also suffers from muscle mass loss due to Transverse Myelitis, bone density loss due to arthritis in left hand, significant deterioration of an organ and moderate to severe immune suppression; however since the appellant is diagnosed as morbidly obese and her BMI is 38.0, malnutrition cannot be accepted as a symptom. The ministry acknowledges that the appellant has two or more symptoms but argues that there is not enough information to establish that these are as a result of a chronic, progressive deterioration of health. The appellant's position is that there is sufficient information from her physician to establish that as a direct result of the chronic, progressive deterioration of her health, the appellant displays two or more of the listed symptoms.

Section 67(1.1)(b) of the EAPWDR requires that a medical practitioner confirm that as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the symptoms listed. The ministry acknowledges that there is sufficient information from the medical practitioner to establish that the appellant displays two or more of the symptoms listed, as set out in the Supplemental Medical Opinion dated August 21, 2012, being muscle mass loss due to Transverse Myelitis, bone density loss due to arthritis in her left hand, neurological degeneration due to Transverse Myelitis, significant deterioration of an organ, and moderate to severe immune suppression. In the Supplemental Medical Opinion, the physician agrees that both of the symptoms of muscle mass loss and neurological degeneration are due to the appellant's severe medical condition of Transverse Myelitis, which is described by the physician as mental deterioration, and that the symptoms are displayed as a result of the appellant's chronic, progressive deterioration of health. The panel finds that the ministry's conclusion that there is not sufficient information to establish that as a direct result of the chronic, progressive deterioration of health, the appellant displays two or more of the symptoms listed, pursuant to Section 67(1.1)(b) of the EAPWDR, was not reasonable.

The ministry's position is 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 her chronic, progressive deterioration of health and to prevent imminent danger to life, as required by Section 67 (1.1)(c) and (d) of the EAPWDR. The ministry argues that it is not clear how multivitamins, Zinc, folate, B complex and fish would help alleviate the specific symptoms by "...giving patient more energy and improved healing." The ministry also argues that the medical practitioner stated in the Application for MNS that these items would prevent imminent danger to the appellant's life as "...patient's alertness should improve, less weakness, less falls, more energy, more exercise, and better cardiovascular fitness" and no further information was provided. The ministry argues that the information does not establish that the requested vitamins/minerals and fish will prevent imminent danger to life as there is no medical history of a direct and imminent danger to the appellant's life at the present time. 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 her chronic, progressive deterioration of health and to prevent imminent danger to life.

Section 67(1.1)(c) 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 for MNS dated May 3, 2012, the physician reported that the vitamins or mineral supplements required are: "...multivitamins, Zinc, folate, B-complex, fish", with no indication of the expected duration of need, but that these items will alleviate the specific symptoms identified by giving the appellant "...more energy and improved healing." The panel finds that the medical practitioner has confirmed that multivitamins, Zinc, folate, B complex and fish are required to alleviate her specific symptom of significant neurological degeneration by providing more energy and improved healing. The panel finds that the ministry's conclusion that there is not sufficient information to establish that the appellant requires the vitamins and minerals for the purpose of alleviating an identified symptom, pursuant to Section 67(1.1)(c) of the EAPWDR, was not reasonable.

Section 67(1.1)(d) of the EAPWDR requires further that the medical practitioner confirm that failure to obtain the vitamins and minerals will result in imminent danger to the appellant's life. In the application dated May 3, 2012, in response to the request to describe how the multivitamins, Zinc, folate, B complex and fish will prevent imminent danger to the appellant's life, the medical practitioner indicated that the appellant's "...alertness should improve, less weakness, less falls, more energy, more exercise, better cardiovascular fitness." In both the Supplemental Medical Opinions, dated August 21, 2012 and October 16, 2012, the physician agrees that failure to obtain these items will result in imminent danger to the appellant's life "...such as progressively deteriorating her conditions; with the items she will prevent the rate of deterioration of her health." In the letter dated October 16, 2012, the physician reported that the appellant fell on September 30, 2012 while walking down one small step, that it was likely due to her weakness and poor coordination caused by her chronic condition of Transverse Myelitis and it was shown in hospital that she had fractured a bone in her foot and her left forearm near the elbow. While the evidence demonstrates that the vitamins and minerals would be beneficial to improve the appellant's health and "prevent the rate of deterioration of her health", there was no information provided to establish a rapid rate of deterioration of the appellant's health such that a failure to obtain the vitamins and minerals will result in an imminent danger to the appellant's life. Therefore, the panel finds that the ministry reasonably determined that there is not sufficient information currently available to establish that failure to obtain the vitamins and minerals 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 reported that the additional nutritional items required to alleviate symptoms are "...fish, lean chicken and lean goat" and the physician does not provide information on how the requested nutritional items are required as a caloric supplementation to the regular diet, but instead states that due to depression the appellant has low appetite. The ministry argues that it appears that the appellant is not currently eating a

regular diet and therefore more food would not be required. The ministry points out that the physician stated that the appellant needs "quality proteins in diet, lower carbohydrate foods, lower fat and less processed foods" and these items are specific foods and the physician does not confirm that the appellant requires a caloric intake over and above a regular intake as her body has poor absorption. The ministry further argues that the physician indicated that these items will give the appellant more efficient physiology and improve her mental alertness and energy but does not indicate that without them the appellant will experience a direct and 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.

Section 67(1.1)(c) 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 dated May 3, 2012, in response to a request to specify the additional nutritional items required, the physician indicated "...fish, lean chicken, lean goat" with no indication of the expected duration of the need. 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 "...depression- low appetite." However, in both the Supplemental Medical Opinions, dated August 21, 2012 and October 16, 2012, the physician does not agree with the statement that the appellant requires a caloric intake over and above a regular intake as her body has poor absorption. Therefore, 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 May 3, 2012, the medical practitioner responds to the question how the nutritional items will prevent imminent danger to the appellant's life, by stating "...patient will have more efficient physiology to improve mental alertness, energy." In the Supplemental Medical Opinion dated August 21, 2012, the physician agrees that failure to obtain additional nutritional items (Ensure drinks, a higher protein intake such as chicken, fish, and higher fruit and vegetable intake) will result in imminent danger to the appellant's life "...such as progressively deteriorating her conditions; with the items she will prevent the rate of deterioration of her health." In the letter dated October 16, 2012, the physician reported that the appellant fell on September 30, 2012 while walking down one small step, that it was likely due to her weakness and poor coordination caused by her chronic condition of Transverse Myelitis and it was shown in hospital that she had fractured a bone in her foot and her left forearm near the elbow. While the evidence demonstrates that the additional nutritional items would be beneficial to improve the appellant's health and "prevent the rate of deterioration of her health", there was no information provided to establish a rapid rate of deterioration of the appellant's health such that a failure to obtain the additional nutritional items will result in an imminent danger to the appellant's 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 and finds that the ministry reasonably concluded that the medical practitioner has not confirmed that failure to obtain the requested additional nutritional items will result in imminent danger to the appellant's life, as 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.