



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated June 20, 2016, which denied the appellant’s request for a Monthly Nutritional Supplement (MNS) on the basis that the appellant did not meet the criteria set out in section 67(1.1) c and d of the *Employment and Assistance for Persons With Disabilities Regulation* (“EAPWDR”) and Schedule C, section 7(a). In particular, the ministry determined that the information provided did not demonstrate that the appellant’s medical practitioner had described how the specified items would alleviate a specific symptom set out in EAPWDR section 67(1.1)(b), as is required by EAPWDR section 67(1.1)(c), or that the failure to obtain the specified items would result in imminent danger to the appellant’s life as required by EAPWDR section 67(1.1)(d). In addition, the ministry determined that there was insufficient evidence to establish that the requested MNS were required as part of a caloric supplementation to a regular dietary intake as required by EAPWDR Schedule C section 7(a).

### PART D – Relevant Legislation

EAPWDR, section 67 and Schedule C section 7

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Application for Monthly Nutritional Supplement dated December 15, 2015 in which the appellant's physician indicates that the appellant has chronic pain syndrome and has had multiple orthopedic surgeries, specifically failed right knee surgery, failed discectomy, and failed ankle surgery. The physician indicates that the appellant has significant muscle mass loss, specifically right side leg weakness, secondary to muscle weakness as well as nerve degeneration secondary to his discectomy. The physician recommends that the appellant have Ensure/Boost as it may aid in increased protein and help build up muscle strength (the "MNS Application").
- The appellant's Request for Reconsideration dated May 20, 2016 indicating that the appellant disagrees with the ministry's decision and that he is awaiting documentation for submission.

### **Additional information provided**

The appellant's Notice of Appeal dated July 6, 2016 indicates that additional medical information is provided. The appellant includes a letter from another physician dated July 6, 2016 stating that she saw the appellant at a walk in clinic and upon review of the medical documentation he has provided, including investigations ordered by the cardiologist, the appellant has been diagnosed with paroxysmal supraventricular tachycardia (the "Physician's Letter").

By email dated July 27, 2016 the ministry advised that it will be relying on the reconsideration decision.

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*.

### **Admissibility of New Information**

Although the ministry did not object to the new Physician's Letter provided by the appellant with his Notice of Appeal, the Physician's Letter contains information regarding a new medical diagnosis of tachycardia. As this new medical diagnosis is not in support of information that was before the ministry at the time of reconsideration as required by section 22(4) of the *Employment and Assistance Act*, the panel has not admitted the Physician's Letter into evidence.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant funding for a MNS on the basis that the appellant did not meet the criteria set out in section 67(1.1) c and d and Schedule C, section 7(a) of the EAPWDR was reasonable. In particular, was the reconsideration decision in which the ministry determined that the information provided did not demonstrate that the appellant's medical practitioner had described how the specified items would alleviate a specific symptom set out in EAPWDR section 67(1.1)(b), that the failure to obtain the specified items would result in imminent danger to the appellant's life and that there was insufficient evidence to establish that the requested MNS were required as part of a caloric supplementation to a regular dietary intake was reasonable.

The relevant legislation is as follows:

### EAPWDR - 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 centre,

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.

(B.C. Reg. 68/2010)

(2) In order to determine or confirm the need or continuing need of a person for whom a supplement is provided under subsection (1), the minister may at any time require that the person obtain an opinion from a medical practitioner or nurse practitioner other than the practitioner referred to in subsection (1) (c). (B.C. Reg. 68/2010)

## EAPWDR Schedule C, Health Supplement - MNS

**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)

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### Vitamin Mineral Supplementation

The appellant's position is that the information provided supports a finding that he is eligible for MNS as his physician indicates that he requires Ensure/Boost due to his chronic pain and medical conditions.

The ministry's position is that the information provided is not sufficient to meet the legislative criteria because although the physician notes that the appellant requires Ensure/Boost, no further information is provided to specify the vitamin/mineral supplements that the appellant requires. In addition, the ministry notes that while the physician indicates that the Ensure/Boost may aid in increased protein and help build up muscle strength he specifically states that he cannot say that this supplement will prevent imminent danger to life. The ministry's position is that the legislative criteria have not been met.

### Panel Decision:

In the MNS Application, where asked to describe how the vitamin or mineral supplementation will alleviate the symptoms identified, the physician indicates that the appellant has weakness secondary to muscle loss and that Ensure/Boost may aid in increasing the appellant's protein and help build up muscle strength. However, when asked to describe how the item will prevent imminent danger to the appellant's life the physician indicates that he cannot say that this supplement will prevent imminent danger to life.

EAPWDR section 67(1.1) requires that both sections (c) and (d) be met and as the physician does

not indicate that the Ensure/Boost will prevent imminent danger to the appellant's life, the panel finds that the ministry was reasonable in determining that the criteria for a request for vitamins/minerals was not met.

### Nutritional Items

The appellant's position is that the information provided by the physician demonstrates that he qualified for MNS for nutritional items.

The ministry's position is that the information provided does not establish that the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating a symptoms referred to in EAPWDR section 67(1.1)(b) and that failure to obtain the requested items would result in imminent danger to the appellant's life. The reconsideration decision notes that the physician suggests Ensure/Boost/Trim for 3 months, but that the physician does not indicate that the appellant has any absorption issues. The ministry notes that the physician indicates that the appellant has limited nutritional intake more related to lack of money but that increased protein may decrease his right leg weakness secondary to muscle wasting. The ministry's position is that the information provided does not indicate that the appellant requires extra calories over and above those found in his regular diet but that the information provided indicates that the appellant needs to consume more protein as part of a specific diet. The reconsideration decision also notes that the physician does not specify that the appellant requires additional caloric supplementation to prevent imminent danger to his life.

### Panel Decision:

In the MNS Application, the physician specifies that the additional nutritional items required and expected duration of need is Ensure/Boost/Trim for 3 months. However, the physician indicates that the appellant does not have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The physician also indicates that the nutritional items may increase his protein which may decrease his right leg weakness secondary to muscle wasting but that his limited nutritional intake is more related to lack of money.

As the physician has not provided any information indicating the specified nutritional items that the appellant requires that are part of a caloric supplementation to a regular dietary intake or that the nutritional items will prevent imminent danger to the appellant's life, as required by EAPWDR Schedule C, section 7(a) and section 67(1.1) (d), the panel finds that the ministry was reasonable in determining that the information provided did not meet the legislative criteria for the MNS of nutritional items.

### Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision finding the appellant ineligible for MNS as the legislative criteria of EAPWDR section 67(1.1)(c), (d) and Schedule C, section 7(a) were not met was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.