

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated August 9, 2016, which held that the appellant is not eligible for a Monthly Nutritional Supplement (MNS) for vitamins/mineral supplements and nutritional items pursuant to sections 67(1), 67(1.1) and Schedule C section 7 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). In particular, the ministry determined that the evidence provided by the appellant's physician failed to establish that:

- he displays two or more the symptoms of chronic progressive deterioration of health as listed in section 67(1.1) b) of the EAPWDR;
- pursuant to section 67(1.1) (c) of the EAPWDR he requires one or more of the items set out in section 7 of Schedule C of the EAPWDR to alleviate a symptom referred to in section 67(1.1) (b) of the EAPWDR; and
- pursuant to section 67(1.1) (d) of the EAPWDR failure to obtain the items referred to in section 67(1.1) (c) will result in imminent danger to his life.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation - (EAPWDR) – Section 67(1) (1.1).

Employment and Assistance for Persons with Disabilities Regulation - (EAPWDR) – Schedule C, section 7.

## PART E – Summary of Facts

The appellant did not attend the hearing. 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 the time of reconsideration consists of:

1. application for monthly nutritional supplement (MNS) which was completed by the appellant's physician and signed and dated February 8, 2016. The physician indicates a diagnoses of ulcerative colitis and fatty liver. In section 2 for treatments, the physician states "ulcerative colitis and fatty liver". In section 3 for symptoms, the physician states "ulcerative colitis – he needs boost/ensure when sick". In section 4, the appellant's height and weight are indicated as 5'7" and 267lbs. In section 5, the physician indicates that boost and ensure are required but does not indicate expected duration of need. In the same section, the physician indicates that the vitamins or minerals required "will maintain nutrition". In terms of how the items requested will prevent imminent danger to the appellant's life, the physician states "unable to properly digest solid food when sick". In section 6, the physician does not indicate which nutritional items are required and for how long. In the same section the physician states "yes, when sick vomits food and blood" and a caloric supplement "will stabilize nutritional levels avoiding hospitalization – visits to emergency". In terms of how the items requested will prevent imminent danger to the appellant's life, the physician states "patient health will stabilize – preventing further damage or risk of life".
2. request for reconsideration (RFR) signed and dated July 21, 2016 in which the appellant states that he:
  - has had serious health issues since early childhood;
  - is unable to process gluten, wheat and dairy and becomes ill if he eats them;
  - does not get enough protein or enzymes; and
  - needs the necessary meal supplements and vitamins to maintain better health and recover from illnesses.

### **Evidence On Appeal**

Notice of Appeal, signed and dated August 17, 2016.

### **Evidence At Hearing**

At the hearing the ministry relied on its reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated August 9, 2016, which held that the appellant is not eligible for a MNS for vitamins/mineral and nutritional items pursuant to sections 67(1), 67(1.1) and Schedule C section 7 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, the ministry determined that the evidence provided by the appellant's physician failed to establish that:

- he displays two or more the symptoms of chronic progressive deterioration of health as listed in section 67(1.1) b) of the EAPWDR;
- pursuant to section 67(1.1) (c) of the EAPWDR he requires one or more of the items set out in section 7 of Schedule C of the EAPWDR to alleviate a symptom referred to in section 67(1.1) (b) of the EAPWDR; and
- pursuant to section 67(1.1) (d) of the EAPWDR failure to obtain the items referred to in section 67(1.1) (c) will result in imminent danger to his life.

The relevant legislation is as follows:

### **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 family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who

(a) is a person with disabilities, and

(b) is not described in section 8 (1) [*people receiving special care*] of Schedule A, unless the person is in an alcohol or drug treatment centre as described in section 8 (2) of Schedule A, 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 another nutrition-related supplement,

(e) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 7 (c).]

(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.

### **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 Appellant's Position*

The appellant argues that the information provided by his physician sets out that the legislative requirements for vitamin/mineral and nutritional items supplement have been met and the ministry's denial is contrary to the evidence and the legislation. He also argues that the ministry's denial clearly contradicts its own mandate.

### *The Ministry's Position*

The ministry's position as set out in the Reconsideration Decision is that the appellant is ineligible for MNS for vitamins/minerals on the basis that he has not satisfied the legislative requirements in the EAPWDR sections 67(1.1) (b-d) and Schedule C section 7. In particular the evidence fails to establish that the appellant displays two or more the symptoms of chronic progressive deterioration of health as listed in section 67(1.1) (b) of the EAPWDR, he requires one or more of the items set out in section 7 of Schedule C of EAPWDR to alleviate symptoms of chronic progressive deterioration pursuant to 67(1.1) (c) of the EAPWDR, and failure to obtain the items requested will result in

imminent danger to her life pursuant to 67(1.1) (d) of the EAPWDR.

### *The Panel's Decision*

Section 67(1.1) states that in order to receive a nutritional supplement the ministry must receive a request completed by the medical practitioner or nurse practitioner and the request must confirm that the recipient has a chronic, progressive deterioration of health resulting from a severe medical condition, displays two or more the symptoms of chronic progressive deterioration of health, requires the requested items to alleviate symptoms of chronic progressive deterioration, and failure to obtain the items requested will result in imminent danger to the recipient's life.

### *Vitamins/Minerals*

In this case, the request was completed by the appellant's physician. In the MNS application the physician does not confirm that the appellant displays two or more of the symptoms of chronic, progressive deterioration of health as noted in the legislation and application. In section 3 of the application the physician indicates one symptom (vital organ) but not two or more. In the same section, under significant deterioration of a vital organ (please specify) the physician states "ulcerative colitis – he needs booth or ensure when sick" but does specify which organ has significant deterioration. Without confirmation from the physician that the appellant displays two or more of the symptoms of chronic, progressive deterioration of health as noted in the legislation, the panel finds that the ministry reasonable determined that the evidence does not establish that criteria 67(1.1)(b) of the EAPWDR has been met.

Furthermore, the physician did not establish that the appellant meets section 67(1.1)(c) of the EAPWDR because he stated only that the requested items were required to "maintain nutrition", and not to alleviate two or more of the symptoms of deterioration as required by the legislation. Finally, the physician did not establish that the failure to obtain the items requested will result in imminent danger to the appellant's life. In the application the physician stated "unable to properly digest solid food when sick", without indication as to how frequently the appellant becomes sick, and the physician did not indicate that there is an *imminent danger* to the appellant's life without the requested items. The legislation is clear that this information must be confirmed by a medical practitioner or nurse practitioner and in the opinion of the panel, the appellant's physician did not provide sufficient information in the MNS application to meet the legislative requirements. The panel finds, that the ministry reasonably determined that the evidence does not establish that the appellant qualifies for a MNS for vitamins/minerals pursuant to section 67(1.1)(c-d) and Schedule C section 7 of the EAPWDR.

### *Nutritional Items*

In the MNS application, the appellant's physician did not request additional nutritional items but does complete the remaining sections of the application under nutritional items and the ministry assessed his eligibility for a nutritional items supplement. In the application for the question regarding the ability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the physician states "...when sick vomits food and blood". However, as previously discussed the physician has not indicated which two (or more) symptoms of chronic progressive deterioration the appellant displays or what causes him to vomit food and blood. Furthermore, the physician indicates

that the appellant cannot absorb sufficient calories when he is sick without indicating how frequently he is sick. Therefore, the panel finds that the ministry reasonably determined that the evidence establishes that the criteria of section 67(1.1)(b) of the EAPWDR for nutritional items has not been met.

The physician stated only that the nutritional supplement was required to “stabilize nutritional levels avoiding hospitalization – visits to emergency”, and not to alleviate two or more of the symptoms of deterioration as required by the legislation. Finally the physician did not confirm that there is an imminent danger to the appellant’s life if he fails to obtain a nutritional supplement as the physician indicated only that the appellant will stabilize and it will prevent further damage or risk of life. The panel finds, that the ministry reasonably determined that the evidence does not establish that the appellant qualifies for a MNS for nutritional items pursuant to section 67(1.1)(c-d) and Schedule C section 7 of the EAPWDR.

**Conclusion**

The panel finds that the ministry reasonably concluded the evidence establishes that the required criteria set out in sections 67(1.1)(b-d) and Schedule C section 7 of the EAPWDR have not been met. The panel therefore finds that the ministry’s decision to deny the appellant’s request for a MNS for vitamins/minerals and nutritional items was a reasonable application of the legislation and was supported by the evidence. Thus, the panel confirms the ministry’s reconsideration decision. The appellant was not successful in his appeal.