

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("ministry"), reconsideration decision dated September 4, 2013 wherein the ministry determined that the appellant was not eligible for Monthly Nutritional Supplement of additional nutritional items. In particular, the ministry was not satisfied that the appellant requires a high protein diet as a part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of a chronic, progressive deterioration of health and to prevent imminent danger to the appellant's life as required under section 67 (1.1) of the Employment and Assistance Persons with Disability Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – section 67(1) and section 7 of Schedule C of the EAPWDR.

PART E – Summary of Facts

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

1. Appellant's application dated June 21, 2013 for Non-local Monthly Nutritional Supplement by a medical practitioner (the "Application"), which among other things states that: (a) the appellant has been diagnosed with "HCV" progressive liver disease; (b) As a result of the said medical condition, the appellant is being treated for a chronic, progressive deterioration of health; (c) as a direct result of the chronic, progressive deterioration of health of the appellant, he displays two or more symptoms that include (i) underweight status; (ii) significant muscle loss; and (iii) significant deterioration of a vital organ –liver; (d) the appellant requires an indefinite supply of certain specified types of vitamins to (i) alleviate appellant's symptoms and "reverse deficiencies"; and (ii) prevent life threatening bleeding infections; (e) the appellant requires nutritional items in the form of a high protein diet for an indefinite period of time to provide caloric supplementation to a regular dietary intake to alleviate the said symptoms and to prevent imminent danger to the appellant's life; and (f) the nutritional items will "reverse wasting" and "prevent life threatening infections". In "Additional Comments" section, the application states that the appellant has a "rapidly progressive liver disease with life long risk of a (potentially terminal disease) even if (the) treatment succeeds";
2. A Monthly Nutritional Supplemental Decision Summary dated July 31, 2013 (the "Summary"), which among other things states that: (a) the appellant is a recipient of disability assistance under EAPWDR; (b) the appellant is not receiving a supplement under EAPWDR; (c) the appellant has no resources to pay for any of the requested items; (d) the nutritional items requested are prescribed by a medical practitioner or a nurse practitioner; (e) a medical practitioner or a nurse practitioner has describe a severe medical condition; (e) the minister is satisfied that as a direct result of the severe medical condition, the appellant is being treated for chronic progressive deterioration of health; (f) the minister is satisfied that the appellant is displaying two or more symptoms as a direct result of a progressive, deterioration of health namely: (i) moderate to severe immune suppression (HCV) and (ii) significant deterioration of a vital organ (liver); (g) the minister is satisfied that: (i) for the purpose of alleviating the appellant's symptoms, the appellant requires vitamins and minerals and (ii) the appellant's physician has confirmed that failure to obtain the requested items will result in imminent danger to the appellant's life; (h) the minister is not satisfied that: (i) for the purpose of alleviating the appellant's symptoms, the appellant requires nutritional supplement requested by the appellant and (ii) the appellant's physician has not confirmed that failure to obtain the requested nutritional items will result in imminent danger to the appellant's life. The Summary further notes that the appellant's request is for high protein diet indefinitely suggesting a specific dietary complement rather than a need for more calories. The appellant is not malnourished, underweight, experiencing significant weight loss and/or absorption issues as a direct result of a chronic, progressive deterioration of health;
3. A letter dated August 1, 2013 from the appellant, which amongst other things states that: (a) the ministry has approved vitamins and minerals as monthly nutritional supplements for the appellant; and (b) the ministry has denied the appellant's request for nutritional items for the reasons described in the Summary;
4. A Request for Reconsideration from the appellant dated August 26, 2013, which among other

things states that: (a) there is a rapidly progressive liver disease with renal liver dysfunction (abnormal synthetic liver function) that has required urgent initiation of experimental antiviral therapy, which documents a severe major organ dysfunction; (b) the appellant has developed labile hypertension worsening his medical condition; (c) beyond these conditions the appellant has developed labile hypertension worsening his medical condition, which have led to poorer nutrition and muscle loss and progressive weakness not yet reflected BMI.

Subsequent to the Reconsideration, the appellant has submitted:

1. A Notice of Appeal dated September 9, 2013, which among other things states that: (a) the appellant's disease has gotten worse and despite the availability of food banks and other resources, the appellant cannot feed himself properly with the funds he gets; and (b) the appellant is drug-free and doing the best he can to improve and not get new diseases.
2. A letter dated September 18, 2013 from the appellant to the Tribunal, which among other things states that:
 - In 2012, the ministry had denied the appellant's request for a meal replacement product (Ensure), which had been recommended by a doctor for the appellant's health and longevity;
 - The appellant tends to lose weight rapidly, which he experiences as a sufferer of his specific medical condition. The appellant burns a considerable amount of calories just sitting in a chair trying to watch a television program. When the appellant has night "terrors" he could be 2kg lighter the next day. The appellant also suffers from a degenerating spine;
 - In the later part of 1997, the ministry became somewhat indifferent to the appellant and consequently the appellant had to seek psychiatric services for assistance.
 - The appellant suffers from PTSD as a direct result of repeated assaults upon him during his adolescence;
 - The appellant is receiving medical treatment for a disease that he has contracted through blood transfusions;
 - The appellant requests that the denial of service to him be immediately rescinded and that he be remunerated backdated to July 2013 and such assistance should continue for however long his doctor recommends; and
 - The appellant's claim is not about "body mass" but more about protein that he cannot find from community resources. He can be overweight and still be quite protein deficient.

The panel finds that some of the contents of the appellant's Notice of Appeal and the letter dated September 18, 2013 support the information and records that were before the minister at the time of

reconsideration. The ministry representative did not object to these being introduced as additional new evidence at the hearing. Therefore, the panel admitted the Notice of appeal and the letter dated September 18 as additional new evidence pursuant to the provisions of section 22 (4) (b) of the Employment Assistance Act.

At the hearing the appellant submitted that he is currently taking an oral treatment for a life-threatening disease and, a side effect of that treatment, he has become sensitive to light and cannot stand in the sunlight for more than a few minutes. He prepares a meal only once a week, which is largely composed of vegetables and a very small amount of protein (meat). The appellant's condition prevents him from standing in a line for 30 to 45 minutes to obtain additional food (which could contain additional protein) from community resources. As a part of this treatment, he receives free vitamins from his treatment center. He is, however, in need of protein to enable him to continue taking his medical treatment and the denial of nutritional items for him affects his ability to continue his treatment. In answers to questions from the ministry's representative, the appellant further stated that:

- He has not mentioned to the ministry the specific medical condition and treatment that makes him sensitive to light, although such treatment existed at the time of his application for a nutritional supplement. His regular diet has included large quantities of vegetables and only a small quantity of protein because of his financial constraints and his inability to stand in a line to obtain additional food from community resources;
- When the appellant is not able to eat, he gets hyper, panicky and cannot sleep. Muscles in his back are weak and he experiences back pain that makes him feel fatigued. His weight fluctuates between 140 lbs. and 165 lbs. based upon the type of activities and the weight loss could be 5 to 8 lbs. during the course of a day;
- He had applied for BC housing 17 years ago, but has not renewed his application recently to reduce his shelter cost. He has no friends or family to assist him and in his present medical condition, it takes him a long time to get things done;
- His existing chronic disease described in the Application converts his food in to protein whenever he does any exercise and he needs to replenish such loss of protein through additional nutritional supplement in the form of more protein;
- He is taking medication for several other medical conditions and he has not reported his fluctuating weight loss to the ministry; and
- The appellant recorded the information in Section 3 of the Reconsideration Request after obtaining it from the same medical practitioner who completed the medical information in his Application.

The ministry relied upon the contents of the reconsideration decision and argued that some of the information provided by the appellant at the hearing was not before the ministry at the time of reconsideration. Therefore, based on the information that was available, the ministry's decision is reasonable. The ministry representative, however, acknowledged that the new information provided by the appellant at the hearing, could result in a different result for the appellant provided it was verified by the appellant's medical practitioner. The ministry representative further argued that the appellant's need for additional protein, by way of a caloric supplementation, is not supported by evidence relating to his weight and BMI, which appears to be within the normal range.

Based on the foregoing, the panel makes the following findings of fact:

1. The appellant is eligible for monthly nutritional supplement as a Person with Disabilities designation and is in receipt of disability assistance;
2. The appellant's physician has confirmed that: (a) certain vitamins and minerals will alleviate the specific symptoms of the appellant and "*reverse deficiencies*"; and (b) that failure to obtain the vitamins and minerals would result in imminent danger to life; and
3. The minister has approved the relevant vitamins and minerals for the appellant indefinitely.

PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the ministry's reconsideration decision dated July 15, 2013 wherein the ministry determined that the appellant was not eligible for Monthly Nutritional Supplement of additional nutritional items. In particular, the ministry held that it was not satisfied that the appellant requires a high protein diet as a part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of a chronic, progressive deterioration of health and to prevent imminent danger to the appellant's life as required under section 67 (1.1) of the Employment and assistance Persons with Disability Regulation (EAPWDR).

The legislation applicable to this appeal is 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)

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)

The appellant's position is that he has been and continues to be mistreated by the ministry. He has several medical conditions, in addition to the chronic, progressive medical condition described in the Application, and treatment for one of the said ailments makes him sensitive to light, prevents him to stand in line to obtain food from community resources. His chronic medical condition results in loss of protein from his body whenever he exercises and he needs additional protein to maintain his balance and to continue his medical treatments. He requests such nutritional supplement at least until January 2013, by which one of his other medical conditions is expected to stabilize.

The ministry's position is that the purpose of the nutritional items is to provide *caloric supplementation*

to a regular dietary intake. The appellant's request is for a high protein diet indefinitely, which implies a specific dietary complement rather than a need for more calories. The appellant does not have a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The appellant has a BMI of 23, which is within the normal range, which does not identify a need for more calories. The ministry contends that there is no information of a sudden or significant weight loss or muscle mass loss related to the medical condition of the appellant notes that the appellant's physician states that the nutritional supplements would "*prevent life-threatening infections*", but does not indicate that danger to life is likely to happen soon.

The panel notes that section 67 (1.1) (c) of EAPWDR provides that in order to receive a nutritional supplement, the minister must receive a request in a specified form (the "Form") completed by a medical practitioner or a nurse practitioner, which confirms that for the purposes of alleviating the symptoms identified by the practitioner, a person requires nutritional items "*that are part of a caloric supplementation to a regular dietary intake*", as specified in section 7 (a) of Schedule C of EAPWDR or vitamins and minerals as specified in section 7 (b) of Schedule C of EAPWDR.

The panel also notes that section 67 (1.1) (d) of EAPWDR provides that the medical practitioner or a nurse practitioner must confirm in the Form that failure to obtain the items set out in section 7 (a) of Schedule C of EAPWDR "*will result in imminent danger to the person's life*".

Thus, the appellant must meet two criteria to obtain the nutritional items requested by him: (1) the nutritional items must be required as a part of a *caloric supplementation to a regular dietary intake*; and (2) failure to obtain the items would result in imminent danger to the appellant's life.

With regard to the first criteria, the panel notes that the medical practitioner's answers to question number 6 (paraphrased below) in the appellant's Application is as follows:

Question: If the two of symptoms identified in Q 3 i.e. "underweight status" and "significant muscle mass loss" (a) are a direct result of chronic, progressive deterioration of health and (b) the nutritional items are medically essential, the nutritional items provide caloric supplementation to a regular dietary intake to a regular dietary intake and are required to prevent imminent danger to the appellant's life?

Answer: High protein diet –indefinite. Nutritional items will reverse wasting and prevent life threatening infections.

In the context of this response, the panel takes note of the appellant's evidence at the hearing that he prepares a meal only once a week, which is largely composed of vegetables and a very small amount of protein (meat). The appellant's condition prevents him from standing in a line for 30 to 45 minutes to obtain additional nutritional food (which could contain additional protein) from community resources. The panel also notes that the medical practitioner also does not confirm that, as a result of his medical condition, the appellant has suffered a *sudden or significant* weight loss or muscle mass loss. On the other hand, as noted by the ministry, the appellant's BMI, as confirmed by the medical practitioner, is within the normal range. Relying upon the forgoing evidence in aggregate, the panel finds that the medical information before the ministry clearly implies and indicates that the appellant requires a regular dietary intake of high proteins to "*reverse wasting and prevent life threatening infections*".

The panel further finds that, although the medical practitioner has responded to the question that is framed in terms of "*caloric supplementation*", the ministry in exercising its role as a delegated decision-maker, properly considered and reasonably concluded that the said response, when taken together with other information provided by the medical practitioner, indicate the need for a specific diet of high protein as a "*regularly dietary intake*" rather than a "*caloric supplementation*" to a regular diet.

The medical practitioner's answers relating to imminent danger to the appellant's life notes that the nutritional items are required by the appellant to "*reverse wasting*" and prevent "*life threatening infections*". The panel finds that this response falls short of the standard for imminent danger to life in that it does not imply that the danger to the appellant's life is likely to happen soon. Therefore, the panel also finds that the ministry reasonably determined that failure to receive the nutritional supplement is not an imminent danger to the appellant's life.

In view of the forgoing findings, the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence or a reasonable application of the relevant enactment in the circumstances of the appellant and therefore confirms the decision.