

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 his 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 fibromyalgia (FM) and diabetes;
 - 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, significant weight loss and significant muscle mass loss;
 - The appellant's height and weight are recorded;
 - In response to a request to specify the additional nutritional items required, the medical practitioner wrote: "patient needs extra protein;"
 - 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 left this section blank;
 - 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 also left this section of the application blank;
 - Asked to describe how the nutritional items will prevent imminent danger to the appellant's life, the medical practitioner wrote: "help prevent infections;" and,
- 2) Letter signed by the appellant's medical practitioner on January 14, 2014, which states in part that:
 - The appellant's FM has caused continual deterioration and the last 6 years have been worse.
 - Some of the medication the appellant takes is to calm his nervous system and, without the medication, he is unable to sleep properly and he would have uncontrollable shaking. He uses a CPAP machine.
 - With Type 2 Diabetes, the appellant has not been able to control it with proper diet and exercise. Because of the price of fresh fruit, vegetables, meats, fish, etc. for a proper diabetic diet, it is unaffordable. They go to the food bank one day every second week to help meet their nutritional needs but only a small portion of what they receive the appellant can eat and the rest has too much sugar.
 - The appellant had a heart attack on March 19, 2012.
 - The appellant tore or pulled every tendon in his left shoulder 2 years ago. He has lost about 20 lbs. over a period of 7 years.
 - The appellant has sores from psoriasis all over his body because his body cannot repair itself as fast as it should.
 - FM breaks down the muscles and organs and turns them into soft tissue. His immune system is deeply compromised, which explains why he catches every cough and cold going. It is not unusual for him to have a cold that lasts 1 ½ years.
 - A doctor could look at him and at his stomach and confirm 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:

- The appellant suffers from FM, Diabetes 2, malnutrition and heart disease.
- FM has caused widespread severe and disabling musculoskeletal pain accompanied by

fatigue, sleep, memory and mood issues. Severe muscle spasms, muscle weakness, muscle loss due to imbalance of nutrients, vitamins and protein. The appellant gets many severe infections which include colds that last for over a year.

- Diabetes, if left untreated or improperly managed, can result in a variety of complications including heart disease, kidney disease, eye disease and nerve damage. Caloric supplementation will improve the quality of life and this will prevent imminent danger to heart, kidney and to life. The appellant suffered a heart attack 2 years ago and "has not been able to bounce back."
- Heart disease- eat more fruits, vegetables, whole grains, and other high-fiber foods. Eat more foods high in omega-3 fatty acids, such as fish. Focus on foods that are high in calcium, potassium and magnesium. These nutrients can lower blood pressure. Folic acid, a B-complex vitamin, is an important nutrient and may also play a role in keeping the heart healthy and preventing cancer-causing changes in the cells.
- The physician added a handwritten note: "agree with patient summary of the nutritional requirements."

In the Notice of Appeal, the appellant expressed his disagreement with the ministry's reconsideration decision. The appellant wrote that the foods he is eating are not the foods a diabetic should be eating. He does not have a choice because of the price of fresh fruit, veggies, vitamins, and other foods are too high. The rashes and sores on the body will clearly show this. If he only ate what he should eat, he would easily drop 20 to 30 lbs. which would lead to more complications and possibly another heart attack. The appellant requests that a doctor be present at the hearing to verify that his health is fading.

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

- When his doctor completed the application for the MNS, he was brief and not that helpful. The appellant asked that a doctor be present at the hearing so that he could satisfy the criteria in the legislation. The doctor would see the sores all over his body which do not heal.
- His symptoms are getting worse.
- He experiences hair loss and open wounds. He has to use a CPAP machine when he's sleeping since he stops breathing 25 times per night and he gets abrasions from the machine.
- He is taking 3 different medications for his nervous system. He experiences electric "tickles", like an electric shock, that goes through his body. He spent 3 months in hospital and the cause of the shocks could not be determined. He takes one medication that is for epilepsy but he does not have epilepsy. He takes another medication for anxiety disorders but he does not like to think he has anxiety. He takes the medications because they stop the shocks.
- The appellant weighs 150 lbs. and if he ate the diet recommended for diabetes he would quickly drop to 130 lbs.
- All the doctor wrote in the application was that he needed extra protein but he needs a healthy diet with proper nutrients so that he can lose the 'bad' weight. He has the wrong type of "weight" because he has high levels of the bad cholesterol. He should not be overweight and he needs to lose about 20 lbs. and be "fitter."
- As far as he knows, his body processes the foods that he eats. Without nutrients, his diabetes is causing protein to leak into his kidneys and he will deteriorate faster. He needs to bring up his immune system.
- He had a heart attack 2 years ago and he did not bounce back according to the stress test.
- It is difficult to get the nutrients he needs. He is on 3 medications for his heart and there are

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certain foods he cannot eat, such as grapefruit.

- Food prices are going up and fresh fruits and vegetables would help his health. His doctor wants him to eat a healthy diet and it would help his situation.
- With Diabetes Type 2, he needs to keep his blood [sugar] levels low otherwise he will be subject to different risks such as loss of a limb, or his heart or liver could go into failure. The items recommended for a diabetic diet are too expensive to purchase and the monthly supplement would help. The diet for diabetes is mostly protein, including beef and fruits and vegetables.
- The additional letter was not signed by his regular doctor because he was away at the time. He has seen the doctor who signed the letter before. The doctor reviewed his chart, reviewed the letter and signed the letter on February 18, 2014.
- The ministry supplied him with Boost for a period of 2 years and then said he was no longer eligible.

The ministry did not object to the admissibility of the letter. The panel reviewed the letter and admitted it as relating to the appellant's previously diagnosed medical conditions and his 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 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. The appellant was approved for 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 by the ministry 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 FM and diabetes as well as an unspecified neurological disorder, a heart condition, and inflammation of the right shoulder, 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 significant muscle mass loss, moderate to severe immune suppression and significant deterioration of a vital organ.

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 specified that the additional nutritional item required is extra protein but did not describe how the nutritional item will alleviate one or more of the symptoms and provide caloric supplementation to the regular diet. The ministry argued that the medical practitioner did not confirm that 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 ministry argued that the medical practitioner did not provide a reason for the symptom of malnutrition to relate it to one of the appellant's medical conditions and, therefore, this symptom was not established. The ministry also argued that the medical practitioner did not provide detail to confirm that the appellant is displaying underweight status or significant weight loss, which would demonstrate that he requires caloric supplementation to a regular dietary intake. The ministry argued that the appellant does not display the symptom of significant weight loss as a loss of 20 lbs. over a period of 7 years does not represent a 'significant' weight loss, especially since the appellant is at a normal weight and his current BMI is in the normal 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, to establish that he 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 his FM has caused continual deterioration and the last 6 years have been worse, that he had a heart attack 2 years ago, he spent 3 months in the hospital for an undiagnosed neurological disorder, he has diabetes and inflammation of the right shoulder. The appellant argued that he has lost about 20 lbs. over a period of 7 years and if a doctor had attended the hearing, as he requested in his Notice of Appeal, one look at him and his stomach would allow the doctor to confirm malnutrition and that his health is fading. The appellant argued that the medical practitioner specified extra protein and there are other nutritional items that the appellant could use such as fresh fruits and vegetables to allow him to lose the "bad weight" and become fitter but these foods are not affordable. The appellant argued that in the additional letter it is confirmed by a physician that diabetes, if left untreated or improperly managed, can result in a variety of complications including heart disease, kidney disease, eye disease and nerve damage and that caloric supplementation will improve the quality of life.

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 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 left this section of the application blank. Although the appellant argued that he has a number of significant

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health issues and a doctor could confirm malnutrition by looking at his stomach, the panel finds that the ministry reasonably determined that this symptom has not been confirmed by a medical practitioner since it was not sufficiently described and related to one of the appellant's medical conditions in the original application.

In response to a request to specify the additional nutritional items required, the medical practitioner wrote that the appellant "needs extra protein." In the letter signed February 18, 2014, another medical practitioner indicated agreement with the nutritional requirements set out, in particular that the appellant needs to eat more fruits, vegetables, whole grains, other high-fiber foods, and more foods high in omega-3 fatty acids, such as fish. As well, the appellant needs to focus on foods that are high in calcium, potassium and magnesium as these nutrients can lower blood pressure and folic acid, a B-complex vitamin, is an important nutrient and may play a role in keeping the heart healthy. The panel finds that the medical practitioners do not characterize any of the nutritional items listed as providing caloric supplementation to the regular diet, but rather as healthy food choices within a regular diet. In the original application, 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 also left this section of the application blank.

The panel finds that the ministry reasonably determined that there is insufficient evidence currently available from a medical practitioner to confirm that the appellant requires caloric supplementation due to symptoms of wasting, despite the opportunity for these details to be added by the medical practitioners in the additional letters of January 14, 2014 and February 18, 2014. While the evidence shows that the items described as additional nutritional items would be beneficial to the appellant's health, the appellant does not dispute that the extra protein and fruits and vegetables, etc. are not part of a caloric supplementation to a regular diet, but rather part of a regular diet that is geared to his particular health concerns. The appellant stated at the hearing that he needs to maintain a healthy diet so that he can lose the "bad weight" and become more fit. The panel finds that the ministry reasonably concluded 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.

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 indicated that they will "...help prevent infections." 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, there is not sufficient information to establish that the medical practitioner has confirmed that failure to obtain the additional nutritional items will result in imminent danger to the appellant's life. The ministry argued that the additional letters address the potential risks to health conditions in a general way without specifying the immediate risks in the appellant's circumstances.

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 his life. The appellant argued that his immune system is deeply compromised, that he gets many severe infections which include colds that last for over a year, that he suffered a heart attack 2 years ago and "has not been able to

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bounce back” and, with Diabetes Type 2, he needs to keep his blood sugar levels low otherwise he will be subject to different risks such as loss of a limb, or his heart or liver could go into failure.

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 stating they will "...help prevent infections." The panel finds that the use of the words in the subsection "*will result in imminent danger*" indicates a requirement for more than a risk or possibility; imminent danger to life is, rather, a guaranteed occurrence without the nutritional items. The panel finds that there is insufficient information provided by the medical practitioner to confirm that the risk of life-threatening infections is currently high, since the evidence relates to the risk of catching, and the appellant's difficulty overcoming, a common cold. As pointed out by the ministry, the additional letters address the potential risk to diabetes if left untreated or improperly managed, without confirming or describing the current danger to the appellant. There is also insufficient information provided by the medical practitioner to show 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 additional nutritional items is "imminent," or likely to happen soon. 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.