

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision made under section 67(1) of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* and dated September 19, 2016, that denied the Appellant's request for a monthly nutritional supplement on the grounds that the Appellant did not meet the criteria of section 67(1.1) of the *(EAPWDR)*, in that

- (a) she failed to establish that extra calories are required as nutritional supplementation over and above those found in a regular diet, to alleviate the symptoms of her Appellant's chronic progressive deterioration of health, as required by Section 67(1.1)(c) *EAPWDR*, and
- (b) she failed to establish that failure to obtain the nutritional supplement will result in imminent danger to her life as required by section 67(1.1)(d) *EAPWDR*.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Schedule C, Section 7

PART E – Summary of Facts

Nature of the Appellant's Application

The Appellant applied for:

- A vitamin or mineral supplementation, and
- Nutritional items.

Her application for vitamin/mineral supplementation was granted, but her application for a nutritional supplement was denied and she asked for a reconsideration. At reconsideration her nutritional supplement request was again denied, and she appealed.

Appellant's Written Submissions at Appeal

The Appellant made written submissions dated September 24, 2016 in which she stated:

- (a) Most of her medical conditions cause weight gain;
- (b) Her Polycystic ovarian syndrome causes obesity;
- (c) The medications she take for her conditions also cause weight gain;
- (d) Because she is gaining weight from the causes does not mean that she is getting proper nutrients to maintain a proper caloric diet;
- (e) That the family physician did not add that she has psoriatic arthritis, badly deteriorating discs from her neck to her tailbone, and had disc removed from her lower back;
- (f) She does have pulmonary hypertension which can be controlled with medication;
- (g) She has arterial hypertension which is much different than pulmonary hypertension;
- (h) There is no cure or medication to make arterial hypertension better;
- (i) Her heart is failing and all she can do is take medications to try and make it stronger and give her a little more time;
- (j) She has just started Candesartan;
- (k) She wants to be able to afford to eat properly for another reason and that is to help her "medical conditions work better to alleviate the stress" on her heart and lungs;
- (l) Arterial hypertension occurs when the right side of the heart does not fill completely with blood which means does not completely fill the lungs with blood then does not get blood to the left side of the heart to send out through the body;
- (m) She has damage from heart failure already and it is painful;
- (n) She wants to do everything she can to make things much easier on her body and hopefully give her more time;
- (o) She does not sit on a couch all day but works part-time;
- (p) She does what she can to help herself and stays as active as she can to keep her heart as strong as she can;
- (q) She would much rather be a person without all these medical conditions and have a normal life, being able to get up in the morning, go to work, or do whatever the day brings but instead has to weight for her bowels to decide what kind of day she is going ; to have because of the food she has eaten the day before or for breakfast;
- (r) Is not listing all of her conditions again as they have already been related;
- (s) Her physician has already informed authorities why she needs a better caloric intake;

- (t) Is asking for help with a better daily caloric intake so she may have better days with all of her complications.

Admissibility of the Appellant's New Evidence

The panel finds that the statement in the foregoing sub-paragraphs (a), (b), (c), (d), (k), (n), (q), (r), (s) and (t) are argument, but finds that the evidence in the foregoing sub-paragraphs (e), (f), (g), (h), (i), (j), (l), (m), (o) and (p) is not admissible because it is not written testimony in support of information and records that were before the minister when the decision being appealed was made pursuant to the *Employment and Assistance Act*, section 22(4).

Documents and Evidence before the Ministry at time of Reconsideration

The evidence before the Ministry at the time of the Reconsideration decision included:

1. The original application for a monthly nutritional supplement dated May 10, 2016 signed by the Appellant's family physician and which stated

The Appellant was 5 feet 4 inches tall and weighed 307 pounds, and that she required a monthly nutritional supplement for the

Diagnosed conditions of:

- Polycystic ovarian syndrome
- Irritable bowel syndrome
- Diverticula disease
- Hypoglycemia,

Which exhibit in the Appellant experiencing weight gain, insulin resistance, chronic intermittent dietary constipation, recurrent colitis and pain, and

As a direct result of the chronic progressive deterioration of health the Appellant displays

- malnutrition because of poor absorption of nutrients due to gastrointestinal problems
- Significant muscle mass loss
- moderate to severe immune suppression and she experiences recurrent infections and is susceptible to infections,

Vitamin or Mineral Supplements required:

That the supplements required are vitamins D, B and C and a high fibre diet

Alleviation of symptoms

Which will alleviate the specific symptoms because the vitamins will help with gastrointestinal health, absorption and ongoing inflammation, and that

Prevention of Imminent Danger to the Appellant's Life

- The items sought will prevent imminent danger to the Appellant's life because she will maintain

a healthy gastrointestinal tract, and avoid complications including but not limited to sepsis, hernia, bowel perforation and an illegible condition, which are all realities

Nutritional Items Required

- The nutritional items required are fruits, vegetables, and whole grains. The Appellant has medical conditions, namely diverticulosis and depression, that result in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake
- That the requested items would alleviate one or more of the symptoms of poor absorption of nutrients, significant muscle mass loss and moderate to severe immune suppression through:
 - Vitamin D, B and C for mood
 - Fibre for gastrointestinal tract, and
 - An illegible entry in the physician's handwriting
- How the nutritional items will prevent imminent danger to the Appellant's life, the physician stated that these should all help to improve her body mass index as this by itself poses immediate and real danger should complications arise

2. Decision of the Ministry dated August 5, 2016 advising that a monthly nutritional supplement consisting of vitamins/minerals have been approved but the request for nutritional items was denied.

3. The ministry's Health Assistance Branch's monthly nutritional supplement decision summary dated August 5, 2016.

4. The request for reconsideration containing a statement from the family physician dated September 2, 2016 which related that the Appellant has:

- Obesity
- Renal failure
- Psoriasis
- Diastolic dysfunction with pulmonary hypotension
- Stating that these diagnoses suggest it is absolutely essential for the Appellant to be on a calorie (illegible in the physician's handwriting) diet and that these foods include fresh fruits, fibre, etc. which are usually expensive, but which are absolutely essential to assist and help long term health in general and to reach the Appellant's goals

5. An undated information sheet entitled "Supplements vs. whole foods"

At the appeal the Ministry relied on the reconsideration decision.

PART F – Reasons for Panel Decision

Issue on Appeal

The issue on appeal is whether the reconsideration decision of the Ministry dated September 19, 2016 was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. The ministry found that that the Appellant did not qualify for a monthly nutritional supplement on the grounds that the Appellant did not meet the criteria of section 67(1.1) of the *EAPWDR*, in that

- (a) she failed to establish that extra calories are required as nutritional supplementation, over and above those found in a regular diet, to alleviate the symptoms of her chronic progressive deterioration of health, as required by section 67(1.1)(c) *EAPWDR*, and
- (b) she failed to establish that failure to obtain the nutritional supplement will result in imminent danger to her life as required by section 67(1.1)(d) (*EAPWDR*).

Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), section 67

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.

- (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).

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Schedule C, section 7

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.

General Scheme of the Legislation

The general scheme of the legislation is to allow a person with disabilities to receive money for a nutritional supplement provided the person is receiving disability assistance, not a resident of a care facility, not receiving another nutrition-related supplement, has no resources available to pay for the supplement, whose information is set out in a prescribed form, who in the opinion of a medical or nurse practitioner is being treated for a chronic progressive deterioration of health, is displaying at least 2 of 7 listed symptoms and for whom the supplement is required to alleviate 1 or more of those symptoms when not providing the supplement will result in imminent danger to the person's life.

Analysis

The ministry was satisfied that the Appellant satisfied *EAPWDR* sections 67(1), (1.1) (a) and (b), but was not satisfied that the Appellant required extra calories as a nutritional supplement to alleviate her symptoms and was not satisfied that failure to provide the nutritional supplement would result in imminent danger to the Appellant's life.

EAPWDR section 67(1.1)(c) – Alleviation of Symptoms

This section requires that the nutritional supplement sought is for the purpose of alleviation of the Appellant's symptoms.

Appellant's Position

The Appellant's position at the appeal was that she required the nutritional supplement in order to eat properly; to deal with conditions that were not before the ministry at reconsideration and to make things easier on her body.

She did not address the 3 of 7 symptoms she had (malnutrition, significant muscle mass loss, moderate to severe immune suppression), the alleviation of which is the goal of supplementation .

Ministry's Position

The ministry's position was that the Appellant did not require the extra calories over and above her regular diet, but rather needs to make appropriate food choices as part of a balanced diet. The ministry's position was that the physician was directing the Appellant how and what to eat to improve her mood, general health and glycemic index, as opposed to alleviation of any of the 3 (of 7 listed) symptoms exhibited by the Appellant, which were malnutrition, significant muscle mass loss and moderate to severe immune suppression. The ministry said that the physician's evidence was that with a height of 5 feet 4 inches and a weight of 307 pounds, the Appellant needed help with her body

mass index, in the event that complications arise, as opposed to requiring the extra calories immediately so as to alleviate symptoms of malnutrition, significant muscle mass loss and moderate to severe immune suppression. The ministry pointed out that the physician's evidence was that the Appellant required a calorie controlled, heart healthy diet, not extra calories.

Panel Finding

The panel finds that the goal of the caloric supplementation sought as nutritional supplementation was not alleviation of the Appellant's symptoms, namely malnutrition, significant muscle mass loss and moderate to severe immune suppression, 3 of the 7 symptoms required by section 67(1.1)(b) *EAPWDR*, as is required by section 67(1.1)(c) *EAPWDR*, but was rather for the Appellant to improve her body mass index and for good health generally.

The panel therefore finds that the Ministry's determination at reconsideration that the Appellant was not entitled to a nutritional supplement for alleviation of symptoms of malnutrition, significant muscle mass loss and moderate to severe immune suppression, was a reasonable application of the *EAPWDR* in the circumstances of the Appellant and was reasonably supported by the evidence.

***EAPWDR* section 67(1.1)(d) – Imminent danger to the Appellant's Life**

This section requires a finding that failing to provide the nutritional supplement sought will result in imminent danger to the Appellant's life.

Appellant's Position

The Appellant did not address the issue of whether or not her life would be in imminent danger if the supplement was not provided; rather she concentrated her argument on the need to make her life better, the need to eat properly, and emphasized that she does what she can to help herself.

Ministry's Position

The ministry's position was that the Appellant's physician's evidence showed she needed to improve her body mass index, that she had a number of symptoms, but of the 3 (out of 7 possible conditions of section 67(1.1)(b) *EAPWDR*) the nutritional supplement sought was not aimed at any of them, and that there was no evidence that not providing the supplement would result in imminent danger to the Appellant's life. The ministry pointed out that on the contrary, the supplement should help the Appellant's body mass index as it, as stated by the physician, "by itself poses immediate and real danger should any complications arise". The ministry pointed out that the physician's evidence was directed at encouraging the Appellant to eat specific foods as part of a balanced diet, rather than consuming more calories. The ministry argued that there was no evidence that the Appellant's life was in imminent danger.

Panel Finding

The panel finds that the Appellant's family doctor was recommending that she eat a balanced diet, and that the foods he recommended were for a different, healthy, diet, and not for extra caloric supplementation additional to her regular diet in order to address imminent danger to the Appellant's life.

The panel finds that there was no evidence of any imminent danger to the Appellant's life should the nutritional supplement not be provided.

The panel therefore finds that the Ministry's determination at reconsideration that the Appellant was not entitled to a nutritional supplement because there was no evidence of imminent danger to the Appellant's life without it, was a reasonable application of the *EAPWDR* in the circumstances of the Appellant and was reasonably supported by the evidence.

Conclusion

The panel finds that the Ministry's decision in denying the Appellant a nutritional supplement, was a reasonable application of the evidence in the circumstances of the Appellant and was reasonably supported by the evidence.

The panel confirms the Ministry decision and the Appellant is not successful in her appeal.