

PART C – Decision under Appeal

The decision under appeal is the February 4, 2014 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”) and Schedule C, (7)(a). 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 specific 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’s life, 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 appellant is designated as a person with disabilities, and is a recipient of disability assistance. The appellant applied for the monthly nutritional supplement on October 4, 2013. On December 9, 2013 the appellant was advised by the ministry that she was ineligible for the supplement, and she requested reconsideration of that decision on January 21, 2014.

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

- An Application for Monthly Nutritional Supplement, dated October 2, 2013, completed by the appellant's physician. The physician states that the appellant is being treated for lupus, a thyroid disorder, and allergies and requires immune boosters and a high quality diet. He noted that she is 5'8" tall and weighs 240lbs. When asked how the nutritional items will alleviate one or more of the appellant's symptoms and provide supplementation to the regular diet, the physician wrote, "strengthen immune system, reduce inflammation". He also wrote, "Yes, see above," 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. Additionally, the physician wrote, "see above," when asked how the nutritional items he indicated would prevent imminent danger to the appellant's life.
- A laboratory report, dated December 30, 2011, showing the appellant's blood chemistry and hematology results. Results which were outside of normal range included: High Lipase, TSH, WBC, Eosinophils and Basophils; Low Creatinine, MCH and Ferritin (with a note indicating the value was considered "borderline iron deficiency").
- A laboratory report, dated July 12, 2013, showing the appellant's blood chemistry and hematology results. Results which were outside of normal range included: High Eosinophils and Low Ferritin (with a note indicating the value was considered "iron deficiency").
- Diagnostic imaging report, dated December 5, 2013, indicating the presence of thyroid nodules.
- A laboratory report, dated December 5, 2013, showing the appellant's blood chemistry and hematology results. Results which were outside of normal range included: High Prolactin TSH, AM Cortisol and Eosinophils; Low Ferritin (with a note indicating the value was considered "borderline iron deficiency").
- A laboratory report, dated December 17, 2013, showing the appellant's blood chemistry and hematology results. Results which were outside of normal range included: Low AM Cortisol.
- Twenty-eight receipts from the appellant's Naturopathic Doctor for the period of March 15, 2013 to January 8, 2014 for services, assessments and supplements provided by the office. During this period, payments for services, assessments and supplements totaled \$2689.59.
- A handwritten list of the sixteen supplements recommended to the appellant by her Naturopathic Doctor.
- Copies of pharmacy receipts from March 2013 to January 2014 for the appellant's

prescriptions and supplies totaling \$728.89.

- A copy of the appellant's Multi-Food Allergy Report, dated March 15, 2013.
- Handwritten documents titled "Supplement Plans" dated July 3, 2013, October 1, 2013 and November 15, 2013 and a document titled "Treatment Options" dated March 15, 2013.
- A letter from the appellant's Naturopathic Doctor, dated January 8, 2014 in which he outlines the appellant's treatment plan with nutritional, prescription and supplemental therapies and states that she has experienced significant improvement in her symptoms since he began seeing her in March 2013. He provides details of the appellant's medical conditions and the justification for each of the recommended therapies.
- The Monthly Nutritional Supplement Decision Summary from December 9, 2013 indicating that the appellant is already receiving the vitamin/mineral supplement. Further, it states that the appellant's physician has noted that she needs a "high quality diet" rather than nutritional items to provide additional calories above a normal diet, in order to alleviate symptoms of a chronic deterioration of health and prevent imminent danger to the appellant's life.
- A letter from the appellant, dated January 21, 2014 requesting an extension of time to submit information for the reconsideration, as she had not realized that the deadline to submit her package had been the week prior. Additionally, she states that her Naturopathic Doctor had written a letter on her behalf and she had only picked it up from his office the day before. She also states that she is having many health problems and that this extra supplement would be very helpful for her to pay her medical bills. She concludes that she has noticed "huge improvements" in her health since she began seeing her Naturopathic Doctor.

In her Notice of Appeal, dated February 12, 2014, the appellant states that she disagrees with the ministry's reconsideration decision because she has many health problems and cannot afford the cost of her nutritional supplements and special foods required because of her allergies and lupus. She adds that she sees a Naturopathic Doctor and it is expensive.

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

- The appellant has struggled with numerous health issues since she was an infant and most recently was diagnosed with lupus, extreme allergies and eczema. She states that her health issues have negatively impacted her day to day life, limiting her social activities and causing her to feel depressed and embarrassed by her appearance.
- The appellant stated that she severely reacts to many foods so is very careful about what she eats and is taking digestive enzymes to assist the breakdown of food. Also, her naturopathic doctor is currently working with her to treat imbalances of her cortisol and adrenal levels and for the past few months has been following a restrictive diet (500 calories per day) with B12 injections that she hopes will reset her pituitary and adrenal glands. She will return to see her naturopathic doctor in a few days to assess the results of this diet.

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- The appellant states that she is certified as a holistic practitioner in many therapeutic areas, but due to her appearance and inability to resolve her own health issues she is not practicing in the profession and currently works as a house cleaner to make some money to fund her treatments. She adds that the cost of treatments has forced her to move back in with her parents after more than 15 years of living independently and that her parents are not completely supportive.
  - The appellant is making every effort she can to become healthy. She has found that by working with her naturopathic doctor she has noticed tremendous improvements in her health, even though it is a slow process. Her naturopathic doctor has tried to work within her limited financial means by responding to her telephone calls, rather than requiring her to pay for frequent office visits, and providing her with detailed letters of support.
  - The appellant states that she is aware that her medical physician did not complete the Application for Monthly Nutritional Support as clearly and thoroughly as she would have liked and acknowledges that she should have gone back to him for a more complete report of her current nutritional needs. She hopes that by providing the information from her naturopathic doctor and receipts to illustrate the cost of her treatments and supplements, she could clearly illustrate her need for a monthly nutritional supplement. She added that she is disappointed that she is not receiving encouragement from her medical physician for pursuing treatment regimens prescribed by her naturopathic doctor.
  - The appellant states that due to her extreme food allergies and extensive cross-reactivity of foods, there are few foods that she is able to eat. She adds that even when she has had success with some foods, things change within her body and she develops new sensitivities and illness. She states that in order to purchase the specific foods she needs, organic and high quality, she has to be very careful where she gets them and cannot always shop at low price stores or get items on sale. She states that her extreme allergies and sensitivities often require her to take in excess of eight Benadryl per day to manage her reactive symptoms.
  - The appellant states that it is very expensive to maintain the regimens prescribed by her Naturopathic Doctor and that any amount of money she could receive as support would be very helpful to cover her ongoing medical bills.

The ministry relied primarily on its reconsideration decision and confirmed that the appellant is receiving the monthly supplement for vitamins and minerals.

## PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's February 4, 2014 reconsideration decision in which the ministry determined that the appellant was not eligible for a monthly nutritional supplement for additional nutritional items 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 confirmed that as a result of a chronic, progressive deterioration of health from lupus, the appellant is displaying symptoms of moderate to severe immune suppression as well as significant deterioration of a vital organ.

The ministry is satisfied that the information provided by the appellant's physician has established that she is being treated for a chronic deterioration of health and has met the eligibility 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 moderate to severe immune suppression as well as significant deterioration of a vital organ.

The ministry is satisfied that the information provided by the appellant's physician has established that she is displaying at least two of the symptoms and 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 her chronic progressive deterioration of health (Section 67 (1.1) (c))

The appellant argues that the dietary requirements needed for her to appropriately manage her ongoing health challenges and severe food allergies are unaffordable to her. She has to be very selective about which foods she chooses to purchase and from where they are purchased, so that she can confirm quality and content. She adds that her supplements and prescriptions recommended as part of her regimen from her naturopathic doctor are very expensive and if she is unable to maintain her current regimen, she will certainly experience serious symptoms and a severe decline in her health overall.

The ministry determined that the information provided by the medical practitioner does not establish in what way(s) the appellant's medical conditions result in an inability to absorb calories to satisfy her daily requirements through regular dietary intake, nor how the nutritional items requested will alleviate one or more of the symptoms identified or prevent imminent danger to her life. Additionally, the appellant's height, weight and BMI do not indicate the need for caloric supplementation, and her

medical practitioner does not indicate that the appellant is underweight, malnourished or had significant weight loss. The appellant, therefore, 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 a required part of a caloric supplementation to a regular dietary intake to alleviate symptoms of her chronic progressive deterioration of health. 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. Furthermore, as argued by the ministry, the appellant's height, weight and BMI do not indicate the need for caloric supplementation and the medical practitioner does not indicate that the appellant is underweight, malnourished or had significant weight loss. Therefore, the panel finds that the ministry's decision, that the appellant's request for a nutritional supplement 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 argued that without the nutritional supplement she will be unable to afford the types of foods, treatments and supplements needed to appropriately manage her ongoing health problems. The appellant added that she felt that her health was in imminent danger due to the degree of care required to manage her severe food allergies and that the consequences of ingesting the wrong foods could cause anaphylactic reaction.

The ministry determined that, in the opinion of the minister, the information provided by the medical practitioner in the application or by the Naturopathic Doctor in his letters, does not demonstrate that a failure to provide the items requested will result in imminent danger to the appellant's life and therefore, she 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 Monthly Nutritional Supplement application to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the medical practitioner wrote "See above," referring to, "strengthen immune system, reduce inflammation." Although the appellant describes poor outcomes associated with mismanagement of her current health problems, the medical practitioner did not confirm that the appellant's 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 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 her life as required by EAPWDR section 67(1.1)(d), was

reasonable.

Conclusion

The panel finds that the appellant is making significant efforts to better her health and accepts that her ongoing regimen with her naturopathic doctor, although somewhat successful, is very expensive for her to maintain. However, within the eligibility criteria, as outlined in the legislation and 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.