

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry")'s Reconsideration Decision dated April 3, 2013 which denied the appellant's request for a Monthly Nutritional Supplement of vitamins/minerals and additional nutritional items (MNS) as the appellant did not meet the requirements of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) section 67(1) and Schedule C, section 7.

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 required by EAPWDR section 67(1.1)(a). However, the Ministry was not satisfied that the information provided by the appellant's physician establishes that:

- the appellant displays two or more symptoms that are a direct result of a chronic, progressive deterioration of health as required by EAPWDR Section 67(1.1)(b);
- the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating one or more of the symptoms that are a direct result of a chronic, progressive deterioration of health as required by Section 67(1.1)(c) and Schedule C, section 7(a) of the EAPWDR;
- the appellant requires vitamins and minerals to alleviate the symptoms of a chronic, progressive deterioration of health as required by Section 67(1.1)(c) and Schedule C, section 7(c) of the EAPWDR; and
- failure to obtain the vitamins and minerals supplements or additional nutritional items would result in imminent danger to her life as required by Section 67(1.1)(d) of the EAPWDR.

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) section 67(1)  
*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) Schedule C section 7

**PART E – Summary of Facts**

At reconsideration, the documents that were before the ministry included the following:

- 1) Request for Reconsideration dated February 27, 2013 (RFR) in which the appellant states that she meets all the eligibility requirements for MNS. The RFR requests that the Ministry consider the appellant's MNS application of October 2012 (the "2012 MNS application") and the MNS application completed September 2011 (the "2011 MNS application") and that when both applications are considered together there is sufficient information to confirm her eligibility for MNS.
- 2) The 2012 MNS application completed by the appellant's physician indicating the appellant's diagnosis is brain injury (memory impairment) and depression (death of her two sons). The physician states that the appellant's brain injury is stable and that the appellant feels she would benefit from a vitamin and supplement regime to prevent further deterioration of her disease. The physician reports that as a direct result of the chronic, progressive deterioration of health the appellant displays the following symptoms: significant weight loss (needs supplement to maintain weight) and significant neurological degeneration (brain injury). The physician reports that the appellant wants to start ginko biloba, increased lecithin, primrose oil, cod liver oil and zinc which would hopefully help with her brain injury and prevent deterioration. The physician also notes that the appellant needs the caloric supplement Ensure to prevent brain deterioration and to prevent weight loss. Under additional comments, the physician states that the appellant feels that without these supplements, she will have a worsening of her brain injury and will start to lose weight. The appellant's height and weight are reported as 5' 8" and 136 pounds.
- 3) The 2011 MNS application signed by a different physician indicating the appellant's diagnosis is coma damage (brain damage in hospital) and depression (that started when her 2 sons died). The application says that the appellant was given wrong drugs that resulted in a coma for 4 days, after which she was sent to a care home for life, for total care from brain damage. The physician reports that as a direct result of the chronic, progressive deterioration of health the appellant displays the following symptoms: malnutrition (requires supplements after given wrongful drugs), underweight status (patient would start to lose weight); significant weight loss (needs supplement to maintain weight), significant neurological degeneration (coma in hospital when misdrugged), moderate to severe immune suppression (coma damage is severe and immune) and significant deterioration of a vital organ (brain damage from coma/suppression of 4 days, required care home for 4 years). The physician reports that the appellant has an ongoing need for vitamin and mineral supplements (ginko biloba, balance, lecithin, stress ease, multivitamin and mineral with b-vitamins, evening primrose oil, cod liver oil, memory solutions and zinc) to alleviate her progressive deterioration of health and to extend her life. The physician also reports that the appellant needs Harmonize Protein Powder and liquid flax oil as a caloric supplement as she cannot absorb enough calories without caloric supplementation in addition to a regular diet. Under additional comments, the physician states that the appellant would start losing weight and start to deteriorate. The appellant's height and weight are reported as 5' 8" and 136 pounds.
- 4) Letter from the ministry to the appellant dated January 29, 2013 advising the appellant that she did not meet the eligibility requirements for a monthly nutritional supplement.

- 5) MNS Decision Summary from Ministry of Social Development Health Assistance Branch dated January 24, 2013.
- 6) Handwritten letter from the appellant regarding vitamin and nutritional supplement for allergies and scabies mitets, undated but with a fax date of December 5, 2012 with information regarding products for scabies treatment.
- 7) Handwritten letter to the Ministry, undated but with a fax date of February 24, 2013 stating that she was sent to a care home for life, that she suffers from depression, is starving, that she does not get enough money to eat properly, and that she does not have a computer and cannot walk to get to a computer. The appellant also states that the Ministry is being cruel in denying her request for MNS (the "Letter").

In her Notice of Appeal dated April 23, 2013, the appellant states that the Ministry is wrong to deny her MNS request as she "...can't get my brain back without the Nutritional Supplement".

The appellant did not attend the hearing. Having confirmed that the appellant was notified of the hearing, the panel proceeded with the appeal in the absence of the appellant as per section 86(b) of the EAPWDR.

The Ministry relied on the Reconsideration Decision. The Ministry representative stated that the Ministry is only taking into account the 2012 MNS application and not the 2011 MNS application as the 2011 MNS application was completed by the appellant and not by her physician. The Ministry stated that the physician was contacted and he confirmed that the appellant completed the 2011 MNS application, that he just signed it, and that it was altered after he signed it. In response to a question, the Ministry representative was not able to advise what information had been altered on the 2011 MNS application, and did not have any of the Ministry's file notes to confirm details of the conversation with the appellant's physician regarding the 2011 MNS application. The Ministry representative also stated that the appellant does not display two or more of the prescribed symptoms listed in the EAPWDR section 67(1.1)(b), and that the information provided does not establish that the MNS will alleviate her symptoms as required by the EAPWDR section 67(1.1)(c). The Ministry found that there is no evidence that failure to obtain the requested items will result in imminent danger to the appellant's life as required by EAPWDR section 67(1.1)(d).

Based on the evidence, the panel's findings of facts are as follows:

- The appellant is a Person with Disabilities in receipt of disability assistance; and
- The appellant has been diagnosed with a brain injury and depression.

**PART F – Reasons for Panel Decision**

The issue to be decided is whether the Ministry's Reconsideration Decision denying the appellant's MNS application on the basis that she did not meet the requirements for the MNS as set out in Section 67(1.1)(b)(c) and (d) and Schedule C, Section 7 of the EAPWDR was reasonably supported by the evidence, or whether the Reconsideration Decision was a reasonable application of the legislation in the appellant's circumstances.

The relevant sections of the EAPWDR are as follows:

**Nutritional supplement**

67 (1) The minister may provide a nutritional supplement in accordance with section 7 [*monthly nutritional supplement*] of Schedule C to or for a person with disabilities in a family unit who receives disability assistance under

(a) section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A, or

(b) section 8 [*people receiving special care*] of Schedule A, if the special care facility is an alcohol or drug treatment center,

if the minister is satisfied that

(c) based on the information contained in the form required under subsection (1.1), the requirements set out in subsection (1.1) (a) to (d) are met in respect of the person with disabilities,

(d) the person is not receiving a supplement under section 2 (3) [*general health supplement*] of Schedule C,

(e) the person is not receiving a supplement under subsection (3) or section 66 [*diet supplements*],

(f) the person complies with any requirement of the minister under subsection (2), and

(g) the person's family unit does not have any resources available to pay the cost of or to obtain the items for which the supplement may be provided.

(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.

(B.C. Reg. 68/2010)

(2) In order to determine or confirm the need or continuing need of a person for whom a supplement is provided under subsection (1), the minister may at any time require that the person obtain an opinion from a medical practitioner or nurse practitioner other than the practitioner referred to in subsection (1) (c). (B.C. Reg. 68/2010)...

#### Schedule C - 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.C. Reg. 68/2010)
- (b) Repealed (B.C. Reg. 68/2010)
- (c) for vitamins and minerals, up to \$40 each month.  
(B.C. Reg. 68/2010)

#### Section 67 (1.1)(b) EAPWDR – Two or more symptoms as a direct result of a chronic, progressive, deterioration of health

The Ministry's position is that although the physician, on the 2012 MNS application reports that the appellant has two of the symptoms listed in Section 67(1.1)(b) of the EAPWDR, namely significant weight loss and significant neurological degeneration, there is no further information on how much weight was lost or over what period of time the weight was lost, that would allow the minister to determine the significance of the weight loss. The Ministry also states that the height and weight recorded indicate that the appellant has a Body Mass Index (BMI) of 20.7 which is in the mid-normal range and there is no evidence of malnutrition, underweight status or significant muscle mass loss. The Ministry's position is that as there is not sufficient detail to accept the symptom of significant weight loss and that the Ministry's position is that the appellant has not met the legislative criteria for two or more symptoms as set out in EAPWDR Section 67(1.1)(b).

The appellant's position, as set out in the RFR, is that she has two of the prescribed symptoms, namely significant weight loss and significant neurological degeneration arising from her medical conditions and that she meets the eligibility requirements for the MNS.

The panel finds that although the appellant's physician indicates on the 2012 MNS application that the appellant displays two or more of the following symptoms, namely significant weight loss and

significant neurological degeneration, the physician did not provide any information detailing how much weight the appellant lost or over what time period. Furthermore, the physician has not provided any information indicating that the appellant is malnourished, has underweight status or significant muscle mass loss. The only information provided by the physician indicates that the appellant needs the supplement to maintain weight. In addition, the panel notes that on the 2011 MNS application the appellant's height and weight are reported to be 5' 8" and 136 pounds. The panel also notes that on the 2012 MNS application dated approximately 13 months later, the appellant's weight is still reported to be 136 pounds, so it appears that the appellant's weight did not change during this time period.

Although the Ministry has not considered the 2011 MNS application as they state that the physician who signed it confirmed that he did not complete it and that it was altered after he signed it, the panel finds that there is no information as to how the 2011 MNS application was altered. In addition, the panel finds that although the appellant may have completed the 2011 MNS application, the physician signed it, thereby confirming his opinion and supporting the information contained on the 2011 MNS application. Therefore, the panel will consider the 2011 MNS application as part of the appellant's evidence.

On the 2011 MNS application, the physician reports that as a direct result of the chronic, progressive deterioration of health the appellant displays six of the listed symptoms, namely: malnutrition (requires supplements after given wrongful drugs), underweight status (patient would start to lose weight); significant weight loss (needs supplement to maintain weight), significant neurological degeneration (coma in hospital when misdrugged), moderate to severe immune suppression (coma damage is severe and immune suppression) and significant deterioration of a vital organ (brain damage from coma of 4 days, required care home for 4 years).

However, the panel finds that the information contained on the 2011 MNS application does not establish how much weight the appellant lost or over what period of time, and does not provide any further information to establish that the appellant is malnourished, underweight or has significant muscle mass loss. In addition, while the physician reports that the appellant was in a coma, suffered brain damage and has immune suppression, there are no further details indicating how the appellant's brain injury is degenerating or any information detailing her immune suppression. In addition, on the 2012 MNS application, the physician reports that the appellant's brain injury is stable.

The panel finds that even when considering both the 2011 MNS application and the 2012 MNS application, there is not sufficient information regarding the reason for the appellant's malnutrition, underweight status, significant weight loss, moderate to severe immune suppression or significant deterioration of a vital organ, to confirm that these symptoms are a direct result of a chronic, progressive deterioration of health on account of a severe medical condition. In this case the appellant has been diagnosed with brain injury and depression and it is not clear how the reported symptoms such as immune suppression, are related to these diagnoses. Accordingly, the panel finds that the Ministry's decision that the evidence does not establish that two or more of the legislative criterion required by Section 67(1.1)(b) were met was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances.

In addition, although the Letter states that the appellant is starving and does not get enough money to eat properly, the panel notes that the EAPWDR section 67(1.1) states that the information provided to the minister must be in the form specified by the minister and completed by a medical practitioner or

nurse practitioner. The panel notes that it is not sufficient for the appellant to state that she is starving without information from a medical practitioner confirming that she displays at least two of the listed criteria in section 67(1.1) of the EAPWDR.

#### Vitamin/Mineral Supplementation

The Ministry's position is that they are not satisfied that the appellant requires vitamin/mineral supplementation 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 notes that the physician reports that the appellant wants to start ginko biloba, lecithin, primrose oil, cod liver oil and zinc and that these would hopefully help with her brain injury and prevent any deterioration. However, the Ministry states that the information provided does not establish that the recommended vitamin supplements would alleviate the appellant's symptoms or that her life is in imminent danger without these supplements. In addition, the Ministry states that the medical practitioner has not reported that the vitamin supplements are medically essential to the appellant's health.

The appellant's position is that she requires vitamin/mineral supplementation to alleviate her symptoms and prevent an imminent danger to life.

Schedule 67(1.1)(c) of the EAPWDR requires that a request for a vitamin/mineral supplement be completed by a medical practitioner who must specify in the request that the person requires one or more of the items set out in Schedule C, Section 7. On the 2012 MNS application, the appellant's physician states that the appellant wants to start ginko biloba, lecithin, primrose oil, cod liver oil and zinc. The physician also reports that these items would hopefully help with her brain injury and prevent deterioration. On the 2011 MNS application, the physician reports that the appellant needs ginko biloba, lecithin, primrose oil, cod liver oil, zinc, balance, memory essentials, and memory solutions to alleviate progressive deterioration of health and to extend the appellant's life.

Although the physician states that the items will "*hopefully alleviate the identified symptoms*", section 67(1.1) of the EAPWDR makes it clear that there must be a direct link between the required vitamin/mineral supplement and the alleviation of symptoms of the appellant's chronic, progressive deterioration of health. As the evidence from the appellant's physician does not establish this link, the panel finds that the Ministry's decision that the legislated criteria were not met was reasonable.

Section 67(1.1)(d) of the EAPWDR requires that the medical practitioner confirm that failure to obtain the requested items will result in imminent danger to the person's life. The term "*imminent*" requires a degree of immediacy. On the 2012 MNS application, the physician reports that the items will prevent deterioration and on the 2011 MNS application, the physician reports that the requested items will prevent further deterioration and reduce the rate of deterioration. The panel finds that the information provided does not provide any information on the rate of deterioration or show that the appellant faces an imminent danger to health if the requested items are not provided. Furthermore, the physician's information does not establish how the requested items will prevent imminent danger to life.

Therefore, the panel finds that the Ministry's decision which denied the appellant's request for vitamin

or mineral supplementation as the criteria of Section 67(1.1)(c) and (d) were not met was reasonable and was a reasonable application of the legislation in the appellant's circumstances.

### Nutritional items

Section 67(1.1)(c) of the EAPWDR requires that a request for supplements must specify in the request that the person requires one or more of the items set out in Schedule C, section 7(a) namely additional nutritional items that are part of a caloric supplementation to a regular dietary intake. 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 Ministry's position is that although the appellant's physician, on the 2012 MNS application, states that the appellant requests Ensure for additional caloric supplementation, the expected duration of need is not described and there is no information to confirm 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 notes that in response to the request for a description as to how the nutritional items will alleviate one or more of the specified symptoms and provide caloric supplementation to the regular diet, the physician states that it will prevent brain deterioration/weight loss but there is no information to confirm that the Ensure will prevent imminent danger to life.

The appellant's position, as set out in the RFR and the Letter, is that due to her health conditions, she requires additional nutritional supplements to prevent weight loss and brain degeneration. She states that she is starving and cannot afford the nutritional supplements she needs on her monthly income.

Section 67(1.1) of the EAPWDR makes it clear that there must be a direct link between the requested nutritional items, namely caloric supplementation, and the alleviation of the symptoms of the appellant's chronic, progressive deterioration of health. However, the panel finds that the evidence provided by the medical practitioner does not identify the expected duration of the nutritional items needed, or establish the required link between the nutritional items required and the chronic, progressive deterioration of health.

On the 2011 MNS application, the appellant's physician reports that the appellant requires Harmonize Protein Powder and liquid flax oil as the appellant had taken Ensure previously but it had too much sugar. The physician reports that the appellant cannot absorb enough calories with caloric supplementation in addition to a regular diet, to prevent deterioration. However, the physician does not provide any further information to establish how the appellant's brain injury or depression would prevent her from being unable to absorb sufficient calories. On the 2012 MNS application, the appellant's physician reports that the appellant requires the caloric supplement Ensure, but did not provide any information to explain how the appellant's medical condition results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.

The panel notes that the information provided by the two different physicians completing the 2011 MNS application and 2012 MNS application is inconsistent in that the 2011 MNS application states



that Ensure has too much sugar and the appellant requires Harmonize Protein Powder and liquid flax oil, whereas on the 2012 MNS application, the physician reports that the appellant requires Ensure. The panel finds that the information provided by the physicians does not establish that the appellant requires nutritional items as caloric supplementation and that the information provided does not establish how the requested nutritional item will alleviate one or more symptoms and provide caloric supplementation to the appellant's regular diet. Accordingly, the panel finds that the Ministry's decision that the requirements of Section 67(1.1)(c) were not met was reasonable and was a reasonable application of the legislation in the appellant's circumstances.

In response to question 6 of the 2012 MNS application requesting a description of how the items will prevent imminent danger to the applicant's life, the appellant's physician has not included any information. Under additional comments, the physician reports that the appellant feels that without the caloric supplement she will have a worsening of her brain injury and will start to lose weight. On the 2011 MNS application, the physician states that the appellant's brain damage was permanent and it only started to reverse when supplements for the brain were given. Under additional comments, the physician reports that the appellant would start losing weight and start to deteriorate without proper supplementation.

The panel finds that the information provided by the physician on both the 2011 MNS application and the 2012 MNS application does not identify that the appellant faces an imminent danger to health if the requested items are not provided or show how the requested items will prevent imminent danger to life as required by Section 67(1.1)(d) of the EAPWDR.

The panel finds that the Ministry's decision that the physician's information did not establish that failure to obtain the requested nutritional items would result in imminent danger to the appellant's life was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances.

Based on the above, the panel finds that the Ministry's decision to deny the appellant's MNS request was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances. Therefore, the panel confirms the Ministry's decision.