

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated May 20, 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 March 1, 2014 signed by the appellant's medical practitioner, which states in part that:
  - The appellant's severe medical conditions are Type 2 DM [diabetes mellitus], high cholesterol, high blood pressure, obesity and a genetic condition causing her to be intolerant of some medication;
  - In response to the question: 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 significant deterioration of a vital organ due to an enlarged liver;
  - The appellant's height and weight are recorded;
  - In response to a request to specify the additional nutritional items required, the medical practitioner wrote: "needs to eat low fat, low cholesterol, low salt diet;"
  - In response to the question: does the appellant have 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: "not sure";
  - 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: "will help prevent diabetes-related complications, reduce risk of heart disease, stroke";
  - Asked to describe how the nutritional items will prevent imminent danger to the appellant's life, the medical practitioner wrote: "as above"; and,
- 2) Laboratory Investigation Results dated November 16, 2013 reporting in part that the appellant has impaired fasting glucose indicative of increased risk of developing Type 2 diabetes, and abnormal levels for hemoglobin, lipids and cholesterol;
- 3) Letter dated December 2, 2013 from a medical practitioner, a specialist in gastroenterology, which states in part that:
  - The appellant is noted to have metabolic syndrome and likely a component of fatty liver disease. She is noted to have hepatomegaly [enlarged liver] and wanted to pursue a liver biopsy;
  - The appellant has an underlying genetic mutation which is uncommon with mutation of the cytochrome P450 resulting in aromatase deficiency. It is believed that she has intolerances to many drugs secondary to this. There is limited data available on this;
  - Her weight has increased by 50 lbs. over the last 7 to 10 years; she does not pursue a regular exercise program nor is she pursuing a specific dietary regimen.
  - Whole body imaging with an MRI revealed fatty infiltration of the liver with some sparing of the caudate lobe. No hepatic lesions noted.
  - She has underlying fatty liver disease and multiple risk factors for this including glucose intolerance, being overweight, and dyslipidemia as part of the metabolic syndrome.
  - A liver biopsy would not change her overall management; and,
- 4) Request for Reconsideration dated May 17, 2014 with attached letter from the appellant dated April 16, 2013 and supporting information in the form of printouts from Wikipedia, regarding Dysmetabolic syndrome X.

Prior to the hearing, the appellant provided the following additional document:  
Letter dated June 4, 2014 from a registered nurse, stating in part that:

- The appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate symptoms of her chronic, progressive health deterioration and to prevent imminent danger to her health.
- Due to the appellant's specific genetic make-up, her body cannot process certain medications without the nutritional items of the caloric supplementation. These medications include antidepressants that she requires for acute symptoms of depression.
- She is writing the letter as a deeply concerned friend of the appellant and as a registered nurse with a Master of Science in Nursing.
- Although she is not a nurse practitioner, the appellant requested her assistance because the short time left for her to appeal does not give enough time for her to request the assistance from her doctor.
- The appellant's overall health and well-being suffer from a complex health and family history and seem to become more fragile as years pass.

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

Letter dated May 2, 2014 from the appellant's medical practitioner stating in part that:

- The appellant has a rare genetic condition that affects her metabolism and medication processing.
- She suffers from malnutrition because she cannot process food properly and nutrients cannot be absorbed properly due to this genetic condition.

In her Notice of Appeal, the appellant expressed her disagreement with the ministry's reconsideration decision. The appellant wrote that:

- She has proved with doctors' letters that she meets the criteria. The forms did not make it clear that it was for caloric supplementation, although everything, including malnutrition, implies.
- A fax has been sent from the same nursing/health instructor who has a Masters and who filled out her disability forms after she assessed the appellant. The appellant needs caloric supplementation without which she cannot take certain medication.
- This puts her at harm because of consequences without medicine.

In her Request for Reconsideration and attached letter, the appellant wrote that:

- Her kind of metabolic condition causes the opposite [of weight loss, muscle deterioration, etc.], and, instead, weight gain shows deterioration. She has a rare genetic disorder.
- The categories of symptoms listed are discriminatory to people who have metabolic conditions that cause severe weight gain.
- For her kind of health situation, deterioration means insulin resistance which causes weight gain, hormone depletion, food turning into fat instead of energy, etc.
- All the medical information shows that she would be in great danger of heart attack, stroke, death, other dangerous risks related to diabetes. She has been very close to ending her life because she has not been able to physically bear 13 medical conditions.
- She is in debt because she has to pay for hormone and medications and natural remedies that are not paid for by the medical system.
- She reacted to one of the medications she was taking and ended up in Emergency two times. She cannot tolerate the diabetes medications and needs natural remedies.
- She originally had "1 health thing" (Polycystic Ovarian Syndrome) and when doctors gave her

medicines for hormone imbalance, "those medicines triggered genetic weakness things and through time [she] ended up with health 13 things."

- She was a thin person when stress triggered Polycystic Ovarian, then she suddenly gained a huge amount of weight. The more she depletes hormones, the more it is like she is fighting a battle with her body to try not to gain weight.
- She needs this nutritional supplement because of needing soy hormone. Without it, her brain, organs, everything goes downhill.
- She also needs foods that she cannot afford. She has been told she has to change her diet drastically.

At the hearing, the appellant stated that:

- The ministry accepted that she displays the symptom of malnutrition and there is also proof of deterioration of a vital organ, and she has more than one organ affected.
- She has oxygen depletion problems which make the mornings difficult for her and it takes a few hours for her body to feel better.
- She requires nutrition as a result of her genetic situation. She has so many genes that have mutated and doctors were giving her medicines that were causing more and more damage. She started with one health problem and now she has 13 to 15 medical conditions.
- She has diabetes and high cholesterol but she cannot take the medicines she needs. She also needs to take anti-depressants.
- She needs special foods. She has attended a clinic for heart and diabetes in an attempt to control her medical conditions. She cannot have foods that contain xenobiotics as she will have a reaction. She needs organic foods that have not been in contact with plastics. She needs to take raw milk, yogurt and cheese, etc. so that she gets the things she is missing and then she can take her anti-depressants. Raw milk is illegal in Canada unless she buys a "cow-share," which she needs.
- She had written that she needs soy hormone, estrogen /progesterone but the government would not pay for any medicines so she had to pay on her own and she accumulated \$920 in debt and this is causing undue hardship.
- She is at the point where she cannot handle living like this. She needs more medicines and specialized foods to improve her health situation.
- She applied for desperate medical equipment and the ministry did not provide it due to some changes and it caused some brain problems. Now she needs this supplementation for desperate things she is going through.
- The Polycystic Ovarian Syndrome causes the foods she eats to be turned into fat rather than energy.
- She does not understand why she would need to explain her genetic situation because if the doctors divulge the information there is no legislation to protect her against discrimination. The doctor has put information about her genetic diagnosis and that should be enough.
- By identifying the symptom of malnutrition, her family doctor is addressing the situation that her condition is changing her body chemistry.
- The letter from the registered nurse is from a nursing instructor that the appellant originally met at a university a long time ago. She provided an assessment of the appellant in support of her application for disability. She is higher than a nurse practitioner because she trains those people.
- Asked about the different handwriting on the Application for MNS, the appellant stated that she added some things to the form because her doctor was in a hurry and had not provided

complete answers. She discussed the notes she made on the form with the doctor.

- She finds even when she goes to the specialist, her doctor writes something quick and irrelevant and she has to explain to the specialist why she is there.
- She wanted to get more information from a doctor but her family doctor is away for a while and the walk-in clinics have told her she needs to see her family doctor.

### ***Admissibility of New Information***

The ministry did not object to the admissibility of the letter dated June 4, 2014. The panel admitted this letter as new information as relating to the appellant's previously diagnosed medical conditions and her need for the MNS and as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4) of the *Employment and Assistance Act (EAA)*. The letter dated May 2, 2014 from the appellant's medical practitioner was also admitted by the panel, pursuant to Section 22(4) of the EAA, having been accepted by the ministry as part of the record available at reconsideration.

The ministry relied on its reconsideration decision. The facts included that the appellant is a Person With Disabilities (PWD) in receipt of disability assistance and the vitamin and mineral supplement in the amount of \$40 per month. In a letter dated May 27, 2014, the ministry accepted the physician's letter of May 2, 2014, which was submitted by the appellant on May 5, 2014 but not received by the ministry until May 26, 2014. The ministry considered the additional letter as part of the record at reconsideration.

At the hearing, the ministry highlighted that to receive the nutritional items as part of the MNS, 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 as extra calories to regular nutritional needs. The ministry considers the letter dated June 4, 2014 from the registered nurse as a letter from a friend or advocate as the author acknowledges that she is not a nurse practitioner. In terms of the appellant's reluctance to divulge all the information available about her genetic condition, the ministry stated that it relies on the legislation and that sufficient information must be provided by the appellant to establish that all of the criteria are met.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration 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 for providing the 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 sets out additional requirements 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 Type 2 diabetes, high cholesterol, high blood pressure, obesity due to "metabolic rare genetic situation", and a genetic condition causing her to be intolerant of some medication, 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 under this section. The ministry acknowledged that there is sufficient information from the medical practitioner, in the application for MNS and the letter dated May 2, 2014, to establish that the appellant displays two or more of the symptoms, namely malnutrition and significant deterioration of a vital organ (enlarged liver).

***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 "needs to eat low fat, low cholesterol, low salt diet" and needs to eat things that do not trigger blood thinning and "foods that counteract rare genetic situation," which demonstrates that she needs to eat specific foods as part of a balanced diet. The ministry argued that the medical practitioner makes diet recommendations that involve appropriate food choices within the appellant's regular dietary intake, rather than caloric supplementation to her dietary intake. The ministry argued that the medical practitioner reported that she is "not sure" whether the appellant has a medical condition that results in the inability to absorb sufficient calories. The ministry argued that because the appellant's height and weight recorded in the application indicate that her BMI [body mass index] is 36.4, it indicates the appellant is not underweight or in need of caloric supplementation.

The appellant's position is that sufficient information has been provided by the medical practitioners, in both the original application and the additional letters, along with the information from the registered nurse, 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 the ministry accepted that she displays the symptom of malnutrition and her family doctor is thereby addressing the situation that her health condition is changing her body chemistry. The appellant argued that her kind of metabolic condition, which is a rare genetic disorder, causes the opposite of weight loss, muscle deterioration, etc. and, instead, the resulting weight gain shows deterioration. The appellant argued that her doctor confirmed that the nutritional items required will alleviate one or more of the symptoms described and there is nothing in the legislation that requires that the nutritional items alleviate a particular symptom, such as significant weight loss or underweight status. The appellant argued that the categories of symptoms listed are discriminatory to people who have metabolic conditions that cause severe weight gain. The appellant argued that she needs to take raw milk, yogurt and cheese, etc. so that she gets the things she is missing and then she can take her medicines, including her anti-depressants.

***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 as 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 to eat low fat, low cholesterol, low salt diet" and the panel finds that the ministry reasonably determined that these items are components of a regular dietary intake and not part of a caloric supplementation to a regular dietary intake. While the appellant argued that she needs to take raw milk, yogurt and cheese, as well as organic foods so that she gets the things she is missing and can

then take her medicines, including her anti-depressants, the panel finds that the ministry reasonably determined that these food items are also food choices within a regular dietary intake. The registered nurse wrote in her letter dated June 4, 2014 that due to the appellant's specific genetic make-up, her body "cannot process certain medications without the nutritional items of the caloric supplementation", which the panel notes relates to the appellant's inability to process some medications, as reported in the physician's information, and does not confirm that the appellant has an inability to absorb sufficient calories. As well, Section 67 specifically requires that all information in support of a request for the MNS be confirmed by either a medical practitioner or a nurse practitioner and the nurse acknowledged in her letter that she is not a nurse practitioner. In response to the question in the MNS application as to 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: "not sure."

The ministry 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 of 36.4, which indicates that the appellant is not underweight or in need of caloric supplementation, and the medical practitioner described the symptom of malnutrition in her May 2, 2014 letter as "she cannot process food properly and nutrients cannot be absorbed properly" 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 in the application: "will help prevent diabetes-related complications, reduce risk of heart disease, stroke" with no reference to supplementing calories. In the December 2, 2013 letter, the specialist in gastroenterology, reported that the appellant's weight has increased by 50 lbs. over the last 7 to 10 years, which the specialist attributes at least partially to the lack of both a regular exercise program and a specific dietary regimen.

While the appellant argued that the list of symptoms in Section 67(1.1)(b) is discriminatory to those who have metabolic conditions that cause severe weight gain, the panel does not have jurisdiction to consider human rights issues pursuant to Section 46.3 of the *Administrative Tribunals Act* which, as stated in Section 19.1 of the *Employment and Assistance Act*, applies to the Tribunal. The panel finds that the ministry's conclusion that there is not sufficient information from the medical practitioner to confirm that the 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 imminent danger to the appellant's life. The ministry noted that in describing how the nutritional items required will prevent imminent danger to life the medical practitioner wrote: "will help prevent diabetes-related complications, reduce risk of heart disease, stroke." The ministry argued that the word "imminent" denotes a degree of immediacy that is not present in the appellant's circumstances as the threats of eventual complications related to diabetes and heart disease may or may not occur at unspecified future times. The ministry argued that 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 practitioners and the nurse confirmed that failure to obtain the additional nutritional items will result in imminent danger to her life. The



appellant argued in her Request for Reconsideration that all the medical information shows that she would be in great danger of heart attack, stroke, death, other dangerous risks related to diabetes. The appellant argued that she needs this nutritional supplement because she needs soy hormone and special foods she cannot afford, without it, her brain, organs, everything goes downhill. The appellant argued that she should not have to explain the details of her genetic situation because if the doctors divulge the information there is no legislation to protect her against discrimination. The appellant also argued that she has been very close to ending her life because she has not been able to physically bear 13 medical conditions.

#### *Panel decision*

Section 67(1.1)(d) of the EAPWDR 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 with regard to how the nutritional items will prevent imminent danger to the appellant's life, by writing: "will help prevent diabetes-related complications, reduce risk of heart disease, stroke." The appellant provided Laboratory Investigation Results dated November 16, 2013, which indicate that she has impaired fasting glucose (indicative of increased risk of developing Type 2 diabetes), as well as abnormal levels for hemoglobin, lipids and cholesterol; however there was no interpretation of these results by a medical or nurse practitioner. Given an opportunity to provide supplemental information in her letter dated May 2, 2014, the medical practitioner did not discuss an imminent danger to the appellant's life as a result of a failure to obtain nutritional items.

The panel notes that although untreated or uncontrolled diabetes could potentially pose a serious danger, 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. While the appellant argued that she is reluctant to divulge the details of her genetic situation for fear of discrimination, Section 67(1.1) of the EAPWDR requires that a medical practitioner confirm each of the criteria in the Section. The requirement in Section 67(1.1)(d) is for the medical practitioner to confirm that imminent danger to the person's life will be caused by a failure to obtain the nutritional items that are part of a caloric supplementation. The panel notes that there is no mention in this Section of any action taken by a person to precipitate imminent danger to his or her life. The panel therefore 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.