

### PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated August 21, 2013 which denied the Appellant's request for a Monthly Nutritional Supplement ("MNS") for additional nutritional items on the basis that the Appellant had not met all of the criteria of section 67 of the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR").

Specifically, the Ministry determined that the Appellant did not require 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 an imminent danger to her life as required by section 67(1.1)(c) and (d) and Schedule C, section 7 of the *EAPWDR*.

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR") section 67(1), (1.1) and (2) and Schedule C, section 7

## PART E – Summary of Facts

The evidence before the Ministry at reconsideration included:

1. The Appellant's Request for Reconsideration dated August 9, 2013 which attached to it the following:
  - (a). One page of undated written submissions of the Appellant; and
  - (b). A letter addressed to "To Whom It May Concern," signed by the Appellant's physician and dated August 13, 2013 ("the Physician Letter") in which the physician provides an answer to one question relating to the Appellant's eligibility for Monthly Nutritional Supplements.
2. The Ministry Monthly Nutritional Supplement ("MNS") Decision Summary dated July 17, 2013; and
3. The Appellant's Application for Monthly Nutritional Supplement form ("MNS Application") dated May 29, 2013 and prepared by the Appellant's physician;

In her Request for Reconsideration, the Appellant argues that she meets the eligibility requirements for nutritional items as provided for in section 67 of the *EAPWDR*. The Appellant argued that in completing the MNS Application her physician wrote that she needed extra foods in the form of fresh produce, whole grains, fish and poultry in addition to a regular dietary intake. The Appellant further argued that her physician noted that her Irritable Bowel Syndrome ("IBS") causes malabsorption of some nutrients and that extra calories are needed to address malnutrition, muscle mass loss, eye damage and kidney damage. Lastly, the Appellant argues that her physician has stated on the MNS Application that her medical condition is at a stage where nutritional intervention is required to alleviate symptoms, to reduce the rate of further deterioration and subsequent health issues resulting from her medical conditions.

The MNS Application asks the Appellant's physician to list and describe the Appellant's severe medical conditions and the physician diagnoses the Appellant with Bilateral Carpal Tunnel Syndrome, Diabetes (with the added comment "needs strict dietary control"), Hypertension, Irritable Bowel Syndrome (with the added comment "chronic use of meds"), Glaucoma (with the added comment "uses drops – worsening vision") and Kidney Stones. In response to the question as to whether the Appellant is being treated for a chronic, progressive deterioration of health, the physician notes IBS for which the Appellant takes Dicetel and over the counter products, Kidney Stones which require surgical removal, Diabetes which requires a strict diet and Glaucoma requiring Xalatan. With respect to the question of whether the Appellant displays two or more of the listed symptoms as a direct result of the chronic, progressive deterioration of health, the physician notes under Malnutrition "medication for digestive issues cause some absorption problems", under "Significant Muscle Mass Loss" "generalized muscle weakness", under Significant Neurological Degeneration "bilat [sic] carpal tunnel – numbness of fingers" and under Significant Deterioration of a Vital Organ "eyes (glaucoma)". The physician indicates that the Appellant is 5'3" tall and weighs 200 lbs.

Under the section for Vitamin or Mineral Supplementation, the physician identifies the specific vitamin or mineral supplement required and the expected duration of need by noting "Long term use of multivitamins and minerals – iron, vitamin B complex, high potency vitamin C, omega 3, probiotics – all daily." The physician notes that the vitamins or mineral supplements will alleviate the Appellant's symptoms by commenting that they are "needed daily to prevent further deterioration of IBS." The physician comments further that the vitamins and mineral supplements will prevent imminent danger to the Appellant's life by commenting that "[the Appellant's] medical condition is at a stage where

nutritional intervention is required to avoid further exacerbation of health issues related.”

Under the section for Nutritional Items, the physician identifies the specific nutritional items required and the expected duration of need by noting “duration – long term” and “in addition to regular diet intake she requires daily intake of extra foods in the form of fresh produce, whole grains, fish and poultry.” The physician notes that the Appellant’s IBS causes malabsorption of some vitamins. The physician describes how the nutritional items required will alleviate one or more of the Appellant’s symptoms and provide caloric supplementation to her regular diet by noting “extra calories address malnutrition, muscle mass loss, eye damage and kidney damage” and he states that the nutritional items will prevent imminent danger to the Appellant’s life noting “her medical condition is at a stage where nutritional intervention is required to alleviate symptoms, to reduce rate of future deterioration and subsequent health issues.” Under the heading “Additional Comments”, the physician states that the Appellant needs the requested nutritional items and vitamin and mineral supplements “to prevent or alleviate further deterioration and subsequent health risks resulting from her medical conditions.”

In the Physician Letter, the Appellant’s physician answers “No” to the question of whether the Appellant’s current high protein diet allowance of \$40.00 and vitamin and mineral allowance of \$40.00 is sufficient to meet her need for nutritional supplementation.

With her Notice of Appeal, the Appellant provided 3 pages of written submissions. Subsequent to submitting her Notice of Appeal, the Appellant appears to have modified her written submissions by adding one additional page as well as providing three x-ray reports which were not before the Ministry at reconsideration. These reports are as follows:

1. An X-Ray report dated February 15, 2012 providing results of x-rays on the Appellant’s knees and hips;
2. An X-Ray report dated November 23, 2009 providing results of x-rays on the Appellant’s left knee; and
3. An X-Ray report dated May 7, 2007 providing results of x-rays on the Appellant’s thoracic spine.

The admissibility of the Appellant’s written submissions and the three x-ray reports requires consideration. Section 22(4) of the *Employment and Assistance Act* provides as follows:

- 22 (4)** In a hearing referred to in subsection (3), a panel may admit as evidence only
- (a) the information and records that were before the minister when the decision being appealed was made, and
  - (b) oral or written testimony in support of the information and records referred to in paragraph (a).

With respect to the Appellant’s 4-page written submissions, there is specific reference to the Appellant’s IBS, nutrient malabsorption, hypertension and kidney stones, all of which were considered in the MNS application. As such, the Panel admits the Appellant’s 4-page written submission as written testimony in support of the information and records that were before the minister when the decision being appealed was made under section 22(4)(b) of the *Employment and Assistance Act*.

With respect to the three x-ray reports, in her written submissions the Appellant states that “The

reason for showing you x-ray results if [sic] for you to see that fractures do not heal and bone does not build in places where it should (fractures, rod tract, L. hip where bone was removed for graft) while it deposits in places it should not like in kidneys and joints.”

The two most recent x-ray reports indicate findings of chondrocalcinosis and osteoarthritis in the Appellant's knees and hips. As the MNS application makes reference to the ongoing deterioration of the Appellant's health in general, the Panel finds that these two reports constitute written testimony in support of the information and records that were before the minister when the decision being appealed was made and they are therefore admissible pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

The May 7, 2007 x-ray report however simply refers to a compression fracture “of indeterminate age”. It does not reference a condition or finding that may have contributed to the fracture and as such the Panel finds that this x-ray report is not admissible under section 22(4)(b) of the *Employment and Assistance Act* as the findings therein are not in support of the information and records that were before the minister when the decision being appealed was made.

The Ministry relied on the Reconsideration Decision and has not introduced any additional evidence.

The Panel makes the following findings of fact which are not in issue:

1. The Appellant is a Person with Disabilities in receipt of disability assistance.
2. The Appellant is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition, specifically IBS, kidney stones, glaucoma, hypertension, diabetes and bilateral carpal tunnel syndrome.
3. As a direct result of the chronic, progressive deterioration of health, the Appellant displays symptoms of malnutrition, significant muscle mass loss, significant neurological degeneration and significant deterioration of a vital organ.
4. The Appellant receives a monthly vitamin/mineral supplement.

## PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry reasonably determined that the Appellant was ineligible for a Monthly Nutritional Supplement for additional nutritional items on the basis that the Appellant had not met all of the criteria of section 67 of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”).

Specifically, the Ministry determined that the Appellant did not require 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 an imminent danger to her life as required by section 67(1.1)(c) and (d) and Schedule C, section 7 of the EAPWDR.

The relevant legislation, section 67 and Schedule C, section 7 of the EAPWDR, provides as follows:

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)

### **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)

As set out above, section 67(1) and (1.1) of the *EAPWDR* set out the criteria that an applicant must satisfy to be eligible for a nutritional supplement. Each of the criteria is mandatory in nature and where an applicant does not satisfy each of them, the request for the nutritional supplement will be denied.

On review of the Reconsideration Decision, the Ministry determined that the Appellant has been designated as a Person with Disabilities who is in receipt of disability assistance and that her request for the MNS was, as required by section 67(1.1) of the *EAPWDR*, in the form specified by the minister, completed by a medical practitioner or nurse practitioner.

Similarly, the Ministry determined that the Appellant's physician confirmed that she is being treated for a chronic, progressive deterioration of health on account of a severe medical condition (IBS, kidney stones and diabetes and glaucoma) and that as a direct result, she displays two or more of the listed symptoms therefore satisfying the eligibility criteria as set out in section 67(1.1)(a) and (b) of the

*EAPWDR.*

Section 67(1.1)(c) of the *EAPWDR* provides that a medical practitioner or nurse practitioner must confirm that for the purpose of alleviating a symptom referred to in sub-paragraph (b), an applicant requires one or more of the items set out in s.7 of Schedule C and specified in the request.

In her written submissions, the Appellant states that she requires additional nutritional items because her IBS causes nutrient malabsorption and chronic constipation which also interferes with the absorption of nutrients. The Panel notes however that section 67(1.1)(c) of the *EAPWDR* requires that the confirmation of the requirement for the additional nutritional items for the purpose of alleviating a symptom in sub-paragraph (b) come from a medical or nurse practitioner rather than the Appellant herself.

In the Reconsideration Decision, the Ministry states that the Appellant's physician does not report that the Appellant has a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, that the physician recommends a healthy, nutritional diet as opposed to additional calories and that the Appellant's IBS only causes malabsorption of some vitamins which the Appellant has been approved for already.

Turning again to the MNS Application, when asked to specify the additional nutritional items required by the Appellant and the expected duration of need, the physician notes "in addition to regular diet intake [the Appellant] requires daily intake of extra foods in the form of fresh produce, whole grains, fish and poultry" and that the duration is "long term." The Appellant's physician comments further in the MNS Application that these nutritional items will alleviate one or more of the symptoms as provided for in section 67(1.1)(b) of the *EAPWDR* and provide caloric supplementation to the Appellant's regular diet by noting "Extra calories address malnutrition, muscle mass loss, eye damage and kidney damage." The Panel notes that the symptoms of malnutrition, muscle mass loss and eye damage are all referenced in the MNS Application.

The Panel notes further that the Appellant's physician confirms in the MNS Application in response to the question of whether she has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a dietary intake that the Appellant's IBS causes malabsorption of "some nutrients." While the Ministry states in the Reconsideration Decision that this reads "some vitamins", after careful consideration the Panel is of the view that the Ministry's reading of the physician's writing is incorrect and that this does in fact read "some nutrients."

The Panel finds that the Appellant's physician has confirmed that she requires additional nutritional items that are part of a caloric supplementation to her regular dietary intake for the purpose of alleviating malnutrition. The physician is clear in the MNS Application that the Appellant requires additional food and extra calories in addition to her regular dietary intake to alleviate her malnutrition and that her ability to absorb nutrients is compromised due to her IBS. As such the Panel finds that the Ministry's decision that the Appellant did not require 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 as set out in section 67(1.1)(c) of the *EAPWDR* was unreasonable.

Section 67(1.1)(d) of the *EAPWDR* provides that a medical practitioner or nurse practitioner must confirm that failure by an applicant to obtain the items referred to in paragraph (c) will result in

imminent danger to the person's life.

In the Reconsideration Decision, the Ministry takes the position that the Appellant's physician is of the view that her medical condition is merely at a stage where nutritional intervention is required to alleviate symptoms and to reduce the rate of future deterioration and health issues and that there is no imminent danger to the Appellant's life should the requested nutritional supplement not be provided.

In her written submissions, the Appellant argues that her consumption of wheat products and resulting high blood pressure which is caused by excessive water retention is a life threatening condition. She argues further that her use of large quantities of laxatives, necessary due to constipation caused by consumption of wheat products, can also become life threatening.

In the MNS application, the Appellant's physician responds to the question of how the nutritional items will prevent imminent danger to the applicant's life by stating "her medical condition is at a stage where nutritional intervention is required to alleviate symptoms, to reduce risk of future deterioration and subsequent health issues."

The Panel finds that section 67(1.1)(d) of the *EAPWDR* is clear that it must be the opinion of the medical practitioner or nurse practitioner that failure by an applicant to obtain additional nutritional items will result in **imminent** danger to the person's life. In the present case, the Panel finds that while the Appellant is of the view that her consumption of wheat is life threatening for a variety of reasons, it is the opinion of her physician that the nutritional items are necessary to address "future deterioration and subsequent health issues" as opposed to imminent danger to the Appellant's life. As such, the Panel finds that the Ministry's determination that there was insufficient evidence to confirm that failure by the Appellant to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life was reasonable.

Therefore, given the finding of the Panel that the Appellant has not satisfied each of the requirements of section 67(1.1) of the *EAPWDR*, the Panel finds that the Ministry's decision to deny the Appellant a monthly nutritional supplement in the form of additional nutritional items was a reasonable application of the applicable legislation in the circumstances of the Appellant and the Panel confirms the Ministry's decision.