

## PART C – Decision under Appeal

The decision under appeal is the October 17, 2013 reconsideration decision of the Ministry of Social Development and Social Innovation (the "ministry"), in which the ministry determined that the appellant was not eligible for a monthly nutritional supplement as provided in Section 67 of the Employment and Assistance for Persons with Disabilities Regulation (the "EAPWDR"). In particular, the ministry found that:

- There was insufficient information provided in the appellant's application and Request for Reconsideration (RFR) to establish that a medical practitioner had confirmed that the appellant required additional nutritional items as part of a caloric supplementation to a regular dietary intake for the purposes of alleviating a symptom, as required by Section 67 (1.1) (c); and
- There was insufficient information provided by the appellant's medical practitioner to confirm that failure to obtain a nutritional item as part of a caloric supplementation to a regular dietary intake will result in imminent danger to the appellant, as required by Section 67 (1.1) (d);

## PART D – Relevant Legislation

EAPWDR Section 67;  
EAPWDR Schedule C, Section 7

## PART E – Summary of Facts

The panel was advised that the appellant's advocate had contacted the Tribunal office the afternoon prior to the day of the hearing to request an adjournment because he would not be able to attend the hearing with the appellant. He was advised by the Tribunal chair that an adjournment would not be granted because Section 4.4 of the Tribunal's Practices and Procedures requires a party to file a completed Appeal Adjournment Request form more than one business day prior to the hearing and the request was received within the 24 hour time frame. He was advised by Tribunal staff that as per Section 4.4 (c) the appellant would have to make the request to the panel at the hearing; otherwise the hearing would proceed. The appellant did attend the hearing at the scheduled time and requested an adjournment, but added that he was prepared to proceed without his advocate. The ministry had no objections to the adjournment request and noted that there had already been one previous adjournment granted. The panel confirmed with the appellant that he had received the appeal record the week before and that he and his advocate were aware of the hearing date. He also stated that he was aware that his advocate would not be available on the date of the hearing shortly after receiving the appeal record package. He had thought that the advocate would contact the Tribunal office and request an adjournment earlier in the week, rather than the afternoon before the hearing was scheduled.

After confirming that the appellant and his advocate were properly notified, and taking into consideration that one previous adjournment had been granted in this matter the adjournment was denied and the hearing proceeded as scheduled. The panel also noted that while discussing the requested adjournment, the appellant expressed his willingness to proceed in his advocate's absence.

The appellant is designated as a person with disabilities, and is a recipient of disability assistance. The appellant applied for the monthly nutritional supplement for additional nutritional items on July 16, 2013. On July 17, 2013 the appellant was advised by the ministry that he was ineligible for the supplement, and he requested reconsideration of that decision.

The information before the ministry at the time of reconsideration included the following:

- An Application for Monthly Nutritional Supplement, dated July 16, 2013, completed by the appellant's physician. The physician states that the appellant is being treated for coronary artery disease, renal cancer resulting in the removal of one kidney, degenerative disc disease and borderline diabetes mellitus. The physician states that the appellant displays symptoms of significant weight loss and significant deterioration of a vital organ (heart and kidney). In the section of the form requesting the physician to specify the additional nutritional items required and duration of need, the physician wrote, "Need low calorie, high protein diet. Low salt diet. Need fresh fruit, vegetables, fish/chicken." He also wrote, "No" when asked if 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 physician stated that lowering cholesterol and salt in the appellant's diet would be beneficial to heart health, in relation to alleviating the symptoms noted above. Additionally, he stated that the nutritional items he indicated above would prevent imminent danger to the appellant's life by, "Preserving solitary kidney's function."
- A letter from the appellant's advocate, dated October 3, 2013, requesting an extension to complete the Request for Reconsideration (RFR).

- A letter from the appellant's advocate, undated, with a fax machine date marking of October 15, 2013, in which he states that the medical practitioner confirms that the nutritional items required will prevent imminent danger to the appellant's life when he wrote, "preserve solitary kidney's function," on the report of July 16, 2013. The advocate also states that the medical practitioner stated that there has been significant weight loss and significant deterioration of a vital organ, which satisfies the requirement for two or more of the symptoms listed in Section 67 (1.1)(b). The advocate adds that the ministry confirmed that they were satisfied that the appellant was displaying two or more of these symptoms as a direct result of a chronic, progressive, deterioration of health (significant muscle loss & significant deterioration of a vital organ) in a Monthly Nutritional Supplement Decision Summary report from January, 2012.
- The first page of the Monthly Nutritional Supplement Decision Summary from January 2012.

In his Notice of Appeal, dated October 29, 2013, the appellant states that he disagrees with the ministry's decision because the ministry has failed to consider all the information before them.

The appellant's oral evidence on appeal included the following information:

- The appellant states that he suffers from a severe deterioration of his health specifically in regards to his heart and kidneys, since 2008, reporting that he has had four heart attacks, seven angioplasties and five stents. He has also had one of his kidneys removed due to previous renal cancer and the remaining kidney is in functional decline due to the amount of medications he is currently required to take and the appellant reports that his kidney has holes in it and is losing protein. The appellant states that he has recently been diagnosed with sleep apnea, which has improved since he has started sleeping with a CPAP machine at night. He feels that his health problems are primarily due to his genetics because both of his parents suffered similar issues, but that he is doing his best to fight against these health challenges. The appellant states that he had continued to work up until 2010 when his health prevented him from working any longer, adding that this was when he turned to assistance and since then it has been a very difficult road.
- The appellant stated that he feels that the criteria in the legislation need to be changed because they are outdated. He adds that he knows that he is not the only person struggling with these issues of trying to meet the criteria and he believes that the local authority has been instructed by the ministry to limit the amount of services provided to people on assistance.
- The appellant disagrees with the ministry conclusion that his health does not place him in imminent danger, adding that the inability to purchase the healthy food he needs does put his health in danger, because controlling his diet is the only option he has left, as he has already undergone the maximum number of procedures for his heart disease. He also states that in the previous month, he stopped receiving the \$40 dietary supplement that he had been receiving for the past year and was unsure why it had been taken away from him. The appellant states that he cannot access resources in the community for food because they offer primarily canned or highly processed options which he cannot eat, due to the restrictions of his

diet.

- The appellant states that he does not feel that the medical practitioner who completed his application had considered all of his previous medical records. The appellant noted that he was aware that the physician had stated "No" in the section of the form which asks about the appellant's ability to absorb calories, adding that he could not afford the \$25 fee to request the physician complete another form and update the information. The appellant believes that his advocate may have contacted the physician, requesting additional information, but he was not sure.
- The appellant states that he has an upcoming appointment with a dietitian who will work with him on his diet and hopefully provide the documentation necessary to re-instate the \$40/month dietary supplement.

The ministry relied primarily on its reconsideration decision, however; the ministry did state that they now accept the medical practitioner's report that the appellant displays symptoms of significant weight loss and significant deterioration of a vital organ (heart and kidney), as indicated in the reconsideration decision, meeting the statutory criteria for EAPWDR Section 67 (1.1) (b). The ministry otherwise provided no new information.

At the appeal hearing the ministry did submit the second page of the Monthly Nutritional Supplement Decision Summary from January 2012 of which the first page was included by the appellant's advocate with his RFR.

The panel admitted the second page of the Monthly Nutritional Supplement Decision Summary from January 2012, as the panel determined that it provided the date and additional detail to accompany the first page that had been submitted with the RFR, and is in support of the information and records that were before the ministry at reconsideration, pursuant to section 22(4) of the Employment and Assistance Act. The appellant advised the panel that he had no objection to admission of the second page of the Monthly Nutritional Supplement Decision Summary from January 2012.

## PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's October 17, 2013 reconsideration decision in which the ministry determined that the appellant was not eligible for a monthly nutritional supplement as provided in Section 67 of the EAPWDR.

The relevant legislation is as follows:

### EAPWDR

#### 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
- (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)

### EAPWDR Schedule C Health Supplements

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)

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Whether the appellant is being treated for a chronic deterioration of health (Section 67 (1.1) (a))

The appellant's medical practitioner reported that the appellant is being treated for coronary artery disease, renal cancer resulting in the removal of one kidney, degenerative disc disease and borderline diabetes mellitus.

The ministry is satisfied that the information provided by the appellant's physician has established that he is being treated for a chronic deterioration of health and he has met the statutory criteria for EAPWDR (Section 67 (1.1) (a)).

Whether the appellant is displaying at least two of the symptoms set out in Section 67 (1.1) (b)

The appellant's medical practitioner reported that the appellant displays symptoms of significant weight loss and significant deterioration of a vital organ (heart and kidney).

The ministry is satisfied that the information provided by the appellant's physician has established that he is displaying at least two of the symptoms and he has met the statutory criteria for EAPWDR (Section 67 (1.1) (b)).

Whether the nutritional items are part of a caloric supplementation to a regular dietary intake to alleviate symptoms of his chronic progressive deterioration of health (Section 67 (1.1) (c))

The appellant or his advocate do not address whether the items are part of a caloric supplementation to a regular dietary intake.

The ministry determined that the information provided by the medical practitioner in the application demonstrated that the appellant requires healthier food choices, rather than a need for caloric supplementation and therefore he has not met the statutory criteria for EAPWDR (Section 67 (1.1) (c)).

The panel finds that the ministry reasonably determined that the information provided did not demonstrate that the nutritional items are required part of a caloric supplementation to a regular dietary intake to alleviate symptoms of his chronic progressive deterioration of health, namely

significant weight loss and significant deterioration of a vital organ,. Section 67(1.1), together with Section 7 of Schedule C, stipulates that additional nutritional items are designed to be part of a supplement of calories beyond those foods already being consumed in the regular diet. When asked in the MNS application whether the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy his daily requirements through a regular dietary intake, the medical practitioner wrote "No." The panel finds that the medical practitioner provided a definitive answer that the appellant is able to absorb sufficient calories to satisfy daily requirements through a regular dietary intake and, therefore, does not require supplementation, or extra, calories to a regular diet. Rather, the evidence of the medical practitioner in the MNS application is that the appellant requires a low calorie, high protein, low salt diet, provided through fresh fruit, vegetables, fish/chicken, and that lowering cholesterol and salt in his diet will be "beneficial to heart health." therefore; the panel finds that the ministry's decision, that the appellant's request for a nutritional supplement for additional nutritional items was not confirmed by a medical practitioner to be part of caloric supplementation to a regular dietary intake as required by EAPWDR section 67(1.1)(c), was reasonable.

*Whether the failure to obtain the nutritional items will result in imminent danger to the appellant's life (Section 67 (1.1) (d))*

The appellant and his advocate argue that the medical practitioner confirms that the nutritional items required will prevent imminent danger to the appellant's life when he wrote, "preserve solitary kidney's function," on the report of July 16, 2013. The appellant adds that due to the deterioration and number of previous surgical interventions, he is no longer eligible for further surgeries and diet and medication are his only remaining options to maintain his health. The appellant states he has had one of his kidneys removed due to previous renal cancer and the remaining kidney is in functional decline due to the amount of medications he is currently required to take and the appellant reports that his kidney has holes in it and is losing protein. The appellant adds that his health is so poor that he does not know what his status will be in two years or even tomorrow but it is in decline and he feels that demonstrates imminent danger.

The ministry determined that, in the opinion of the minister, the information provided by the medical practitioner in the application does not demonstrate that a failure to provide the items requested will result in imminent danger to his life and therefore, he has not met the statutory criteria for EAPWDR (Section 67 (1.1) (d)).

The panel finds that the ministry reasonably determined that the information provided by the medical practitioner did not demonstrate that a failure to provide the items requested will result in imminent danger to the appellant's life. When asked in the MNS application to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the medical practitioner wrote "Preserve solitary kidney's function." Although the appellant states that his remaining kidney is in functional decline, that it has holes in it and is losing protein, the medical practitioner did not confirm that there has been a deterioration of the appellant's solitary kidney to the point that if it gets worse his life will be in imminent danger, as required by the legislation. The panel finds that the ministry reasonably interpreted the use of the word "imminent" in the Section 67(1.1)(d) to refer to an immediacy such that the danger to life is likely to happen soon. Therefore; the panel finds that the

ministry's decision that the appellant's request for a nutritional supplement did not establish that a medical practitioner confirms that failure to obtain the nutritional items requested will result in imminent danger to his life as required by EAPWDR section 67(1.1)(d) was reasonable.

Conclusion

For the reasons detailed above, the panel finds that the ministry decision was a reasonable application of the legislation in the circumstances of the appellant. Accordingly, the ministry decision is confirmed.