

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated March 15, 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 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 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 included:

- 1) Application for Monthly Nutritional Supplement (MNS) dated December 4, 2012 signed by a physician and which states in part that the appellant's severe medical conditions are "gluten intolerance- possible celiac, not able to stop gluten for period to biopsy, severe GI [gastrointestinal] symptoms; months now of diarrhea and intolerance to several foods, gastroscopy normal but no biopsies taken for celiac." The appellant is being treated for a chronic, progressive deterioration of health, specifically "...ongoing GI symptoms, please see letter. Has lost weight, will be referred to gastroenterologist."
 - 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 malnutrition ("decreased mg. on blood"), significant weight loss ("70.7 kg. 2012-03-29 to 6.3 kg. 2012-09-26");
 - the appellant's height and weight are recorded;
 - in response to a request to specify the additional nutritional items required, the physician indicated "...suspected celiac disease- ongoing evaluation;"
 - 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 again wrote "suspected celiac disease;"
 - 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 noted "...can't eat any gluten- diarrhea, bloating, pain;"
 - in response to a request to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the physician indicated "...prevent complication from celiac disease;"
 - for additional comments, the physician wrote: "...see printouts;" and,
- 2) Request for Reconsideration- Reasons prepared by the appellant's physician on her behalf.

In her Notice of Appeal, the appellant wrote that she disagrees with the ministry's reconsideration decision and made the points that she is on a celiac diet and she is allergic to milk protein not the lactose, and she pays for some of her own medication (\$753.41 last year and \$200 in physio). If she does not stick to her diet or pay for these medications, she will get very sick. She is only trying to take care of herself.

In the Request for Reconsideration, the appellant's physician wrote that the appellant is awaiting a gastroenterology appointment and she likely has celiac disease/gluten intolerance. Gluten-free products, eg. bread, pasta, are too expensive for the appellant to afford on a regular basis and this limits her diet.

At the hearing, the appellant stated that the ministry says that she cannot pinpoint celiac disease but when she stops eating gluten she feels much better and the symptoms stop and she is not on the toilet all the time. The appellant stated that she cannot take Boost because it includes milk protein. When she does not eat gluten, her iron levels go up and she has more energy and is not tired all the time. The appellant stated that it is very expensive to not eat gluten or milk. The appellant stated that she had to eat gluten for a month and got very sick and then went for "surgery" to be tested for celiac but the doctor "forgot" to do the test for celiac disease. The appellant agreed that this procedure involved an endoscope. The appellant noted that when a person has mental health issues, some doctors question the person's credibility and "don't give a hoot." The appellant stated that when the scope was put down her throat, it was discovered that there was 'something' in her throat. She saw an Ear, Nose and Throat (ENT) specialist who put a camera down her throat and told her she has Leukoplakia on her vocal chords and that this can be caused by acid going into her throat from acid reflux. Sometimes the acid reflux is so bad that she cannot eat and almost chokes. The doctor told her she should quit smoking, which she has for the most part. She has an appointment on May 7th to find out whether she has to have surgery for this condition.

The appellant stated that it was her psychiatrist who suspected that the appellant might be gluten intolerant. At that time she was having stomach aches so bad she would "keel over", and when she stopped eating wheat

she began to feel better. The appellant noted that she does not like to wear diapers because they are expensive. She is good at budgeting, but the amount of money she receives "....does not pay for anything." The appellant stated that the reason she does not eat gluten is because of her health needs, not because of "dietary needs," as suggested by the ministry. The appellant stated that she needs the money for something that is good for her health and not for alcohol. She does not like being sick all the time and the celiac disease is just one of her physical problems. The appellant stated that the references in the MNS application to a letter and printouts were likely copies of the specialist reports and other papers that she had tried to give to the ministry but she was told by the ministry that these papers were not needed.

The ministry relied on its reconsideration decision which included evidence that the appellant is a Person With Disabilities (PWD) in receipt of disability assistance. On December 12, 2012 the appellant submitted an application for the MNS, for additional nutritional items. The appellant is currently in receipt of the MNS for vitamins/minerals at the rate of \$40 per month. The appellant is also receiving a diet supplement of \$40 per month for a gluten-free diet.

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'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 argued that the information provided in the Application for MNS and the Request for Reconsideration indicates that the appellant is under investigation for celiac disease. The ministry argued that the medical condition causing the appellant's symptoms such as diarrhea is still under investigation and has not yet been diagnosed. The appellant's position is that there is sufficient information from her physician and from her to establish that she has celiac disease and other conditions and 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 medical practitioner indicated that the appellant has gluten intolerance and she has "possible" celiac disease, with ongoing GI symptoms. Although the medical practitioner indicated in the application to "see letter", the ministry followed up for a copy of the letter and none was forthcoming from the doctor's office. However, the same medical practitioner completed the Request for Reconsideration and stated at that time that the appellant was still awaiting an appointment with a gastroenterologist and that she "likely" has celiac disease/gluten intolerance. At the hearing, the appellant stated that the ministry says that she cannot pinpoint celiac disease but when she stops eating gluten she feels much better and the symptoms stop and she is not on the toilet all the time. Also, when she does not eat gluten, her iron levels go up and she has more energy and is not tired all the time. Although the appellant points to a correlation between her symptoms and the consumption of gluten, her physician has referred her to a gastroenterologist to make a diagnosis and the appellant is still awaiting that appointment. The panel finds that the ministry reasonably determined that the medical condition causing the appellant's "severe GI symptoms" is still under investigation and that, at this point, the medical practitioner has not been able to provide a definitive diagnosis. 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 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 argued that the meaning of the physician's comment about the symptom of malnutrition ("decreased mg. on blood") is unclear. The ministry argued that it suggests that blood tests indicate that the level of magnesium has decreased, which can be caused by chronic diarrhea, but the ministry's decision must rely on evidence provided by health professionals and cannot be based on conjecture. The ministry argued that the physician indicated that the appellant has lost 7.7 kg. over a 6-month period but does not directly relate the appellant's weight loss to a severe medical condition. 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. In the MNS application, 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 malnutrition ("decreased mg. on blood") and significant weight loss ("70.7 kg. 2012-03-29 to 63 kg. 2012-09-26"). Although the medical practitioner provided notes as detail regarding the symptoms identified, the panel finds that the ministry reasonably determined that the comment regarding malnutrition is unclear. With respect to whether the appellant is being treated for a chronic, progressive deterioration of health, the medical practitioner indicated that the appellant has "...ongoing GI symptoms...has lost weight, will be referred to gastroenterologist," and the panel finds that the ministry reasonably determined that the medical practitioner has not directly related the appellant's weight loss to a chronic, progressive deterioration of health, as the cause is still under investigation. 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 reasonable.

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 argued that the medical practitioner did not specify the additional nutritional items required and the expected duration of need but wrote "...suspected celiac disease- ongoing evaluation." The ministry argued that the physician described the appellant's medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake as "suspected celiac disease." The ministry argued that the physician does not confirm that the appellant is displaying the symptoms of underweight status or muscle mass loss which would demonstrate that the appellant requires a caloric supplementation to a regular dietary intake. The ministry argued that the height and weight recorded on the application indicate a BMI of 27.3 which is above the normal range. The ministry argued that the physician recommended a gluten-free diet which is a specific dietary regime involving the replacement of foods and these items represent components of a regular dietary intake rather than a caloric supplementation to a regular dietary intake.

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 a symptom of a chronic, progressive deterioration of health. The appellant argued that she needs a supplement because of her condition which is clearly celiac disease. The appellant argued that when she stops eating gluten she feels much better and the symptoms stop and she is not on the toilet all the time. The appellant argued that she avoids eating gluten because of her health needs, not because of dietary needs. The appellant also argued that her request should not be denied because her doctor might not have written something a certain way.

Section 67(1.1) of the EAPWDR and Section 7 of Schedule C require that the medical practitioner confirm that for the purpose of alleviating a symptom referred to, the appellant requires the additional nutritional items that are part of a caloric supplementation to a regular dietary intake. When asked to specify the additional nutritional items required and the expected duration of need, the medical practitioner did not directly answer the question and wrote "suspected celiac disease- ongoing evaluation." At the hearing, the appellant stated that she cannot take Boost because of the milk protein. The panel finds that the ministry reasonably determined that the nutritional items required by the appellant have not been specified and confirmed by the medical practitioner, as required by the legislation. Further, when asked to describe how the nutritional items required will alleviate one or more of the symptoms described and provide caloric supplementation to the regular diet, the medical practitioner indicated "...can't eat any gluten- diarrhea, bloating, and pain." The medical practitioner indicated that changes are required to the appellant's diet, or the foods that she ingests, to remove foods which contain gluten, and that these changes will alleviate symptoms of diarrhea, bloating and pain. In the Request for Reconsideration, the medical practitioner wrote that Gluten-free products, eg. bread and pasta, are too expensive for the appellant to afford on a regular basis and this limits her diet. The wording of Section 67(1.1) together with Section 7 of Schedule C stipulates that the person must specifically require the nutritional items as part of a caloric supplementation to the person's regular dietary intake; in other words, the items are designed to be part of a supplement of calories beyond those foods being consumed in the regular diet. 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.

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 argued that the physician described how the requested nutritional items will prevent imminent danger to life by stating that they will "...prevent complications from celiac disease." The appellant's position is that the information from the medical practitioner confirms that failure to obtain additional nutritional items will result in imminent danger to the appellant's life.

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. The medical practitioner responded to the question how the nutritional items will prevent imminent danger to the appellant's life by stating they will "...prevent complications from celiac disease." The panel finds that the word "imminent" refers to an immediacy such that the danger to life is likely to happen soon and that there is neither a definitive diagnosis of celiac disease nor an indication of the likelihood of complications. The panel finds that the ministry reasonably concluded that the information from the medical practitioner has not confirmed that failure to obtain the [unspecified] additional nutritional items will result in imminent danger to the appellant's life, as is required by the legislation.

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a Monthly Nutritional Supplement for additional nutritional items because the requirements of Section 67(1.1) of the EAPWDR were not met, was reasonably supported by the evidence and the panel confirms the ministry's decision.