

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated March 12, 2013 which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and additional nutritional items. The ministry found 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:

- as a direct result of the chronic, progressive deterioration of health, the appellant displays two or more of the listed symptoms;
- the appellant requires vitamins and minerals to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life; and,
- the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life.

PART D – Relevant Legislation

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

PART E – Summary of Facts

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

- 1) Application for Monthly Nutritional Supplement (MNS) dated October 12, 2012 signed by the appellant's physician and stating in part that:
 - the appellant's severe medical conditions are severe gastric reflux;
 - 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 underweight status, significant weight loss, and significant muscle mass loss, with no other notes provided;
 - the appellant's height and weight are recorded;
 - in response to a request to specify the vitamin or mineral supplements required, the physician left this section of the application blank;
 - in response to a request to describe how the vitamin or mineral supplement will alleviate the specific symptoms identified, the physician wrote "...improved strength and energy;";
 - ~~-in response to a request to describe how the vitamin or mineral supplement will prevent imminent danger to the appellant's life, the physician wrote "...progressive muscle loss;";~~
 - in response to a request to specify the additional nutritional items required, the physician left this section of the application blank;
 - 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 left this section blank;
 - 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 "...improve strength and energy;";
 - in response to a request to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the physician indicated "...as above;";
- 2) Diet Supplement Request dated November 20, 2012 completed by the same physician who completed the MNS application which indicated a diagnosis of Irritable Bowel Syndrome (IBS), "very symptomatic;";
- 3) Letter dated February 25, 2013 from the physician 'To Whom It May Concern' stating in part:
 - in response to the question whether the symptoms identified of underweight status, significant weight loss and significant muscle mass loss are a direct result of the appellant's chronic progressive deterioration of health, the physician indicated "yes;";
 - in response to the question whether the appellant requires nutritional items in addition to her normal diet and will increased caloric intake over and above a normal dietary intake alleviate the symptoms identified, the physician indicated "...yes, very severe Irritable Bowel Syndrome- would benefit from increased caloric intake;";
 - in response to the question whether, as far as higher caloric intake is concerned, will it prevent imminent danger to life; in other words, is the appellant's health condition at a stage where caloric supplementation is required to relieve her symptoms, prevent further health deterioration or to reduce the rate of further deterioration, the physician wrote "yes;";
 - in response to the question whether vitamin and mineral supplements are required to alleviate the appellant's symptoms and, if so, how will they help, the physician indicated "...increase the nutritional value of her intake;";
 - in response to the question whether, as far as vitamin and mineral supplementation is concerned, will it prevent imminent danger to life; in other words, is the appellant's health condition at a stage where vitamin and mineral supplementation is required to relieve her symptoms, prevent further health deterioration or to reduce the rate of further deterioration, the physician wrote "yes, it will enhance her nutritional status;"; and,
- 4) Request for Reconsideration.

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

In her Notice of Appeal, the appellant expresses her disagreement with the ministry's reconsideration decision.

At the hearing, the appellant stated that the physician who completed the MNS application has been her family doctor for about 10 years. The appellant stated that she currently weighs 125 lbs. while her weight in 2011 was in a range from 135 to 140 lbs. She currently takes vitamins but it is not enough. The appellant clarified that she takes B-complex for stress and the aches in her bones, and green tea extract which is supposed to increase weight and help with energy. The appellant stated that she does not get enough calcium so she has pains in her bones, in her elbow and knee. She has two children and she has had a problem for some time and then her husband left and now she needs medications for her acid reflux and for depression. The appellant stated that even though she takes medications, she still gets acid in her throat when she eats something, and she cannot eat certain foods such as tomatoes or drink coffee. The appellant stated that she makes a meal for her children but she cannot eat it because she has a stomach ache and she usually eats only vegetables. For approximately one year she has had IBS that causes both constipation and diarrhea and also limits what she can eat. The appellant stated that when she can afford to buy a nutritional item like Boost, she will do so. Her doctor encourages to take Boost or Ensure. The appellant stated that sometimes she cannot afford to fill her prescriptions because they are not covered. The appellant stated that if she does not get her medication, "one day" she will have many problems.

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 October 15, 2012 the appellant submitted an application for the MNS, for vitamins and minerals as well as additional nutritional items.

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 vitamins and minerals and 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.

Two or more symptoms

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 medical practitioner checked 3 symptoms of underweight status, significant weight loss and significant muscle mass loss but there is no further description to explain how much weight loss or over what period of time the weight loss or muscle mass loss occurred. The ministry argued that the appellant's Body Mass Index (BMI) of 21.0 is within the normal range. The ministry argued that the physician reiterated these symptoms in the new information but does not provide any additional explanation. The appellant's position is that there is sufficient information from her physician, in the MNS application and the additional letter, 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. The advocate argued that while the BMI may be relevant to the symptom of the appellant's underweight status, it is not relevant for the symptoms of significant weight loss and significant muscle mass loss as these indicate a change over time with which the appellant's long-time doctor would be well aware.

Panel decision

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, the medical practitioner responded to the question whether, as a direct result of the chronic progressive deterioration in health, the appellant displays two or more symptoms, that the appellant displays underweight status, significant weight loss, and significant muscle mass loss, with no other notes provided. At the hearing, the appellant stated that the medical practitioner who completed the MNS application has been her family doctor for about 10 years. The appellant stated that she currently weighs 125 lbs. while her weight in 2011 was in a range from 135 to 140 lbs. In the letter dated February 25, 2013, the medical practitioner indicated that the symptoms identified are a direct result of the appellant's chronic progressive deterioration of health. While the symptom of underweight status is called into question give the appellant's BMI was in the normal range at the time of the MNS application, the panel finds that the medical practitioner who has treated the appellant as her family doctor for 10 years confirmed that the appellant also has symptoms of significant weight loss and significant muscle mass loss. 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.

Vitamins and Minerals

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 argued that in the MNS application the medical practitioner does not specify what vitamin or mineral supplement is required or the expected duration of need. The ministry also argued that the medical practitioner stated in the Application for MNS that these items would prevent imminent danger to the appellant's life as "...progressive muscle loss" and, in the additional information, that "...it will enhance her nutritional status" and this is not evidence of an imminent danger to life without the [unspecified] vitamin/mineral supplement. 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.

Panel decision

Section 67(1.1)(c) 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 in sub-section (b), the appellant requires the vitamins and minerals as "specified in the request." In the Application for MNS dated October 12, 2012, in response to a request to specify the vitamin or mineral supplements required, the medical practitioner left this section of the application blank yet indicated that these unspecified vitamin or mineral supplements will alleviate the specific

symptoms identified as they will provide "...improved strength and energy." In the February 25, 2013 letter, in response to the question whether vitamin and mineral supplements are required to alleviate the appellant's symptoms and, if so, how will they help, the medical practitioner indicated "...increase the nutritional value of her intake." The panel finds that the medical practitioner has not confirmed that the vitamins and minerals will address either of the symptoms identified, being significant weight loss or significant muscle mass loss. At the hearing, the appellant stated that she takes B-complex for stress and the aches in her bones, and green tea extract which is supposed to increase weight and help with energy, but this has not been confirmed by the medical practitioner. The panel finds that the medical practitioner has not specified the vitamins or minerals, as required by the legislation, in either the original application or in the February 25, 2013 letter. The panel finds that the ministry's conclusion that there is not sufficient information to establish that the appellant requires specified 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 MNS application, in response to a request to describe how the vitamin or mineral supplement will prevent imminent danger to the appellant's life, the medical practitioner wrote "...progressive muscle loss." In the February 25, 2013 letter, in response to the question whether, as far as vitamin and mineral supplementation is concerned, will it prevent imminent danger to life; in other words, is the appellant's health condition at a stage where vitamin and mineral supplementation is required to relieve her symptoms, prevent further health deterioration or to reduce the rate of further deterioration, the medical practitioner wrote "...yes, it will enhance her nutritional status." The panel finds that the rephrasing of the question is problematic in providing options of one "or" the other with slightly different meanings and it is not clear to which option the medical practitioner agreed. While the medical practitioner agreed that vitamins and minerals will enhance the appellant's nutritional status and may have agreed that they will "reduce the rate of further deterioration", there was no information provided to establish a rapid rate of deterioration of the appellant's health such that a failure to obtain the vitamins and minerals will result in an 'imminent' danger to the appellant's life. 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. Therefore, the panel finds that the ministry reasonably determined that there is not sufficient information currently available to establish that failure to obtain vitamins and minerals will result in imminent danger to the appellant's life, pursuant to Section 67(1.1)(d) of the EAPWDR.

Additional Nutritional Items

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 argued that the medical practitioner did not specify what additional nutritional items are required or the expected duration of need. The ministry argued that there is no information to answer the question whether the appellant has a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The ministry further argued that the medical practitioner answered the request to describe how the unspecified nutritional items will prevent imminent danger to life by writing "as above" and is likely referring to the previous answer "progressive muscle loss." The ministry argued that in the additional information, in terms of imminent danger to life, the medical practitioner answers "yes" with no further explanation. 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.

Panel decision

Section 67(1.1)(c) 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 specified in the request as part of a caloric supplementation to a regular dietary intake. In response to

a request to specify the additional nutritional items required, the medical practitioner left this section of the MNS application blank. At the hearing, the appellant stated that when she can afford to buy a nutritional item like Boost, she will do so and her doctor encourages her to take Boost or Ensure; however, this has not been confirmed by the medical practitioner. 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 medical practitioner again left this section blank. In the February 25, 2013 letter, in response to the questions whether the appellant requires nutritional items in addition to her normal diet and will increased caloric intake over and above a normal dietary intake alleviate the symptoms identified, the medical practitioner indicated "...yes, very severe Irritable Bowel Syndrome- would benefit from increased caloric intake." While the medical practitioner stated that the appellant would benefit from increased caloric intake, the panel finds that the medical practitioner does not make it clear that the nutritional items are required as part of a caloric supplementation, and he does not take the opportunity to specify the nutritional items required. The panel finds that the ministry reasonably concluded that there is not sufficient information from the medical practitioner to confirm that the appellant requires specified additional nutritional items 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 MNS application, the medical practitioner responded to the question how the nutritional items will prevent imminent danger to the appellant's life, by stating "as above," and while it may be likely that he was referring to a previous answer of "progressive muscle loss," as stated by the ministry, the panel finds that it is not clear to which previous comment the medical practitioner refers and the legislation requires a definitive confirmation by the medical practitioner.

In the supplemental letter, the medical practitioner responded to the question whether, as far as higher caloric intake is concerned, will it prevent imminent danger to life; in other words, is the appellant's health condition at a stage where caloric supplementation is required to relieve her symptoms, prevent further health deterioration or to reduce the rate of further deterioration, the medical practitioner wrote "yes." The panel finds that the rephrasing of the question is problematic in providing options of one "or" the other with slightly different meanings and it is not clear to which option the medical practitioner agreed. While the medical practitioner may have agreed that caloric supplementation will "reduce the rate of further deterioration" of her health, there was no information provided to establish a rapid rate of deterioration of the appellant's health such that a failure to obtain the additional nutritional items will result in an 'imminent' danger to the appellant's life. The panel finds that the 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 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.

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 and for vitamins and minerals because the requirements of Section 67(1.1) of the EAPWDR were not met, was reasonably supported by the evidence and the panel confirms the ministry's decision.