

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated March 27, 2014 which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and additional nutritional items. The ministry held that the requirements of Section 67(1.1) and Section 7 of Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) were not met as there is not sufficient information to establish that a medical or nurse practitioner has confirmed:

- as a direct result of the chronic, progressive deterioration of health, the appellant displays two or more of the listed symptoms, under Section 67(1.1)(b);
- the appellant requires vitamins and minerals to alleviate the symptoms of his chronic, progressive deterioration of health and to prevent imminent danger to life, pursuant to Section 67(1.1)(c) and (d); and,
- the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake, pursuant to Section 7 of Schedule C, to alleviate the symptoms of his chronic, progressive deterioration of health and to prevent imminent danger to life, under Section 67(1.1)(c) and (d).

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) Page 1 of an Application for Monthly Nutritional Supplement (MNS) dated December 2, 2013 completed and signed by the appellant and stating in part that:
 - The appellant's severe medical conditions are: "severe depression, bipolar; losing weight for the last 4 months- cancer?;"
 - In response to the question whether, as a direct result of the severe medical conditions, is the appellant being treated for a chronic, progressive deterioration of health, the appellant wrote: "I need food; proteins on a regular basis;"
- 2) Application for Monthly Nutritional Supplement (MNS) dated December 2, 2013 signed by a medical practitioner and stating in part that:
 - The appellant's severe medical conditions are: [left blank];
 - In response to the question whether, as a direct result of the severe medical conditions, is the appellant being treated for a chronic, progressive deterioration of health, the medical practitioner left it blank;
 - 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 symptom of underweight status with a note "underweight";
 - The appellant's height and weight are recorded with a note of a [Body Mass Index] of 19.8;
 - In response to a request to specify the vitamin or mineral supplements required, the medical practitioner noted "N/A" or not applicable;
 - In response to a request to describe how the vitamin or mineral supplement will alleviate the specific symptoms identified, the medical practitioner wrote "N/A";
 - In response to a request to describe how the vitamin or mineral supplement will prevent imminent danger to the appellant's life, the medical practitioner left this section blank;
 - In response to a request to specify the additional nutritional items required, the medical practitioner wrote "bipolar- probably not eating properly";
 - 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 wrote "no";
 - 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 noted "better nutrition;"
 - In response to a request to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the medical practitioner left this section blank;
 - The additional comments by the doctor are that: "Patient states he would like to go on a high protein diet to gain some weight."
- 3) Photograph of the appellant's torso; and,
- 4) Undated Request for Reconsideration.

In his Request for Reconsideration, the appellant wrote that:

- He has severe malnutrition with significant weight loss and that he should send a photograph. He also has muscle mass loss.
- He is bipolar and cannot get food by standing in line. He was assaulted twice because of that.
- He also has severe hearing loss: "80% of my right ear and ___ of my left ear."

In his Notice of Appeal dated April 1, 2014, the appellant expressed his disagreement with the

ministry's reconsideration decision. The appellant wrote that he has the two and more symptoms. He also thinks he has moderate immune suppression.

At the hearing, the appellant provided the following additional information:

- 1) Photograph of the appellant's legs;
- 2) Medical Examination Referral dated February 1, 2014 to the physician from a registered hearing instrument practitioner indicating that the appellant exhibited unilateral hearing loss; and,
- 3) Hearing Assessment dated January 10, 2014 with a recommendation for the appellant to be fitted with hearing aids for better sound localization.

At the hearing, the appellant stated that:

- He has retired from his previous employment in the health care field and he has some experience with different medical conditions.
- He has malnutrition with significant weight loss and significant muscle mass loss. The photograph shows his weight loss and muscle mass loss.
- He also has problems with his prostate and he has a family history of colon cancer and wonders if he might have cancer.
- He can no longer stand in line for food since he was recently assaulted. He used to get food from a "take-out" area that was discontinued about 2 months ago and this has been a major contributor to his not getting enough to eat.
- He has severe mental problems and also severe hearing loss. He has an 80% loss in his right ear due to antibiotics that he took. He is supposed to get hearing aids from the ministry.
- He needs some extra assistance for only a short period since, in a few years, he will receive a CPP disability pension.
- He can only deal with one thing at a time and right now he also has issues with the federal government and he could not get back to his doctor or in to see an advocate because he has felt overwhelmed.
- The physician who completed the MNS Application is his third family physician since the first two he was seeing have retired.
- He wonders if he has moderate immune suppression as well after an infection a few years ago which required that he have an operation and IV therapy. He feels his mental condition and his diet are impacting his immune system as well.
- He cannot cycle anymore and his diet is currently composed of bread half of the time.

The ministry did not object to the admissibility of the additional information. The panel admitted the additional documents and photograph as further information relating to the appellant's medical condition and being in support of the information and records before the ministry on reconsideration, pursuant to section 22(4) of the *Employment and Assistance Act*. The panel did not admit the information provided by the appellant regarding possible problems with his prostate as this was not in support of information or records before the ministry at the time of reconsideration.

The ministry relied on its reconsideration decision which included evidence that:

- The appellant is a Person With Disabilities (PWD) in receipt of disability assistance;
- On December 2, 2013 the appellant submitted an application for the MNS, for vitamins and minerals as well as for additional nutritional items.
- The appellant submitted the first page of the Application for MNS that he completed.

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 and for vitamins and minerals because the requirements of Section 67(1.1) and Section 7 of Schedule C 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 bipolar disorder, pursuant to Section 67(1.1)(a) of the EAPWDR.

Two or more symptoms

The ministry's position is that sufficient information has not been provided from the medical practitioner to establish that as a direct result of the chronic, progressive deterioration of health, the appellant displays two or more of the listed symptoms, pursuant to Section 67(1.1)(b) of the EAPWDR. The ministry argued that the medical practitioner reported that the appellant's symptom is significant weight loss and no other symptoms were identified by the practitioner.

The appellant's position is that there is sufficient information from the medical practitioner to establish that as a direct result of the chronic, progressive deterioration of his health, he also displays the symptoms of severe malnutrition and significant muscle mass loss and possibly moderate immune suppression. The appellant argued that, as a retired health care professional, he has some experience with different medical conditions and he believes he has malnutrition with significant weight loss and significant muscle mass loss. The appellant argued that the photographs of his torso and his legs show his weight loss and muscle mass loss.

Panel decision

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. In the Application for MNS dated December 2, 2013, in responding to the question of whether as a direct result of the chronic progressive deterioration in health, the appellant displays two or more symptoms, the medical practitioner indicated the symptom of underweight status with a note "underweight." While the appellant argued that he is a retired health care professional and he believes he also displays the symptoms of malnutrition, significant muscle mass loss and possibly moderate immune suppression, none of the other symptoms listed in the MNS Application are confirmed by the medical practitioner. Section 67(1.1) stipulates that the medical or nurse practitioner must confirm that the person displays two or more of the symptoms and since this "medical practitioner" or "nurse practitioner" must be treating the person for a chronic, progressive deterioration of health, the panel finds that the practitioner must be someone other than the person requesting the MNS.

The appellant also pointed to the photographs as demonstrating his significant weight loss and significant muscle mass loss; however, there is no confirmation of these symptoms by the medical practitioner and the panel finds that there is no evidence of a baseline of comparison in order to show a "significant loss," whether in weight or muscle mass, over a period of time. The panel therefore finds that the ministry reasonably concluded that there is not sufficient information to establish that the medical practitioner has confirmed that, as a direct result of the chronic, progressive deterioration of health, the appellant displays two or more of the symptoms listed, pursuant to Section 67(1.1)(b) of the EAPWDR.

Vitamins and Minerals

The ministry's position is that sufficient information has not been provided from the medical practitioner to establish that the appellant requires specific vitamins and minerals to alleviate the symptoms of his chronic, progressive deterioration of health and that obtaining these items will prevent imminent danger to life, as required by Section 67 (1.1)(c) and (d) of the EAPWDR. The ministry argued that the medical practitioner does not specify that the appellant requires any vitamin or mineral supplements as he has written "N/A." The ministry argued that the physician does not provide an explanation for how vitamins and mineral supplements will help alleviate a symptom

referred to in Section 67(1.1)(b) of the EAPWDR as he has again written "N/A." The ministry also argued that the medical practitioner does not report that obtaining vitamins or minerals will prevent imminent danger to the appellant's life.

The appellant's position is that sufficient information has been provided to establish that vitamins and mineral supplements are required to alleviate one of his symptoms of his chronic, progressive deterioration of health and to prevent imminent danger to his life. The appellant argued that half of his diet currently consists of bread and that he is no longer able to ride a bicycle like he used to.

Panel decision

Section 67(1.1)(c) of the EAPWDR requires that the medical practitioner confirm that, for the purpose of alleviating one of the symptoms referred to in sub-section (b), the appellant requires the vitamins and minerals as set out in Section 7 of Schedule C. In the Application for MNS dated December 2, 2013, the medical practitioner wrote "N/A" in the sections of the Application for specifying the vitamin or mineral supplements required by the appellant and how the vitamin or mineral supplement will alleviate the specific symptoms identified. As well, in response to a request to describe how the vitamin or mineral supplement will prevent imminent danger to the appellant's life, the medical practitioner left this section blank.

The appellant did not argue that particular vitamins and minerals have been identified in the request, as required by Section 67(1.1)(c) of the EAPWDR, but pointed out that there is not much nutrition in his diet, which consists of half bread, and that he can no longer perform some of the activities that he used to, such as cycling. The panel finds that the appellant's evidence of his loss of the ability to perform a physical activity such as cycling is not sufficient evidence of the requirement in Section 67(1.1)(d) that failure to obtain vitamins and minerals will result in imminent danger to the appellant's life. Overall, the panel finds that the ministry reasonably concluded that there is not sufficient information from the medical practitioner to establish that the appellant requires specified vitamins and minerals for the purpose of alleviating an identified symptom and that failure to obtain the vitamins and minerals will result in imminent danger to the appellant's life, pursuant to Section 67(1.1)(c) and (d) of the EAPWDR.

Additional Nutritional Items

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 and to prevent an imminent danger to the appellant's life. The ministry argued that the medical practitioner's evidence is not sufficient to satisfy the requirement of caloric supplementation as set out in Section 7 of Schedule C because, when asked to describe the additional nutritional items required and the expected duration of need, the medical practitioner reported "bipolar- probably not eating properly." The ministry further argued that when asked 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 response by the physician was "no." The ministry argued that the medical practitioner did not indicate how much weight the appellant had lost and over what time frame his weight loss had occurred, and that his BMI is calculated at 19.8 which is in the normal weight range and, therefore, he is not in need of caloric supplementation. The ministry further argued that there is no evidence of imminent danger to the appellant's life as the medical practitioner did not report that failure to obtain nutritional items would result in imminent danger to life.

The appellant's position is that sufficient information has been provided by the medical practitioner 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 and to prevent imminent danger to his life. The appellant argued that he can no longer stand in line for food since he was recently assaulted and while he used to get food from a "take-out" area, this service was discontinued and this has been a major contributor to his not getting enough to eat.

Panel decision

Section 67(1.1)(c) of the EAPWDR requires that the medical practitioner confirm that for the purpose of alleviating a symptom referred to in sub-section (b), the appellant requires the additional nutritional items as part of a caloric supplementation to a regular dietary intake, pursuant to Section 7 of Schedule C. In the MNS Application dated December 2, 2013, in response to a request to specify the additional nutritional items required, the medical practitioner indicated "bipolar- probably not eating properly." The ministry concluded that the medical practitioner's suggestion that the appellant is probably not getting sufficient nutrition in his regular dietary intake indicates that he requires changes to his food choices within his regular dietary intake, rather than caloric supplementation to his regular diet. In the MNS application, the medical practitioner does not indicate 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. Further, the medical practitioner indicated the appellant's BMI score of 19.8, based on his height and weight, which the ministry stated is a weight within the normal range, suggesting, as the ministry concluded, that the appellant is not in need of caloric supplementation to his regular dietary intake. Given the above evidence, the panel finds that the ministry reasonably concluded that there is not sufficient information from the medical practitioner to confirm that additional nutritional items are required as part of a caloric supplementation to a regular dietary intake pursuant to Section 7 of Schedule C to alleviate related symptoms, as set out in Section 67(1.1)(c) of the EAPWDR.

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 MNS Application, the medical practitioner did not respond to the request to describe how the nutritional items will prevent imminent danger to the appellant's life, and provided additional comments that: "Patient states he would like to go on a high protein diet to gain some weight." Given that the medical practitioner has not provided his opinion that the appellant requires nutritional items as caloric supplementation pursuant to Section 7 of Schedule C and has indicated the appellant's preference for a high protein diet, rather than any consequence of imminent danger to life, the panel finds that the ministry reasonably concluded that the medical practitioner has not confirmed that failure to obtain the requested additional nutritional items 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) 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 and vitamins and minerals because all of the requirements of Section 67(1.1) of the EAPWDR were not met, was reasonably supported by the evidence. The panel confirms the ministry's decision.