

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated February 27, 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 appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

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

- 1) Application for MNS dated October 28, 2013 signed by the appellant's medical practitioner and stating in part that:
 - The appellant's severe medical conditions are a chronic wound, described as "a progressive wound requiring daily care";
 - In response to the question whether, as a direct result of the severe medical condition, the appellant is being treated for a chronic, progressive deterioration of health, the medical practitioner wrote: "yes, T3 paraplegia, chronic open decubitus ulcers, multiple surgical procedures and amputations."
 - 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 muscle mass loss, moderate to severe immune suppression and significant deterioration of a vital organ and wrote "multiple open non-healing decubitus ulcers";
 - The appellant's height and weight are not recorded and the medical practitioner wrote "not applicable, "LE [lower extremity] amputation";
 - In response to a request to specify the additional nutritional items required, the medical practitioner wrote: "high protein diet, Ensure, Boost Plus t.i.d. [three times a day] lifelong "
 - 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 wrote: "financial burden to afford high protein diet and necessary supplementation";
 - Asked to describe how the nutritional items will prevent imminent danger to the appellant's life, the medical practitioner wrote: "increased nutrition and high protein diet to improve healing."
 - Additional comments by the medical practitioner are: "see enclosed discharge summaries, wound care done AT LEAST 2 times per week by nurses";
- 2) Home and Community Care Discharge Summary dated November 25, 2011 stating in part that the appellant was discharged from home care nursing for wound care since he was readmitted to hospital;
- 3) Hospital Discharge Summary dated May 12, 2013 which states in part that:
 - The appellant was admitted from emergency with a diagnosis of urosepsis, query strep associated with paraplegia and a prolapse to the colostomy.
 - The appellant was treated with IV antibiotics for approximately 3 weeks;
- 4) Letter from the appellant's medical practitioner dated February 7, 2014, which states in part that:
 - The appellant is a T3 paraplegic with multiple fractures and chronic non-healing decubitus ulcers that required multiple hospitalizations, sometimes for as long as months at a time.

- The appellant is undergoing daily wound care.
- The appellant has significant muscle mass loss and shows evidence of malnutrition as a result of his progressive and chronic debilitating health condition.
- The appellant requires a life-long high protein diet to enable him to develop muscle mass, prevent deterioration of his chronic decubitus ulcers and to prevent imminent danger to his life; and,

5) Request for Reconsideration dated February 13, 2014.

In his Request for Reconsideration, the appellant wrote that he requests a review of the letter from his family doctor. He has insufficient funds vital to his recovery and healing from a chronic wound partially due to paraplegia. The appellant wrote that he is experiencing the following symptoms as a direct result of a chronic progressive deterioration of health: malnutrition, significant muscle mass loss, and moderate to severe immune suppression, as detailed in the doctor's note.

In the Notice of Appeal, the appellant expressed his disagreement with the ministry's reconsideration decision. The appellant wrote that he requires additional nutritional items as part of caloric supplementation to a regular dietary intake and to prevent imminent danger to his life. The appellant wrote that without supplement, his condition will continue to deteriorate.

The ministry relied on its reconsideration decision which included evidence that the appellant is a Person With Disabilities (PWD) in receipt of disability assistance as well as the MNS for vitamins and minerals at the rate 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 ministry stated that neither the symptom of malnutrition nor significant muscle mass loss is sufficient, on its own, to demonstrate a wasting condition. The ministry stated that there is no supporting evidence such as the appellant's current height and weight which would allow calculation of his BMI [body mass index] and where it falls on the range in relation to normal, or the change in his muscle mass to show a significant loss over a specific period of time. The supplement is intended to prevent imminent danger to the person's life by providing essential, specified items to supplement calories beyond regular nutritional needs. The ministry acknowledged that the physician stated in her February 7, 2014 letter that the high protein diet is necessary to prevent imminent danger to the appellant's life and did not have comment further to the ministry's analysis in the reconsideration decision.

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, T3 paraplegia, chronic open decubitus ulcers, multiple surgical procedures and amputations and a chronic wound requiring daily care, "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 and malnutrition.

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 stated that the medical practitioner specified that the additional nutritional item required is high protein diet and Ensure/ Boost Plus and, in describing how this will alleviate the specific symptoms, the medical practitioner referred to financial circumstances rather than a medical condition that requires nutritional items as part of a caloric supplementation. The ministry stated that the appellant also referred to his insufficient funds in his Request for Reconsideration, which funds are vital to recovery and healing from a chronic wound. The ministry stated that the medical practitioner also 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 stated that the medical practitioner did not provide detail to confirm that the appellant is displaying underweight status or significant weight loss, since the medical practitioner wrote that the appellant's height and weight is "not applicable", and the ministry was unable to calculate his BMI [body mass index] and determine if he requires caloric supplementation to a regular dietary intake. The ministry stated that the medical practitioner reported that the appellant requires a high protein diet which represents a specific nutritional regime which is recommended for the appellant's regular dietary intake and does not demonstrate a need for caloric supplementation to a regular dietary intake.

The appellant's position is that sufficient information has been provided by the medical practitioner, in both the original Application and the additional letter, 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. In his Request for Reconsideration, the appellant emphasized the letter from his family doctor and wrote that he has insufficient funds vital to his recovery and healing from a chronic wound partially due to paraplegia. The appellant argued that he is experiencing the following symptoms, as detailed in his doctor's notes, as a direct result of a chronic progressive deterioration of health: malnutrition, significant muscle mass loss, and moderate to severe immune suppression.

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 response to a request to specify the additional nutritional items required, the medical practitioner wrote in the original application "high protein diet, Ensure, Boost Plus t.i.d. [three times a day] lifelong." 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: "financial burden to afford high protein diet and necessary supplementation." In her February 7, 2014 letter, the medical practitioner reiterated that the appellant requires a life-long high protein diet. The panel considered the ordinary meaning of

“supplementation” to be something added and finds that the ministry reasonably determined that the medical practitioner recommendation is for a higher proportion of protein within the appellant’s regular diet rather than an addition of calories to his regular dietary intake.

In the original MNS 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. The ministry pointed to the absence of a response to this question as well as no record of the height and weight for the appellant as areas where the ministry found a lack of sufficient information to support a finding of a wasting condition and, consequently, a need for caloric supplementation. While the appellant is displaying the symptoms of malnutrition and significant muscle mass loss, the ministry argued that neither symptom is sufficient, without further detail, to establish a wasting condition. The ministry stated that there is no supporting evidence such as the appellant’s current height and weight which would allow calculation of his BMI and where it falls on the range in relation to normal. Rather than provide the appellant’s height and weight in the application, the medical practitioner wrote “not applicable, “LE [lower extremity] amputation” and, although it is not clear from the medical practitioner’s notes, it may be that the amputation of a body part compromises the accuracy of a BMI calculation. The medical practitioner wrote in her February 7, 2014 letter that the appellant has significant muscle mass loss and shows evidence of malnutrition as a result of his health condition, and she also reported that it is a high protein diet, rather than a supplement of calories, that is necessary to alleviate these symptoms.

The panel considers that while evidence of malnutrition, or a lack of proper nutrition, would appear to be a symptom of wasting, it can also be caused by not having enough to eat due to the scarcity of food or by not eating enough of the right things as a result of choices made regarding the composition of one’s regular dietary intake, as well as by being unable to use, or process, the food that one eats as a result of a medical condition. By requiring evidence of a need for caloric “supplementation” to a regular dietary intake, or calories in addition to the regular diet, the MNS for additional nutritional items is geared specifically for those experiencing one of the listed symptoms as a result of a regular diet being insufficient, rather than for those who do not have enough to eat or who are not eating enough of the right things. 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 pointed out that in describing how the nutritional items required will prevent imminent danger to life, the medical practitioner indicated in the MNS application that “increased nutrition and high protein diet to improve healing” and this does not constitute confirmation that the appellant requires caloric supplementation to prevent imminent danger to his life. The ministry stated that the medical practitioner wrote in the letter dated February 7, 2014, that the nutritional items will enable the appellant “...to develop muscle mass, prevent deterioration of his chronic decubitus ulcers and to prevent imminent danger to [his] life” and the ministry argued that this does not constitute confirmation that failure to provide nutritional items will result in ‘imminent’ danger to life.

The appellant's position is that the information from the medical practitioner in the application and her letter confirmed that failure to obtain the additional nutritional items will result in imminent danger to his life. The appellant wrote in his Notice of Appeal that without supplement his condition will continue to deteriorate.

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 "...increased nutrition and high protein diet to improve healing." In her letter, the medical practitioner wrote that the appellant requires a life-long high protein diet to enable him to develop muscle mass, prevent deterioration of his chronic decubitus ulcers and to prevent imminent danger to his life." She also wrote that the appellant has chronic non-healing decubitus ulcers that have required multiple hospitalizations, sometimes for as long as months at a time and that the appellant has already undergone at least one lower extremity amputation as a result of his condition. The panel finds that the evidence of the medical practitioner demonstrates a need for a high protein diet to improve healing and to enable the appellant to develop muscle mass, reducing the number of long-term hospital stays and preventing imminent danger to the appellant's life. However, the requirement of the legislation is that failure to obtain nutritional items that are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the person's life. The panel finds that the ministry reasonably determined that there is not sufficient evidence provided of the appellant's need for caloric supplementation, as set out above. The panel finds that the ministry reasonably concluded that the medical practitioner has not confirmed that failure to obtain the requested additional nutritional items that are 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) 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.