

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated January 28, 2014 which denied the appellant's request for a Monthly Nutritional Supplement (MNS) for additional nutritional items. The ministry held that the requirements of Section 67(1.1) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as there is not sufficient information to establish that:

-the appellant requires 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 imminent danger to life.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67(1.1) and Schedule C, Section 7

PART E – Summary of Facts

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

- 1) Application for MNS dated August 15, 2013 signed by the appellant's medical practitioner and stating in part that:
 - The appellant's severe medical conditions are diabetes, osteoarthritis and lupus;
 - In response to the question whether as a direct result of the chronic progressive deterioration in health, does the appellant display two or more symptoms, the medical practitioner indicated the symptoms of malnutrition (note: "imbalance of nutrients"), significant muscle mass loss (note: "lack of proper nutrition and exercise") and moderate to severe immune suppression (note: "muscle spasms, muscle weakness");
 - The appellant's height and weight are recorded;
 - In response to a request to specify the additional nutritional items required, the medical practitioner wrote: "folic acid, enriched breads, flours, cereals, grain products;"
 - In response to the question whether 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 medical practitioner noted: "Diabetes Type 2";
 - Asked to describe how the nutritional items required will alleviate one or more of the symptoms described and provide caloric supplementation to the regular diet, the medical practitioner wrote: "needed to regulate blood, build muscle, nerve cells, teeth and bones";
 - Asked to describe how the nutritional items will prevent imminent danger to the appellant's life, the medical practitioner wrote: "Omega 3 and Omega 6, iron Zinc, vitamins A,C,E,D, Boost;" and the medical practitioner note "page enclosed;" and,
- 2) Letter dated January 14, 2014 signed by the appellant's medical practitioner which states in part that:
 - The appellant suffers from Diabetes 2, osteoarthritis, lupus, Inflammatory Bowel Disease. With these illnesses comes chronic progressive deterioration of health, malnutrition, significant severe muscle mass loss, severe immune suppression, and significant neurological degeneration;
 - Osteoarthritis of the cervical spine or lumbar spine can irritate the spinal nerves, causing severe pain that can radiate from the spine as well as numbness and tingling of the affected parts of the body;
 - Lupus- extremely tired, severe joint pain, also affecting nervous system;
 - Inflammatory Bowel Disease- the loss of fluid and nutrients from diarrhea and chronic inflammation of the bowel causes fever, fatigue and malnutrition; and,
- 3) Request for Reconsideration dated January 14, 2014.

Prior to the hearing, the appellant provided the following additional document:

Undated letter signed by a physician and stating in part that:

- Lupus is described generally as an autoimmune disease where the body's immune system becomes hyperactive and attacks normal, healthy tissue. This results in symptoms such as inflammation, swelling, and damage to joints, skin, kidneys, blood, the heart and lungs (this can be life threatening).
- Lupus puts the appellant's kidneys, and heart at risk for problems and eating fresh fruits and 'veggies' would reduce further deterioration and imminent danger to life.
- "Eating fresh fruits and veggies along with healthy eating would alleviate symptoms of a

- chronic, progressive deterioration of health and to prevent imminent danger to life.”
- The appellant is fighting breast cancer and she is on treatment for the next 5 years.
 - Caloric supplementation will improve the quality of life in cancer patients; this will prevent imminent danger to life and prevent further deterioration of her pancreas, heart, kidney, eyes and nerves. Caloric supplementation should also include a balance essential amino acid supplement rich in protein and with adequate vitamin D.
 - Eat a wide variety of fresh, organic foods to give the appellant’s system the best chance to naturally produce estrogen. A high quality protein, fresh vegetables and fruit would help prevent further deterioration of health and prevent imminent danger to life.
 - Type 2 Diabetes if left untreated or improperly managed can result in a variety of complications including heart disease, kidney disease, eye disease and nerve damage. The appellant is having a hard time managing her diabetes.
 - Caloric supplementation will improve the quality of life, this will prevent imminent danger to heart, kidney and to life.
 - The appellant has had Irritable Bowel Syndrome (IBS) for many years. Taking a supplement of probiotics may also help treat IBS.
 - Osteoarthritis is described generally as degenerative arthritis which is a progressive disease that gradually becomes more severe with time. If left untreated, the compression on the nerves from the lumbar spinal stenosis can lead to increasing weakness and loss of function of the legs. It can also lead to loss of bowel and bladder control and the appellant is experiencing loss of bladder control. Calcium, magnesium, vitamin D and other nutrients are important for bone health, a balanced diet with plenty of dairy, fish, fiber fruits and vegetables.
 - Without the MNS, the appellant cannot afford the foods that would prevent imminent danger to her life. She wants a chance to improve her health, get stronger muscles and bone, get a better weight range and lower her risk of heart disease and help stop further deterioration to her bones and get her diabetes under control.
 - The physician added a handwritten note which reads: “Agree with patient’s summary of her nutritional requirements.”

At the hearing, the appellant submitted the following additional documents:

- 1) Page referred to by the medical practitioner with the notation “page enclosed” on the original application for MNS, which states in part that:
 - Osteoarthritis- aching pain, stiffness, difficulty moving the joints (knuckles, knees, hips, lower back). A combination supplement of glucosamine, shark cartilage and quercetin was found to be helpful as a treatment.
 - Lupus- achy and swollen joints especially in wrists, small joints of the hands, elbows, knees and ankles;
 - Anemia- the appellant has a CPAP machine;
 - Chronic Inflammatory Bowel Disease- irregular bowel habits, fatigue, cramping, sweats;
 - Fibromyalgia- stiffness and tenderness of muscles, tendons and joints, chronic pain and disability. Digestive disorders, balance problems, itchy/burning skin;
 - Diabetes 2- it is expensive to stick to a healthy diet when the food prices are so high and keep increasing when the cheques stay the same.
 - Handwritten note: “Omega 3 and Omega 6, Vitamins A, D, E, calcium, magnesium for bone, protein and iron; and,
- 2) Surgical Pathology Report dated August 9, 2013 which indicates diagnoses of an admixed

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ductal carcinoma in situ in the right breast.

In her Notice of Appeal, the appellant expressed her disagreement with the ministry's reconsideration decision. The appellant wrote that it is really hard putting everything on paper. She will be able to explain her condition at an oral hearing.

In her Request for Reconsideration, the appellant wrote that she suffers from malnutrition, severe muscle mass loss, severe immune suppression and neurological degeneration and she meets the requirements. The doctor has signed a note confirming her illness and progressive deterioration of health.

At the hearing, the appellant and her advocate stated that:

- The ministry accepted that she displays the symptom of malnutrition.
- With lupus, she is at risk of a number of different problems.
- She has breast cancer which is life-threatening and she will have to undergo 5 years of treatments. It is a hard battle and she needs fresh fruits and vegetables to keep healthy. She forgot to mention this diagnosis with the medical practitioner when he was completing the application for MNS.
- Her sister gave her a nutra-bullet to make smoothies to give her extra nutrients and energy, but she needs the fresh fruits and vegetables to use, which are expensive.
- She is on a diet for her diabetes.
- With her IBS, she needs to keep up her nutrition.
- Osteoarthritis is causing her bones to get weaker. She had osteopenia, then it developed into osteoporosis and now that she also has arthritis, so it is called osteoarthritis. Sometimes the pain in her back causes her to be bedridden. She takes medications for the pain.
- With her muscle loss, she is afraid she may break some bones because they are getting weaker. She needs to make her back stronger.
- Her BMI is 32.6 because she is not able to get a proper diet.
- The undated letter was signed by a physician on February 18, 2014.
- The page that was attached to the application for MNS was prepared by her and given to her doctor who had her write the vitamins needed on the bottom of the page.

The ministry did not object to the admissibility of the new documents. The panel reviewed the documents and admitted the undated letter signed by a physician and the page attached to the application as relating to the appellant's previously diagnosed medical conditions and her need for the MNS and being in support of information before the ministry on reconsideration, pursuant to Section 22(4) of the *Employment and Assistance Act*. The panel did not admit the Surgical Pathology Report or the information regarding breast cancer set out in the letter signed by a physician or in the appellant's testimony since this is a new diagnosis that is not in support of information or records before the ministry at reconsideration. For the same reasons, the panel also did not admit the references to Fibromyalgia and anemia.

The ministry relied on its reconsideration decision which included evidence that the appellant is a Person With Disabilities (PWD) in receipt of disability assistance and a dietary supplement for diabetes at the rate of \$35 per month as well as the vitamin and mineral supplement in the amount of \$40 per month.



At the hearing, the ministry highlighted the policy for MNS which states that a recipient of disability assistance must have a severe medical condition causing a chronic, progressive deterioration of health with symptoms of wasting. The supplement is intended to prevent imminent danger to the person's life by providing essential, specified items to supplement regular nutritional needs. The ministry provided a definition of "imminent" as 'likely to occur at any moment.' The ministry also stated that every word in the legislation is important and section 67 requires that the request must be in the specific form prescribed and the medical or nurse practitioner must confirm all the elements listed in the section as part of this request.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry decision, which denied the appellant's request for a Monthly Nutritional Supplement for additional nutritional items because the requirements of Section 67(1.1) of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) were not met, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 67(1.1) of the EAPWDR sets out the eligibility requirements which are at issue on this appeal for providing the additional nutritional supplement, as follows:

Nutritional supplement

- 67 (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.

Section 7 of Schedule C of the EAPWDR provides as follows:

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) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
 - (c) for vitamins and minerals, up to \$40 each month.

The ministry acknowledged that the medical practitioner confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically diabetes, osteoarthritis, lupus, and Inflammatory bowel disease, pursuant to Section 67(1.1)(a) of the EAPWDR. Section 67(1.1)(b) of the EAPWDR requires that a medical practitioner

confirm that as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the symptoms listed. The ministry acknowledged that there is sufficient information from the medical practitioner to establish that the appellant displays two or more of the symptoms, namely malnutrition and significant neurological degeneration. The ministry found that the symptoms of significant muscle mass loss and moderate to severe immune suppression were not established.

Section 67(1.1)(c) and Section 7 of Schedule C of the EAPWDR-Caloric Supplementation

The ministry's position is that it is not satisfied that the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of a chronic, progressive deterioration of health. The ministry argued that the medical practitioner reported that the appellant requires folic acid, enriched breads, flours, cereals and grain products and these items represent components of a regular dietary intake and not items needed for caloric supplementation in addition to a regular dietary intake. The ministry argued that the medical practitioner did not confirm that the appellant is displaying underweight status or significant weight loss, which would demonstrate that she requires caloric supplementation to a regular dietary intake. The ministry argued that the symptom of significant muscle mass loss is attributed to lack of proper nutrition and exercise. The ministry argued that the appellant's height and weight recorded in the application indicate that her BMI [body mass index] is 32.6, which is in the obese range.

The appellant's position is that sufficient information has been provided by the medical practitioner, in both the original application and the additional letters and page, to establish that she requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of a chronic, progressive deterioration of health. The appellant argued that her doctor confirmed in the application that she needs "folic acid, enriched breads, flours, cereals, grain products" and also confirmed in the letter signed February 18, 2014 that she needs calcium, magnesium, vitamin D and other nutrients that are important for bone health, a balanced diet with plenty of dairy, fish, fiber fruits and vegetables. The appellant argued that the ministry accepted that she displays the symptom of malnutrition. The appellant argued that her doctor confirmed that the nutritional items required will alleviate one or more of the symptoms described and provide caloric supplementation to the regular diet by regulating her blood, building muscle, nerve cells, teeth and bone.

Panel decision

Section 7 of Schedule C and Section 67(1.1)(c) of the EAPWDR stipulate that the medical practitioner must confirm that, for the purpose of alleviating a symptom referred to in sub-section (b), the appellant requires the additional nutritional items that are part of a caloric supplementation to a regular dietary intake as specified in the request. In the original application, in response to a request to specify the additional nutritional items required, the medical practitioner wrote that the appellant needs "folic acid, enriched breads, flours, cereals, grain products" and the panel finds that the ministry reasonably determined that these items are components of a regular dietary intake and not a supplement of calories in addition to a regular dietary intake. However, at the end of the application form, in the section relating to an imminent danger to life, the medical practitioner listed various vitamins and also included "Boost," which is a nutritional drink which can in some forms provide a caloric supplementation to a regular dietary intake. In response to the question whether 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 medical practitioner referred to Diabetes Type 2, and this response was not disputed by the ministry.

The ministry also accepted that the medical practitioner had provided sufficient information to establish that the appellant is displaying the symptom of malnutrition. However, the ministry pointed out that the appellant's BMI is in the obese range and the medical practitioner described the symptom of malnutrition in the application as an "imbalance of nutrients" rather than a deficiency in calorie absorption or intake. When asked to describe how the nutritional items will alleviate one or more of the symptoms and provide caloric supplementation to the regular diet, the medical practitioner wrote: "needed to regulate blood, build muscle, nerve cells, teeth and bones," with no reference to supplementing calories. The panel finds that the ministry's conclusion that there is not sufficient information from the medical practitioner to confirm that specified additional nutritional items are required by the appellant as part of a caloric supplementation to a regular dietary intake to alleviate a related symptom, as set out in Section 67(1.1)(c) of the EAPWDR, was reasonable.

Section 67(1.1)(d) of the EAPWDR- Imminent Danger to Life

The ministry's position is that it is not satisfied that the appellant requires additional nutritional items to prevent an imminent danger to the appellant's life. The ministry argued that in describing how the nutritional items required will prevent imminent danger to life the medical practitioner listed a number of vitamins and minerals for which the ministry is already providing a supplement. At the hearing the ministry argued that the additional information lists a number of medical conditions with general information about symptoms and risks that are not specific to the appellant's circumstances. At the hearing, the ministry argued that the word "imminent" is defined as 'likely to occur at any moment' and that, even considering the additional letters and page, there is not sufficient information to establish that the medical practitioner has confirmed that failure to obtain the nutritional items will result in imminent danger to the appellant's life.

The appellant's position is that the information from the medical practitioner confirmed that failure to obtain the additional nutritional items will result in imminent danger to her life. The appellant argued that she has a number of serious health conditions and her doctor signed the letter stating Type 2 Diabetes which, if left untreated or improperly managed, can result in a variety of complications including heart disease, kidney disease, eye disease and nerve damage. The appellant argued that she is having a hard time managing her diabetes. The appellant argued that she also been diagnosed with osteoarthritis, lupus, and IBS and she is afraid she may break some bones because they are getting weaker due to her osteoarthritis, and she needs proper nutrition to alleviate the symptoms of lupus and IBS.

Panel decision

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. In the original application, the medical practitioner responded to the question how the nutritional items will prevent imminent danger to the appellant's life, by writing "'Omega 3 and Omega 6, iron Zinc, vitamins A,C,E,D, Boost,'" and noting in the additional comments "page enclosed." The additional page which the appellant submitted at the hearing included a list of her health conditions and related symptoms but no information supporting the finding of a current danger to the appellant's life in particular.

The panel finds that the medical practitioner specified Diabetes Type 2 as the medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements and the appellant argued that she is having a hard time managing her diabetes and her doctor confirmed that complications can include heart, kidney and eye disease as well as nerve damage. The panel finds

that although untreated or uncontrolled diabetes could potentially pose a serious danger to the appellant's life, there is insufficient information provided by the medical practitioner to confirm that the risk of complications from diabetes is currently high for the appellant or that there is a rapid rate of deterioration in the appellant's health that would indicate that the danger to the appellant's life without the unspecified nutritional items is "imminent," or likely to happen soon. The appellant acknowledged that she is currently in receipt of a dietary supplement from the ministry for diabetes, at the rate of \$35 per month, and this is designed to help her manage her diabetes. The panel finds that the ministry reasonably concluded that the medical practitioner has not confirmed that failure to obtain the requested additional nutritional items will result in imminent danger to the appellant's life, as required by Section 67(1.1)(d) of the EAPWDR.

Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a Monthly Nutritional Supplement for additional nutritional items because all of the requirements of Section 67(1.1) of the EAPWDR were not met, was reasonably supported by the evidence and the panel confirms the ministry's decision.