

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated November 14, 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 his 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 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 July 13, 2012 signed by the appellant's physician and stating in part that the appellant's severe medical condition is that he has no molars and has difficulty chewing, and that the appellant is being treated for a chronic, progressive deterioration of health as he has difficulty chewing due to his problems with his teeth, he needs to have soft foods and has lost a significant amount of weight; 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 symptoms of underweight status ("is underweight due to problems with chewing"), significant weight loss ("has lost weight due to not being able to eat") and significant muscle mass loss ("not able to eat properly and has lost muscle mass") are indicated; the vitamins or mineral supplements required are reported as "...Ensure", with no expected duration of the need described, that this item will alleviate the specific symptoms as "...will prevent further weight loss and muscle mass loss" and will prevent imminent danger to the appellant's life as "...will allow his body to get appropriate protein and vitamins needed to stay at current weight"; in response to a request to specify the additional nutritional items required, it is indicated "...needs 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 "...yes, he has difficulty chewing due to his teeth and is not able to absorb enough calories"; 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 "...will prevent further weight loss" and how the nutritional items will prevent imminent danger to the appellant's life, it is indicated "...patient will be able to maintain a steady weight and prevent further muscle mass loss."
- 2) Letter from the ministry dated October 11, 2012 to the appellant denying his request and enclosing a copy of the decision summary; and,
- 3) Request for Reconsideration- Reasons.

The ministry did not attend the hearing and did not provide further submissions or evidence. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

At the hearing, the appellant provided two copies of a letter dated June 9, 2012 from a dental centre 'To Whom It May Concern' stating in part that the appellant has seven lower teeth remaining and the teeth are infected and need to be extracted; an approved authorization from an insurer was received and it will cover only the cost of extractions and some minor surgery; request is made for pre-approval of the remaining treatment cost since immediate denture is necessary to restore the functional needs and mini implants are necessary to retain the denture in place since the appellant does not have enough opposing teeth for mastication. The costs of four mini implants is \$4,000 and the cost of immediate denture is \$1,480. One copy of the letter is stamped as received by the ministry on October 26, 2012. The panel reviewed the letters which provide more information regarding the appellant's diagnosed condition and when the ministry received this information and the panel admitted both copies as being in support of information before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

In his Notice of Appeal, the appellant stated that he believes there were other regulations that could result his file fairly, that he has reasons that are worth being heard. In his Request for Reconsideration, the appellant stated that his health is in danger. His previous requests either for supplement nutrition or dental cost have been denied.

At the hearing, the appellant stated that prior to submitting his application for the Monthly Nutritional Supplement (MNS), he made a request to the ministry to have the cost of his dental work done. The appellant referred to the letter dated June 9, 2012 which he stated he had submitted to the local ministry office and should have been in his file to be reviewed as part of the ministry's consideration of his application for the

MNS. The appellant stated that he delivered a second copy to the ministry office on October 26, 2012 and he requested that it be stamped as received, as proof that it is in his file. The appellant stated that he did not want to apply for the MNS but he was told that it can take a long time for the requests to cover the cost of his dental work to be processed and his family doctor recommended that he get the nutritional supplements in the meantime. The appellant pointed to the date on the application as July 13, 2012 and this is when he made the request for the MNS. The appellant stated that he has 3 teeth remaining on his top jaw and his bridge is attached to these teeth. The appellant explained that his teeth on the bottom jaw are still infected but he wants to retain the front teeth and have a bridge placed in the back but the implants are required to stabilize the bridge. The appellant stated that the ministry has approved the cost of a full denture for him but the cost of the implants has been denied. The appellant stated that any movement in his mouth causes him to vomit and the denture would not be affixed to his jaw and would likely cause vomiting.

The appellant stated that he was in a car accident in 2009 in which he injured his back and shoulders and he has been in a difficult situation ever since. The appellant stated that he has been dealing with ICBC and Work Safe and has experienced stress and depression, for which he takes medication. The appellant stated that he has not been able to work and he does not want to ask the ministry for help but he has no choice. The appellant stated that he did not have the budget to take care of his teeth properly and now he is having problems. The appellant stated that it is not an illness that has caused the problems with his teeth. The appellant stated that his family doctor told him that if the infection in his teeth gets much worse and goes into the root of his tooth or into his blood, he will end up in hospital. The appellant stated that he currently takes medications for his depression and Ibuprofen for pain relief. The appellant stated that his family is currently taking care of him, that they cook something that he is able to eat. The appellant stated that he has lost approximately 2 kg. in the last year but he has not been keeping track. The appellant stated that he has been feeling weak and his family doctor submitted an application for another diet allowance for which he was approved and he receives an addition \$40 per month. The appellant stated that he currently purchases some Ensure.

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 medical practitioner in which it is confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition. Specifically, the physician diagnosed the appellant with having no molars, that he has difficulty chewing due to the problems with his teeth, that he needs to have soft foods and has lost a significant amount of weight and he needs supplements. According the application for MNS, the physician reported that the appellant's symptoms are underweight status (is underweight due to problems with chewing), significant weight loss (has lost weight due to not being able to eat), and significant muscle mass loss (not able to eat properly and has lost muscle mass). The ministry pointed out that given the appellant's height and weight as set out by the physician, his BMI [body mass index] is 20.84 and a BMI of between 19 and 25 is considered a normal amount of body fat. The ministry acknowledged that the appellant displays three symptoms but is not satisfied these are as a result of a chronic, progressive deterioration of health. The ministry stated that dental work could be considered a possible solution to the appellant's situation and, as a PWD, the appellant is entitled to dental supplements.

The medical practitioner specified the vitamin or mineral supplement required as "...Ensure" and that this item would alleviate the specific symptoms by preventing further weight loss and muscle mass loss. The ministry stated that Ensure is a nutritional item and it is not a vitamin or a mineral. The ministry stated that it is not clear why the appellant is not able to sustain his caloric intake with soft foods. The ministry stated that the appellant is currently receiving a dietary allowance of \$40 per month. The ministry stated that although the physician indicated that Ensure will prevent imminent danger to the appellant's life as it will allow his body to get appropriate protein and vitamins needed to stay at his current weight, it is unclear why the dental work that could provide molars, i.e. dentures, has not been considered. The ministry stated that since the appellant has PWD designation, he may be eligible for \$1,000 worth of dental work within a 2 year period beginning on January 1, 2033 and on each subsequent January 1 in an odd numbered year.

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The medical practitioner reported, in the application, that the additional nutritional item required to alleviate symptoms is a high protein diet. The ministry stated that this diet is requested in order to achieve a higher quantity of protein and not to increase the caloric intake above a normal dietary intake. The physician does not report 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.

## 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 both that the medical practitioner has confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically having no molars, and that it is difficult to confirm 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 points out that the physician reports that the appellant has difficulties chewing due to problems with his teeth and needs supplements and soft foods and he has lost a significant amount of weight. The ministry argues that the physician has not provided evidence to confirm that the appellant has a severe medical condition that prevents him from contacting a dentist in order to resolve his dental problems. The appellant's position is that there is sufficient information from his physician and the dental centre to establish that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition. The appellant argues that his family doctor told him that if the infection in his teeth gets much worse and goes into the root of his tooth or into his blood, he will end up in hospital.

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 "...has no molars, has difficulty chewing, needs supplement" and that he is being treated for a chronic, progressive deterioration of his health as he "...has difficulty chewing due to his problems with his teeth, needs to have soft foods and has lost significant amount of weight." In the letter dated June 9, 2012 from the dental centre, a physician states that the appellant has seven lower teeth remaining, that the teeth are infected and need to be extracted, an immediate denture is necessary to restore the functional needs and mini implants are necessary to retain the denture in place since the appellant does not have enough opposing teeth for mastication. The appellant stated that his family doctor told him that if the infection in his teeth gets much worse and goes into the root of his tooth or into his blood, he will end up in hospital. The panel finds that this information demonstrates a severe condition that relates to the appellant's teeth and jaw but, although a dental problem, is not excluded from being considered a severe medical condition that has resulted in a chronic, progressive deterioration of his health. There is inconsistency in the ministry's position that acknowledges that the medical practitioner has confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition and also maintains that it is difficult to confirm these facts. As well, the ministry argues that the physician has not provided evidence to confirm that the appellant has a severe medical condition that prevents him from contacting a dentist in order to resolve his dental problems, and the panel finds that this is not a requirement set out anywhere in Section 67(1.1) of the EAPWDR. 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 reported that the appellant's symptoms are underweight status, significant weight loss, and significant muscle mass loss but the appellant's BMI is 20.84 which is within the range considered a normal amount of body fat. The ministry argues that it is unclear what significant weight loss the appellant has incurred as his physician has not provided his initial weight, the amount of weight lost and the length of time it has taken for the appellant to lose this weight. The ministry acknowledges that the appellant displays three symptoms but is not satisfied these are as a result of a chronic, progressive deterioration of health. The ministry argues that dental work could be considered a possible solution to the appellant's situation and, as a PWD, the appellant is entitled to dental supplements. The appellant's position is that there is sufficient information from his physician to establish that as a direct result of the chronic, progressive deterioration of his health, the appellant displays two or more of the listed symptoms. The appellant argues that although the ministry has approved payment of the cost of a full denture for him, the cost of the implants has been denied and the implants are required to stabilize a bridge in the lower back and the denture would not be affixed to his jaw and would likely cause vomiting.

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. Although

the ministry raises issues with the appellant's BMI being within the normal range and a lack of detail regarding the symptom of significant weight loss, the ministry ultimately acknowledges that there is sufficient information from the medical practitioner to establish that the appellant displays two or more of the symptoms listed, being underweight status, significant weight loss, and muscle mass loss. In the application for MNS, the physician also agrees that these symptoms are due to the appellant's chronic, progressive deterioration of health and the physician describes details as "underweight due to problems with chewing", "has lost weight due to not being able to eat" and "not being able to eat properly and has lost muscle mass." Although the ministry argues that dental work could be considered a possible solution to the appellant's problem, the panel finds that the appellant has not yet had the dental work performed and he has not received approval for the cost of the work required to alleviate his symptoms. 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 his 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 the medical practitioner specifies that the appellant requires Ensure and that this is a nutritional item and it is not a vitamin or a mineral. The ministry argues that although the physician indicates that Ensure will prevent further weight loss and muscle mass loss, it is not clear why the appellant is not able to sustain his caloric intake with soft foods. The ministry also argues that the physician indicates that Ensure will prevent imminent danger to the appellant's life as it will allow his body to get appropriate protein and vitamins needed to stay at his current weight, however it is unclear why the dental work that could provide molars, i.e. dentures, has not been considered. 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.

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 July 13, 2012, the physician reported that the vitamins or mineral supplements required is Ensure, with no indication of the expected duration of need, but that this item will alleviate the specific symptoms identified by preventing further weight loss and muscle mass loss. Although the ministry argues that Ensure is not a vitamin or a mineral, the panel finds that the medical practitioner has recommended Ensure as a vitamin or mineral supplement and the ministry has not provided supporting evidence that Ensure does not contain multiple vitamins and minerals, similar to a trade name for a multi-vitamin. The ministry also argues that there are other possible solutions, such as dental work that would provide molars for the appellant, as well as consuming soft foods to sustain his caloric intake, so that Ensure is not required for the purpose of alleviating his identified symptoms. The panel finds that the appellant has not yet had the dental work performed and he has not received approval for the cost of the work required to alleviate his symptoms with this option, however the panel finds that the ministry reasonably concluded that consumption of soft or blended foods is a possible alternative to allow the appellant to ingest appropriate protein and vitamins needed to maintain his weight. The panel finds that the ministry's conclusion that there is not sufficient information to establish that the appellant requires the Ensure for the purpose of alleviating an identified symptom, pursuant to Section 67(1.1)(c) of the EAPWDR, was 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 for the MNS, 2012, in response to the request to describe how the Ensure will prevent imminent danger to the appellant's life, the medical practitioner indicated that it "...will allow his body to get appropriate protein and vitamins needed to stay at current weight." The appellant argues that his family doctor told him that if the infection in his teeth gets much worse and goes into the root of his tooth or into his blood, he will end up in hospital.

However, the panel finds that there is no evidence that the Ensure will alleviate the infection in the appellant's teeth. As well, the ministry argues that there are other possible solutions, such as dental work that would provide molars for the appellant, as well as consuming soft foods to sustain his caloric intake, and there is not sufficient information to establish that failure to obtain Ensure will not result in imminent danger to the appellant's life. The panel finds that the appellant has not yet had the dental work performed and he has not received approval for the cost of the work required to alleviate his symptoms with this option, however the panel finds that the ministry reasonably determined that the consumption of soft or blended foods is a possible alternative to allow the appellant to ingest appropriate protein and vitamins needed to maintain his weight. While the evidence demonstrates that Ensure would be beneficial to the appellant's health and maintain him at his current weight, there was no information provided to establish a rapid rate of weight or muscle mass loss that would indicate a rate of deterioration in 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 item required to alleviate symptoms is a high protein diet and this diet is requested in order to achieve a high quantity of protein and not to increase caloric intake above a normal dietary intake. The ministry argues that the physician does not report 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 ministry argues that the information demonstrates that the appellant needs to eat specific soft or chewable foods as part of a balanced diet until he is able to possibly resume a regular dietary intake once his dental conditions have been corrected. The ministry argues that the physician makes diet recommendations that involve appropriate food choices within his regular dietary intake, rather than caloric supplementation to his dietary intake. The ministry argues that the appellant has a requirement for dental work that could be a possible solution to his present lack of molars which has caused his difficulty with chewing. 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 July 13, 2012, in response to a request to specify the additional nutritional items required, the physician indicated "...needs high protein diet" 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 "...yes, he has difficulty chewing due to his teeth and is not able to absorb enough calories" and the nutritional items "...will prevent further weight loss." The physician identifies a high protein diet as an additional nutritional item, and while the panel finds that it is unreasonable for the ministry to suggest that protein does not include calories, the panel also finds that the ministry reasonably determined that the physician makes a diet recommendation that involves appropriate food choices for a regular dietary intake, rather than caloric supplementation to a regular dietary intake. The information demonstrates that the appellant is not currently ingesting a regular dietary intake due to his difficulty chewing and that the appellant needs to eat specific soft or blended foods as part of a balanced diet rather than as part of a caloric supplementation to a regular dietary intake. 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 for the MNS, the medical practitioner responds to the question how the nutritional items will prevent imminent danger to the appellant's life, by stating "...patient will be able to maintain a steady weight and prevent further muscle mass loss." While the evidence demonstrates that the high protein diet would be beneficial to the appellant's health and maintain him at his current weight, there was no information provided to establish a rapid rate of muscle mass loss that would indicate a rate of deterioration in 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 all of 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.