

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated December 12, 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 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 (MNS) dated June 29, 2012 signed by the appellant's physician and stating in part that the appellant's severe medical conditions are Hypertension (high blood pressure) and Spondylitis; in response to the question of whether the appellant is being treated for a chronic, progressive deterioration of health, the doctor has written "ongoing back and leg pain, high blood pressure- needs low sodium diet"; 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 and significant muscle mass loss; the vitamins or mineral supplements required are reported as "multi-vite," with no indication of the expected duration of need. Asked to describe how this item will alleviate the specific symptoms identified and prevent imminent danger to the appellant's life, the physician has left these sections of the application blank; in response to a request to specify the additional nutritional items required, it is indicated "...needs low sodium 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 responded "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 and prevent imminent danger to the appellant's life, the physician has left these sections of the application blank. Additional comments provided by the physician are "...hypertension- severe, needs low sodium diet;"
- 2) Letter dated November 8, 2012 from the physician to the ministry stating in part that he is the appellant's family physician and has known her for more than 20 years. He believes the appellant should have the MNS for a number of reasons, including that she has degenerative disc disease, spondylolisthesis, and high blood pressure for which she needs to have a low sodium diet and this is difficult on a limited budget. The appellant also has migraines, soft tissue pain, amblyopia, anxiety disorder, psoriasis and vitiligo as well as environmental allergies. She has a combination of significant medical conditions and she requires a low sodium diet. She should be awarded the MNS to allow her to tailor her diet to her particular needs. Her current financial situation makes it impossible for her to shop and cook in a way that supports her medical conditions. He feels that it is imperative that she have this supplement;
- 3) Letter dated December 6, 2012 from the physician to the ministry stating in part that the appellant requires additional nutritional items for the purpose of alleviating one or more of the symptoms that are a direct result of a chronic, progressive deterioration of health, that she suffers from malnutrition, significant muscle mass loss and significant neurological degeneration. The physician stated that the appellant requires the MNS to alleviate symptoms and prevent imminent danger to life; and,
- 4) Request for Reconsideration- Reasons.

In her Notice of Appeal, the appellant stated that for those receiving disability assistance who are not employable, like her, there has been no increase in the rates since 2005 and she has no other financial resources. She wonders why she has to wait until her nutrient deficiencies, other disabilities and health problems put her life in imminent danger because she cannot afford to acquire enough food to meet the requirements in the Canada Health Food Guide. While she receives a \$10 per month diet supplement, she is not employable, and others who are employable can earn up to an extra \$800 per month. The appellant stated that she believes the ministry did not give full and proper consideration to her submission as well as that of her doctor. The appellant stated that she only receives \$531.42 per month for food, personal hygiene products, laundry supplies, household cleaning products, clothing and footwear, transportation, medical/dental services not otherwise covered, and everything else except shelter costs. The appellant stated that the amount remaining of approximately \$150 to \$200 per month is not sufficient for her to maintain a recommended, low sodium diet. Foods that are adequate in quantity for a single person are either high in cost or high in sodium and/or saturated fats. The low sodium diet is to help regulate her high blood pressure and alleviate the chance of getting hardened arteries. The appellant stated that she is coping with 14 disabilities and her life/health is being put in imminent jeopardized danger/risk.

Regarding her diagnosed conditions, the appellant stated that her physician made an error in the MNS application as he stated that she has "spondylitis", whereas it is correctly stated as "spondylolisthesis" in his letter submitted on reconsideration, and the ministry incorrectly referred to the condition as "spondylosis" in the reconsideration decision. With respect to her symptoms, the appellant stated that if she is overweight it is as a result of not getting sufficient nutritional foods and instead opting for affordable foods that satisfy her hunger. It can also be linked to stress and the use of prescription medications. The appellant stated that vitamins, minerals, protein and carbohydrates are essential for the proper maintenance of the body and to be able to function properly. The appellant stated that malnutrition is caused by eating too little and a dietary excess of an incorrect balance of protein, fats and carbohydrates. The appellant stated that since she cannot afford to purchase nutritional foods, she requires vitamin and mineral supplements as an essential alternative. Her doctor did not state that she would 'benefit' from a low sodium diet but, rather, that she needs/requires a low sodium diet. The appellant stated that one does not necessarily have to have the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, but one can also have an inability to afford enough foods to get sufficient calories to satisfy daily requirements.

In her Request for Reconsideration, the appellant added that the inability to acquire nutritional foods in accordance with the Canada Health Food Guide results in malnutrition, muscle loss/joint deterioration, anemia, skin disorders/diseases, fatigue, and other health problems. In regard to support or assistance from friends, associations, neighbours and/or family, the appellant stated that none has been forthcoming. The appellant stated that her lifelong disabilities are high blood pressure/hypertension (with the need for a low sodium diet), spondylolisthesis, degenerative disc disease, spacing discrepancy in her cervical vertebrae of her neck at the C5-C6 level, fibrositis in her shoulders, osteoarthritis, and migraines. As well, she suffers from amblyopia/strabismus, heart murmur, anxiety disorder, eczema, psoriasis and vitiligo, and allergies. The appellant stated that due to the significant impact that all of her disabilities have on her health/life, and the insufficient nutritional food and minimal support of her disability benefits, her health/life is being put in extreme jeopardy.

At the hearing, the appellant stated that she used to have a dietary supplement of about \$40 per month but then the eligibility criteria changed and she was told she no longer qualified. The appellant stated that costs have continued to go up, including having to pay tax on items previously exempt, and she lost her dietary supplement which has cancelled out the \$70 increase in benefits which occurred in 2005. The appellant stated that after the numerous monthly expenses, she has \$150 per month for food. She cannot get foods from the food bank because they are high in sodium. She cannot buy in bulk because she does not have the space to store large quantities and cannot afford to buy a larger freezer. The appellant stated that with her disabilities she cannot stand at the stove to cook as she has overlapping vertebrae and it is a very painful condition. In order to get foods low in sodium and saturated fats she either needs an increase in her benefit amount or a MNS supplement. The appellant stated that the ministry is ignoring the imminent danger to her life as confirmed by her physician in the letter dated December 6, 2012. If she needs a treatment such as massage therapy to help with her conditions, the \$60 that is charged has to come out of her food budget.

At the hearing, the ministry relies on its reconsideration decision.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reconsideration 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 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 the medical practitioner specifies in the application for MNS that the appellant requires multivitamins but does not describe either how the multivitamins will alleviate the appellant's symptoms of malnutrition and muscle mass loss or how they will prevent 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 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 June 29, 2012, the physician reported that the vitamins or mineral supplements required are: "multivitamins", with no indication of the expected duration of need nor how these items will alleviate the specific symptoms identified. In the letter dated November 8, 2012, the medical practitioner added that the appellant has a combination of significant medical conditions and she should be awarded the MNS to allow her to tailor her diet to her particular needs since her current financial situation makes it impossible for her to shop and cook in a way that supports her medical conditions. While the physician also stated, in the letter dated December 6, 2012, that the appellant "...requires the MNS to alleviate symptoms," the panel finds there is no further information provided by the medical practitioner as to how the multivitamins in particular will alleviate the identified symptoms of malnutrition, significant muscle mass loss or significant neurological degeneration. The appellant argues that it is common sense that the multivitamins will alleviate these symptoms; however the panel finds that the legislation requires that the medical practitioner confirm that the specific item, and not simply 'the MNS', is required for the purpose of alleviating a particular symptom. 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 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 June 29, 2012, in response to the request to describe how the multivitamins will prevent imminent danger to the appellant's life, the medical practitioner has left this section blank. The appellant argues that due to the significant impact that a total of 14 disabilities have on her health/life, and the insufficient nutritional food she is able to purchase with her minimal support benefits, her health/life is being put in extreme jeopardy. The appellant also argues that her physician stated in his letter dated December 6, 2012 that she requires the MNS to prevent imminent danger to life. While the appellant argues that the multivitamins are crucial to her well-being, the panel finds that there was no information provided by the medical practitioner to establish a rapid rate of deterioration of the appellant's health such that a failure to obtain the multivitamins in particular 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 appellant could benefit from a low sodium diet however the physician did 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 from the physician demonstrates that the appellant needs to eat specific low sodium foods as part of a balanced diet, which is a diet recommendation for appropriate food choices within her regular dietary intake rather than a caloric supplementation to her dietary intake. The ministry argues that the physician does not report that a low sodium diet will alleviate the symptoms of malnutrition, muscle mass loss and significant neurological degeneration and does not indicated that it 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 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 June 29, 2012, in response to a request to specify the additional nutritional items required, the physician indicated "...needs low sodium diet" with no indication of the expected duration of the need. The appellant points out that her doctor did not state that she would 'benefit' from a low sodium diet, as argued by the ministry but, rather, that she 'needs' a low sodium diet. With respect to the appellant's need for a low sodium diet, however, the panel finds that the ministry reasonably determined that the information from the physician indicates that the appellant needs to eat specific low sodium foods as part of a balanced diet, which is a diet recommendation for appropriate food choices within her regular dietary intake rather than a caloric supplementation to her regular dietary intake. 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." The appellant stated that one does not necessarily have to have the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, but one can also have an inability to afford enough foods to get sufficient calories to satisfy daily requirements. The panel finds, however, that the legislation stipulates that the additional nutritional items specified must be required as part of a caloric supplementation to a dietary intake that is a 'regular' intake and that this requirement must be confirmed by the medical practitioner. 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 a related symptom, 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 June 29, 2012, the medical practitioner responds to the question how the nutritional items will prevent imminent danger to the appellant's life by leaving this section of the application blank. The appellant argues that her physician stated in his letter dated December 6, 2012 that she requires 'the MNS' to prevent imminent danger to life. In the letter dated November 8, 2012, the physician elaborated that the appellant has a combination of significant medical conditions and requires a low sodium diet and that she should be awarded the MNS to allow her to tailor her diet to her particular needs. The physician stated that the appellant's current financial situation makes it impossible for her to shop and cook in a way that supports her medical conditions and he feels that it is imperative that she have this supplement. While the evidence demonstrates that the low sodium diet would be beneficial to improve the appellant's 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 the appellant's life is likely to happen soon. The panel finds that the ministry reasonably concluded that the medical practitioner has not confirmed that failure to obtain a nutritional item that is part of a caloric supplementation to a regular dietary intake 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.