

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated April 24, 2015 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 from a medical or nurse 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, and,
- The appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate a symptom 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

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act (EAA)*.

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

- 1) Application for MNS dated January 18, 2015 signed by the appellant's medical practitioner, which sets out in part that:
  - The appellant's severe medical conditions are hypertension (“needs low salt diet”) and morbid obesity (“needs increased protein diet because of lack of muscle mass”);
  - The appellant is being treated for hypertension and progressive muscle weakness in legs and needs (illegible);
  - 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 muscle mass loss, with a note that “increased loss of muscle mass legs increased weakness”;
  - 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 increased protein diet. Needs 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 left this section incomplete;
  - 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: “Needs more protein intake and decreased salt diet”;
  - Asked to describe how the nutritional items will prevent imminent danger to the appellant's life, the medical practitioner wrote: “reduce hypertension, allow protein intake to help with muscle mass build-up”; and,
- 2) Request for Reconsideration dated April 14, 2015 with attached letter from the appellant's advocate dated April 23, 2015 and letter dated April 21, 2015 in which the medical practitioner wrote that:
  - The appellant suffers from the following serious health problems: pernicious anemia, or a vitamin D deficiency which, if she does not receive sufficient supplementation, can result in neurological symptoms; Irritable Bowel Syndrome, which causes significant abdominal pain and results in dietary inadequacies do (sic) to pain; hypertension, which requires medication and a low salt diet; morbid obesity, which has resulted in significant arthritis in joints leading to significant pain and resultant inadequate exercise and significant fatigue and muscle loss and obstructive sleep apnea.
  - The appellant requires the following: vitamins for B12 supplementation, multivitamin for replacing the inadequate dietary supply, low salt diet for her hypertension, high protein diet intake for rebuilding of her muscle loss, calcium supplementation and vitamin D to prevent osteoporosis and help her arthritis.
  - All of the above will help to maintain the appellant's health and prevent further deterioration in her health.

### **Additional information**

In her Notice of Appeal dated May 5, 2015, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that the ministry failed to consider all the relevant

evidence and has given a narrow interpretation to the legislation and evidence.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Submission by an advocate on behalf of the appellant, including argument and online definitions for pernicious anemia, Irritable Bowel Syndrome (IBS), hypertension, morbid obesity, sleep apnea, and cellulitis; and,
- 2) Letter dated May 19, 2015 in which the medical practitioner wrote that:
  - The appellant suffers from the following serious health problems: pernicious anemia, or a vitamin D deficiency which, if she does not receive sufficient supplementation, can result in neurological symptoms; Irritable Bowel Syndrome, which causes significant abdominal pain and results in dietary inadequacies do (sic) to pain; hypertension, which requires medication and a low salt diet; morbid obesity, which has resulted in significant arthritis in joints leading to significant pain and resultant inadequate exercise and significant fatigue and muscle loss. This has led to obstructive sleep apnea, this has also resulted in increased susceptibility to infection as manifest by recent cellulitis in hospital.
  - The above, in a cumulative whole, lead the appellant to increased risk of significant deterioration of her organs and lead to a cumulative risk of increased immune suppression.
  - The highest risk to her health is her obesity which will lead to a shortened life span.

The ministry relied on its reconsideration decision as its submission on the appeal.

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

The ministry did not raise an objection to the admissibility of the submission on behalf of the appellant or the letter from her medical practitioner dated May 19, 2015. The panel admitted the information in the letter which confirms the appellant's medical conditions and resulting symptom as detailed in the application for MNS and the medical practitioner's letter dated April 21, 2015 as new information relating to the appellant's previously diagnosed medical conditions and her need for the MNS and, therefore, 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 *EAA*.

The panel did not admit the information in the advocate's submission on behalf of the appellant or in the medical practitioner's letter dated May 19, 2015 relating to cellulitis or the risks of significant deterioration of her organs or increased immune suppression as this is new information that was not before the ministry at reconsideration and which does not corroborate information before the ministry at reconsideration. The panel considered the balance of the advocate's submission as argument on behalf of the appellant.

## 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 morbid obesity, hypertension, pernicious anemia, IBS, obstructive sleep apnea, pregnancy (sic) and leg weakness, pursuant to Section 67(1.1)(a) of the EAPWDR. In the advocate's

submission, it is pointed out that the ministry erroneously determined that the appellant is pregnant and it appears that the ministry misread information provided by the medical practitioner in the MNS application that the appellant is being treated for “progressive muscle weakness in legs.”

***Section 67(1.1)(b) of the EAPWDR- Two listed symptoms***

The ministry’s position is that there is insufficient information to establish that the appellant displays two or more of the listed symptoms as a direct result of the chronic, progressive deterioration of her health. The ministry argued that the medical practitioner identified the symptom of significant muscle mass loss but that none of the other listed symptoms is identified by the medical practitioner.

The appellant’s position is that her medical practitioner has provided sufficient information to show that she displays at least two of the listed symptoms as a direct result of the chronic, progressive deterioration of her health. The appellant argued that her medical practitioner confirmed in the MNS application that she displays the symptom of significant muscle mass loss. The appellant argued, in her advocate’s submission, that the medical practitioner confirmed in his letter dated May 19, 2015 that she also suffers from pernicious anemia and, if she does not receive sufficient supplementation, this can result in neurological symptoms. The appellant argued that the medical practitioner confirmed in his letters of April 21, 2015 and May 19, 2015 that the appellant displays muscle loss and neurological symptoms.

***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 section. In the application for MNS, the medical practitioner responded to the question whether, as a direct result of the chronic progressive deterioration in health, the appellant displays two or more symptoms, by indicating the symptom of significant muscle mass loss, and noting that “increased loss of muscle mass legs increased weakness”; however, none of the other listed symptoms is identified by the medical practitioner in the application. While the advocate argued that the medical practitioner also confirmed a listed symptom in his letter dated April 21, 2015, the panel finds that the requirement is for the medical practitioner to confirm that the appellant is currently displaying “significant neurological degeneration” and not simply that there is a possibility of “neurological symptoms.” The panel finds that the ministry reasonably concluded that there is not sufficient information from the medical practitioner to confirm that, as a direct result of the chronic, progressive deterioration of health, the appellant displays two or more of the listed symptoms, as set out in Section 67(1.1)(b) of the EAPWDR.

***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 a symptom of a chronic, progressive deterioration of health. The ministry argued that the medical practitioner indicated in the MNS application that the appellant requires a high protein and low salt diet, which represents a specific diet rather than caloric supplementation to a regular diet. The ministry argued that the medical practitioner did not indicate 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 ministry argued that because the appellant’s height and weight recorded in the application indicate that her BMI [body mass index] is 45.7, it shows that the appellant is within the obesity range and is not underweight or in need of caloric supplementation. The ministry argued that the medical practitioner wrote, in response to a request to specify the additional nutritional items required, that the

appellant “needs increased protein diet; needs low salt diet”; however, this does not describe how this will alleviate the symptom identified.

The ministry argued that while the medical practitioner indicated in his letters that the appellant requires B12 supplementation, multiple vitamins for replacing the inadequate dietary supply, calcium and vitamin D supplementation to prevent osteoporosis and help her arthritis, the ministry cannot address the vitamin/mineral supplementation request as there was no denial rendered for these items. The ministry further argued that the medical practitioner confirmed in the letter that the appellant needs a low salt diet for her hypertension and high protein diet intake for rebuilding of her muscle loss, and this represents a specific dietary intake rather than caloric supplementation to a regular diet.

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 the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate a symptom of her chronic, progressive deterioration of health. The appellant argued that the medical practitioner clearly established that the appellant is suffering from a multitude of health-related conditions and that the \$40 currently being issued to the appellant is insufficient to cover the cost to supplement her nutritional requirements. The appellant argued that the medical practitioner outlined in his April 21, 2015 letter that the appellant requires vitamins for B12 supplementation, multi-vitamins for replacing the inadequate dietary supply, low salt diet for the hypertension, high protein diet intake for rebuilding of her muscle loss and calcium supplementation and vitamin D to prevent osteoporosis and help her arthritis. The appellant argued that the medical practitioner wrote in his May 19, 2015 letter that the appellant's history with morbid obesity has resulted in significant fatigue and muscle loss and has lead to obstructive sleep apnea.

#### *Panel decision*

Section 7(a) 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 specified in the request, as part of a caloric supplementation to a regular dietary intake. In the original application, in response to a request to specify the additional nutritional items required, the medical practitioner wrote that the appellant “needs increased protein diet; needs 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. Further, 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 left this section incomplete.

The ministry accepted that the medical practitioner had provided sufficient information to establish that the appellant is displaying the symptom of significant muscle mass loss; however, 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: “needs more protein intake and decreased salt diet” with no reference to how this will alleviate significant muscle mass loss and provide a supplement to calories above a regular dietary intake. In his letters, the medical practitioner indicated that the appellant's morbid obesity has resulted in significant arthritis in her joints leading to significant pain, inadequate exercise, fatigue, and muscle loss, and wrote that high protein diet intake is required for rebuilding the appellant's muscle loss. The panel finds that the

ministry reasonably determined that the medical practitioner has not confirmed that the high protein diet is required by the appellant as part of a caloric supplementation to a regular dietary intake as the ministry pointed out that the appellant's BMI is 45.7, or in the obese range, which indicates that the appellant is not underweight or in need of caloric supplementation.

The panel finds that the ministry reasonably concluded that while the medical practitioner wrote in his April 21, 2015 letter that the appellant requires vitamins for B12 supplementation, multivitamins for replacing the inadequate dietary supply, calcium supplementation and vitamin D to prevent osteoporosis and help her arthritis, the section of the MNS application relating to vitamins and minerals was not completed by the medical practitioner and there was no denial of a request for these items under Section 7(c) of Schedule C of the EAPWDR for the ministry to consider at reconsideration. The panel finds further 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 medical practitioner has confirmed that the appellant requires additional nutritional items to prevent imminent danger to her life. The ministry noted that in describing how the nutritional items required will prevent imminent danger to life the medical practitioner wrote: "reduce hypertension, allow protein intake to help with muscle mass build-up"; however, this does not indicate an imminent danger to life. The ministry argued that the use of the word "imminent" refers to immediacy such that the danger to the appellant's life is likely to happen soon. The ministry argued that although the advocate argued that the new information from the medical practitioner confirmed imminent danger to the appellant's life, the medical practitioner wrote that the appellant has serious medical conditions and not that the nutritional items will prevent imminent danger to life. The ministry argued that while the medical practitioner's dietary recommendations would be beneficial to the appellant's health, there was no information provided to confirm that failure to obtain nutritional items will prevent imminent danger to life.

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 her life. The appellant argued that the medical practitioner wrote in his May 19, 2015 letter that the appellant's serious health problems, as detailed, in a cumulative whole lead to increased health risks and the highest risk to the appellant's health is her obesity which will lead to a shortened life span.

***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 indicating they will: "reduce hypertension, allow protein intake to help with muscle mass build-up." The medical practitioner was provided with opportunities to add further detail in his letters dated April 21, 2015 and May 19, 2015, in which he wrote that all of the listed vitamins, minerals and low salt/high protein diet will "help to maintain" the appellant's health, "prevent further deterioration in her health," and the highest risk to the appellant's health is her obesity which "will lead to a shortened life span." While the medical practitioner referred to a risk to the appellant's health, Section 67(1.1)(d) of the EAPWDR requires that the medical practitioner confirm that the nutritional items are required to

prevent imminent danger to "life." As well, the panel finds that the ministry reasonably interpreted the use of the word "imminent" to refer to an immediacy that indicates that there is a danger to the appellant's life that is likely to happen soon. Although the advocate argued that the medical practitioner confirmed that the appellant's serious health problems in a cumulative whole lead to increased health risks, the panel finds that there is insufficient information to confirm that the risk of complications from the confirmed medical conditions, namely pernicious anemia, IBS, hypertension, morbid obesity, and obstructive sleep apnea, are 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 nutritional items is "imminent," or likely to happen soon. 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.