

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated February 28, 2013 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 there is not sufficient information to establish that:

- the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of his chronic, progressive deterioration of health and to prevent imminent danger to life.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67(1.1) and Schedule C, Section 7

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Application for Monthly Nutritional Supplement dated October 1, 2012 signed by the appellant's physician and stating in part that:
 - the appellant's severe medical conditions are DM [diabetes mellitus], HTN [hypertension], chronic back pain with radiation to left leg, CAD [coronary artery disease] and left hand weakness/numbness NYD [not yet diagnosed];
 - 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 indicated the symptoms of significant neurological degeneration (left arm/hand and left leg numbness/weakness) and moderate to severe immune suppression (DM);
 - the appellant's height and weight is recorded and a Body Mass Index (BMI) of 29.2 is noted;
 - in response to a request to specify the additional nutritional items required, the physician indicated "...high protein diet- low fat- low salt- low CHO [carbohydrates] diet due to his medical conditions;"
 - 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 indicated "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 indicated "...as his DM is under controlled, his immune system will be stronger" and how the nutritional items will prevent imminent danger to the appellant's life, the physician indicated "...it will help his DM, BP [blood pressure] and high cholesterol under control."
- 2) Letter dated February 22, 2013 from the physician 'To Whom It May Concern' responding to the question whether the appellant requires nutritional items in addition to his normal diet and whether increased caloric intake over and above a normal dietary intake alleviate the symptoms of neurological degeneration and moderate to severe immune suppression with: "...he has diabetes, HTN and heart disease; he also has chronic back pain." In response to the question will nutritional supplementation prevent "imminent danger to life" or is the appellant's health condition at a stage where vitamin supplements are required to relieve his symptoms, prevent further health deterioration or to reduce the rate of further deterioration, the physician indicated "YES" ; and,
- 3) Request for Reconsideration- Reasons.

At the hearing, the appellant's advocate provided a written argument.

In the Notice of Appeal, the appellant expressed his disagreement with the ministry's reconsideration decision. In the Request for Reconsideration, the appellant wrote that he is eligible for the nutritional items of the Monthly Nutritional Supplement (MNS) and referred to the doctor's letter dated February 22, 2013. The appellant wrote that the doctor has reiterated that he suffers from multiple health conditions and, as stated on the application, nutritional items will help him to keep these medical conditions under control and strengthen his immune system. The appellant wrote that the doctor confirmed the nutritional supplement is required to prevent imminent danger to life.

At the hearing, the advocate stated that the application being considered is not the first application that the appellant has made for the MNS, that he is currently receiving the vitamin and mineral supplement amount (\$40) of the MNS. In October 2012 the appellant applied for the MNS again in order to qualify for the nutritional item amount (\$165). The advocate stated that the ministry was satisfied that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, as a result of his diabetes mellitus, hypertension, chronic back pain, coronary heart disease and left hand weakness/numbness not yet diagnosed. The ministry was also satisfied that, as a direct result of the chronic, progressive deterioration of health, the appellant displays two of the listed symptoms, namely significant neurological deterioration and moderate to severe immune suppression. The advocate stated that on the

application the appellant's doctor highlighted his diabetes as relating to the moderate to severe immune suppression, but the appellant has a number of severe medical conditions. With respect to the letter dated February 22, 2013, the advocate clarified that this was sent to the doctor and faxed back with no discussion having occurred with either the advocate or the appellant.

The appellant stated that he takes medication for his diabetes and his blood sugar is high. He needs to see his family doctor soon. The appellant stated that about a week ago he started bleeding from the rectum, that he had a colonoscopy a year ago and a polyp removed, and he needs to have this checked by his family doctor. The appellant stated that he cannot afford to buy turkey which would be high in protein and low in fat, and he cannot afford a bottled drink such as "Boost." The appellant stated that he has consumed Boost before and his doctor has recommended it.

The ministry objected to the admissibility of the appellant's evidence regarding his recent issues with his bowel. The panel did not admit this evidence as it was not in support of information or records that were before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

The ministry relied on its reconsideration decision which included evidence that the appellant is a Person With Disabilities (PWD) in receipt of disability assistance. The appellant is currently in receipt of \$40 per month for vitamin and mineral supplements and \$40 per month for a diet allowance due to his diagnosis of diabetes. On October 3, 2012 the appellant submitted an application for the MNS.

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 acknowledged that the medical practitioner confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically diabetes mellitus, hypertension, chronic back pain, coronary artery disease and left hand weakness/ numbness NYD,

pursuant to Section 67(1.1)(a) of the EAPWDR. 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 acknowledged that there is sufficient information from the medical practitioner to establish that the appellant displays two or more of the symptoms, namely significant neurological degeneration and moderate to severe immune suppression. The ministry pointed out that the appellant's current BMI is in the obese range and he does not have symptoms of malnutrition, underweight status, significant weight loss or significant muscle mass loss.

Section 67(1.1)(c) and Section 7 of Schedule C of the EAPWDR-Caloric Supplementation

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. The ministry stated that the medical practitioner reported that the additional nutritional items required to alleviate symptoms are "...high protein diet- low fat-low salt- low CHO diet due to his medical conditions" and these are elements of a regular diet and are not nutritional items over and above a normal dietary intake. The ministry pointed out that the physician reported that the appellant does not have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The ministry stated that, in reply to the question how the requested nutritional items will alleviate one or more symptoms and provide caloric supplementation to the regular diet, the physician indicated "...as his DM is under controlled, his immune system will be stronger." The ministry argued that a medical condition specifically related to the inability to absorb calories from a regular dietary intake must be the responsible cause for the symptoms.

The appellant's position is that sufficient information has been provided by the medical practitioner, in the application for MNS and the February 23, 2013 letter, 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. The advocate acknowledged that, in the application for MNS, the doctor referred to items that are part of special diet needs, such as high protein, low fat, low salt diet, but argued that the other part of that question on the application asks about caloric supplementation to the regular diet and the doctor responded that "...as his DM is under controlled, his immune system will be stronger." The advocate argued that this be interpreted to mean that the appellant's diabetes is currently not in control and the nutritional items will help to make his immune system stronger. The advocate acknowledged that the doctor did not explain this comment. The advocate argued that the physician indicated, in the February 22, 2013 letter, that the appellant has a number of health conditions and consistently reported that nutritional items will help make the appellant's immune system stronger, thereby alleviating the symptoms identified.

Panel decision

Section 7 of Schedule C and Section 67(1.1)(c) of the EAPWDR stipulate that the medical practitioner must 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. In the application dated October 1, 2012, in response to a request to specify the additional nutritional items required, the physician indicated "...high protein diet- low fat- low salt- low CHO [carbohydrates] diet due to his medical conditions." The physician identified a diet high in protein and low in fat, salt, and carbohydrates as 'additional nutritional items', and the panel finds that the ministry reasonably determined that the physician recommended a diet that includes appropriate food choices for a regular dietary intake, rather than caloric supplementation to a 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 indicated: "NO." The panel finds that the ministry reasonably concluded that the appellant does not have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

The physician reported in the MNS application that the nutritional items will alleviate one or more of the

symptoms specified and provide caloric supplementation to the regular diet by answering: "...as his DM is under controlled, his immune system will be stronger." The panel finds that when this response is considered with the comments by the physician in the following section of the application, that the nutritional items will help bring the appellant's diabetes under control, the physician thereby indicated that the appellant's diabetes is currently not controlled. However, the medical practitioner confirmed that the nutritional items will help by strengthening the appellant's immune system and has not confirmed that these items will provide a caloric supplementation to the appellant's regular diet. When asked in the February 22, 2013 letter whether the appellant requires nutritional items in addition to his normal diet and whether an increased caloric intake will alleviate his symptoms, the physician responded by listing the appellant's medical conditions and did not take the opportunity to address the question. 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) of the EAPWDR- Imminent Danger to Life

The ministry's position is that it is not satisfied that the appellant requires additional nutritional items to prevent an imminent danger to the appellant's life. The ministry stated that the physician described how the requested nutritional items will prevent imminent danger to life by stating that "...it will help his DM, BP and high cholesterol under control" and a monthly dietary supplement is already in place to provide for nutritional choices including high protein. The ministry pointed out that while the physician answers the question, in the February 22, 2013 letter, whether a nutritional supplement will prevent imminent danger to life by stating "yes", there is no further specific information to explain this statement. The ministry also stated that the clarification to the question, being whether the appellant's health condition is at a stage where vitamin supplements are required to relieve his symptoms, prevent further health deterioration, or reduce the rate of further deterioration, is already addressed by the vitamin/mineral supplement and a monthly diabetic diet supplement that the appellant receives. The ministry stated that the word "imminent" refers to an immediacy such that the danger to life is likely to happen soon whereas the physician noted that supplementation will reduce the rate of further deterioration of health.

The appellant's position is that the information from the medical practitioner confirmed that failure to obtain the items specified in the MNS application will result in imminent danger to the appellant's life. The advocate argued that the appellant's physician reported in the MNS application that the nutritional items requested will "...help his DM, BP, high cholesterol under control" and, in the letter dated February 22, 2013 that it will prevent imminent danger to life. The advocate acknowledged that the clarification to the question regarding imminent danger to life in the February 22, 2013 letter referred to vitamin supplements in error, and suggested that the letter elsewhere refers to nutritional items and that the physician may have interpreted this question to also refer to nutritional items.

Panel decision

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 responded to the question how the nutritional items will prevent imminent danger to the appellant's life, by stating "...it will help his DM, BP and high cholesterol under control." The evidence suggests that the high protein, low salt, fat and carbohydrates diet would be beneficial to the appellant's health by helping to control his medical conditions. There was no information provided to establish a rapid rate of deterioration in the appellant's health. There was also no information provided to show that obtaining the additional nutritional items specified will prevent an imminent danger to the appellant's life. The panel finds that the ministry reasonably determined 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. While the physician agreed in the February 22, 2013 letter that nutritional supplementation will prevent imminent danger to life, the advocate acknowledged that the question specifically referenced vitamin

supplements and the panel finds that, while the letter elsewhere refers to nutritional items, it is not clear how the physician interpreted the question and the legislation requires that the medical practitioner definitively confirm that failure to obtain the items referred to will result in imminent danger to the appellant's life. The panel 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 Section 67(1.1)(d) of the EAPWDR.

Conclusion

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 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.