

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the Ministry's) reconsideration decision dated January 12, 2015 which denied the Appellant's request for a Monthly Nutritional Supplement (MNS) for additional nutritional items because she did not meet the program criteria under section 67(1.1) of the Employment and Assistance for Person with Disabilities Regulation (EAPWDR), specifically as required by (c) and section 7 of Schedule C and as required by (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 Appellant was not in attendance at the hearing, but the Appellant's advocate attended on her behalf, pursuant to authorization previously provided by the Appellant. 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 reconsideration consisted of the following:

- An application form for diet assistance, undated, signed by a nurse practitioner indicating that the Appellant has two serious medical conditions and lifelong requirement for a high protein diet.
- An application for a Monthly Nutritional Supplement, dated October 3, 2014, signed by the nurse practitioner, indicating that the Appellant has two serious medical conditions and requires a high protein diet. The nurse practitioner indicates that the Appellant displays the symptoms of moderate to severe immune suppression as a result of being HIV positive and significant deterioration of a vital organ, her liver, and gives the height and weight of the Appellant. In response to the request to specify the additional nutritional items required, the nurse practitioner wrote "high protein diet. Requires extra finances to obtain this." The sections of the application pertaining to vitamin or mineral supplementation, caloric supplementation, ability to absorb sufficient calories, and how the nutritional items requested will prevent danger to the applicant's life are not filled out by the nurse practitioner.

In addition, in section 3 of the request for reconsideration, the Appellant writes that she has had a weight loss of 8 kilos since April 2010, she has central nervous system dysfunction as a result of her medical conditions, and she attaches a follow-up letter from her nurse practitioner.

The letter from the nurse practitioner, dated December 18, 2014 and attached to the request for reconsideration, indicates that the Appellant requires a monthly nutritional supplement because the Appellant's medical conditions have resulted in central nervous system effects and she is severely immunosuppressed. The Appellant's medications cause nausea and, "with a monthly nutritional supplement, money could be spent on high quality foods and supplements that would allow for adequate caloric intake despite ongoing nausea." The nurse practitioner wrote that the Appellant "certainly would benefit from a monthly nutritional supplement."

At the hearing, the Appellant's advocate provided the following oral evidence. The Advocate stated that the Appellant has lost a substantial amount of weight. Even though the Appellant does have a normal body mass index, it doesn't necessarily mean that she is not malnourished. The Advocate explained that the nurse practitioner did not thoroughly complete the original application for a monthly nutritional supplement, but the practitioner does note in her letter that the Appellant experiences nausea as a side effect. The Advocate states that the nausea makes it obvious that the Appellant is probably having difficulty with absorption of nutrients and calories and that high quality food would allow for adequate caloric supplementation. Although the nurse practitioner did not specifically mention nutrition drinks, vitamins, or mineral supplements, the Advocate stated that this is implied by the practitioner's letter. The Advocate further states that if the Appellant does not obtain proper nutrition and additional caloric intake, the Appellant's health will continue to deteriorate further and eventually her health will fail, although she cannot say that the Appellant's life is currently in danger.

The panel determined that the additional oral evidence was admissible under section 22(4) of the Employment and Assistance Act (EAA) as it tended to corroborate and therefore was in support of

the records before the Ministry at reconsideration.

At the hearing, the Appellant's advocate read from additional documentary evidence. The Advocate read from the Appellant's doctor's chart notes from July 2014.

The ministry relied on its reconsideration decision, as summarized at the hearing. In the decision, the ministry stated that the height and weight recorded for the Appellant in the application indicate that her body mass index [BMI] falls within the normal/overweight range. At the hearing, the ministry stated that the Appellant is already in receipt of a diet supplement for a high protein diet.

***Admissibility of Additional Information***

The ministry did not object to the admissibility of the additional oral evidence on behalf of the Appellant, including that read from the doctor's chart notes. The panel determined that the oral testimony read from the additional documentary evidence (the doctor's chart notes), which was not admissible under section 22(4) of the EAA as it pertained to the Appellant's requirement for vitamins and minerals and was not in support of the information available at reconsideration. The panel could not find any evidence to suggest that vitamins and minerals, specifically, were requested in the information that was before the Ministry at reconsideration. Because the monthly nutrition supplement form separates nutritional items from vitamins and minerals, the panel finds that the information before the Ministry at the time of reconsideration referred only to nutritional items.

The panel finds that the information from the nurse practitioner establishes that the Appellant has two serious medical conditions that require high quality foods and supplements and a high protein diet. The panel also finds that the Appellant is currently receiving a diet supplement of \$40 per month for a high protein diet, the Appellant's current BMI is within the normal/overweight range, and she suffers from nausea as a side effect of her medications.

## PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision to deny Appellant's request for a Monthly Nutritional Supplement (MNS) for additional nutritional items because she did not meet all of the program criteria under section 67(1.1) of the EAPDR, specifically as required by (c) and section 7 of Schedule C and as required by (d), was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the Appellant.

The legislation provides the following:

Employment and Assistance for Persons with Disabilities Regulation:

### Nutritional supplement

**67** (1) The minister may provide a nutritional supplement in accordance with section 7 [*monthly nutritional supplement*] of Schedule C to or for a person with disabilities in a family unit who receives disability assistance under

(a) section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A, or

(b) section 8 [*people receiving special care*] of Schedule A, if the special care facility is an alcohol or drug treatment center, if the minister is satisfied that

(c) based on the information contained in the form required under subsection (1.1), the requirements set out in subsection (1.1) (a) to (d) are met in respect of the person with disabilities,

(d) the person is not receiving a supplement under section 2 (3) [*general health supplement*] of Schedule C,

(e) the person is not receiving a supplement under subsection (3) or section 66 [*diet supplements*],

(f) the person complies with any requirement of the minister under subsection (2), and

(g) the person's family unit does not have any resources available to pay the cost of or to obtain the items for which the supplement may be provided.

(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...

### Schedule C - Health Supplements

#### 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.C. Reg. 68/2010)

(b) Repealed (B.C. Reg. 68/2010)

(c) for vitamins and minerals, up to \$40 each month. (B.C. Reg. 68/2010)

The Ministry argued that the Appellant does not meet all of the criteria for the monthly nutritional

supplement for additional nutritional items under section 67(1.1) of the EAPWDR and Schedule C, Section 7. The Appellant met the requirements under section 67(1.1) (a) and (b) of the EAPWDR, but did not meet the requirements in (c) or (d), specifically that the Appellant has not demonstrated that the additional nutritional items requested are required as part of a caloric supplementation to a regular dietary intake to alleviate a listed symptom of the Appellant's medical condition required by (c) and section 7 of Schedule C, or that failure to obtain the nutritional items will result in imminent danger to the Appellant's life required by (d). The Ministry argues that the Appellant does not display the symptoms of wasting (malnutrition, underweight status, significant weight loss, or significant muscle mass loss) and is in the normal/overweight range for body mass index and therefore does not require additional nutritional items to supply caloric supplementation. There is no evidence of how the symptoms would be alleviated by the nutritional items requested. In addition, although the Appellant does require high quality foods and a high protein diet, the Ministry argues that the Appellant is already receiving a diet supplement to assist with this recommendation. Finally, the Ministry argues that the practitioner does not describe how the failure to obtain the nutritional items will result in imminent danger to life.

The Appellant's Advocate argued that although the Appellant's body mass index is in the normal range, this does not necessarily mean that caloric supplementation is not required and "symptoms of wasting" are not part of the wording in section 67(1.1). The Advocate argued that the practitioner's letter implied that the Appellant requires caloric supplementation and, although the practitioner did not specifically mention nutrition drinks such as Boost, this is implied by the practitioner's letter. The Advocate further argued that without the nutritional items requested, the Appellant's health will continue to deteriorate.

Section 7 of Schedule C and Section 67(1.1)(c) of the EAPWDR stipulate that the nurse 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. The panel finds that although the information from the nurse practitioner establishes that a high quality diet, supplements, and a high protein diet are required by the Appellant and that she suffers from nausea, the practitioner does not confirm that additional nutritional items are required for caloric supplementation to a regular dietary intake. The practitioner wrote that, "high quality foods and supplements would allow for adequate caloric intake despite ongoing nausea". The nurse practitioner wrote that the nausea is a side effect of the Appellant's medications and the practitioner does not confirm that the Appellant has an inability to absorb sufficient calories. The section of the application that specifically asks 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 was left blank by the nurse practitioner.

Although the Advocate argued that "symptoms of wasting" are not part of the wording of the legislation, Section 7 of Schedule C sets out that the nutritional items must be part of a caloric supplementation to a regular dietary intake and Section 67(1.1) states that the caloric supplementation must be required to alleviate the symptom. Although the Appellant has experienced an 8 kilogram weight loss since April 2010, there is insufficient evidence of malnutrition, underweight status, significant weight loss, or significant muscle mass loss that would indicate a requirement for caloric supplementation. When asked in the application to describe how the nutritional items required will alleviate one or more of the symptoms specified and provide caloric supplementation to the regular diet, the nurse practitioner did not provide a response. Finally, the recommendations by the

nurse practitioner are not substantively different from the recommendations in the application for the diet supplement, which the Appellant is already receiving. Therefore, the panel finds that the Ministry's decision that the Appellant did not meet the criteria in section 67(1.1) (c) is reasonably supported by the evidence.

The panel also finds that the information provided on behalf of the Appellant shows that failure to obtain the monthly nutritional supplement may result in further deterioration of the Appellant's health and that the nurse practitioner wrote in her letter that "this patient certainly would benefit from a monthly nutritional supplement". However, when asked in the application to describe how the requested nutritional items will prevent imminent danger to the Appellant's life, the nurse practitioner left this section blank. The panel finds that the Ministry reasonably determined that the practitioner does not confirm that a failure to obtain the nutritional items will result in imminent danger to the Appellant's life. Thus, the panel finds that the Ministry's decision that the Appellant did not meet the criteria in section 67(1.1) (d) is reasonably supported by the evidence.

The panel finds the Ministry's decision was reasonably supported by the evidence and confirms the Ministry's reconsideration decision.