



## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated October 12, 2016 in which the ministry found the appellant was not eligible for the Monthly Nutritional Supplement (MNS) of nutritional items because his application did not meet the criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67(1.1) (c) and (d) and Schedule C, section 7, specifically that the Appellant did not satisfy the Ministry that the supplement is required to provide caloric supplementation to a regular dietary intake and that failure to provide additional nutritional items will result in an imminent danger to his life.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67(1), (1.1); Schedule C, section 7

## PART E – Summary of Facts

The Appellant was not in attendance at the hearing. After confirming that the Appellant was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

Information before the minister at reconsideration included:

- A copy of medical test results in the Appellant's name, dated December 10, 2015, reporting that he is reactive for Hepatitis C virus.
- A "Code Blue Record" dated May 5, 2016, in the Appellant's name.
- A copy of a medical consultation report dated June 17, 2016, when he was seen by a diabetes clinic.
- The Appellant's Application for MNS, dated June 23, 2016, stating that diabetes is a life threatening disease for him, and that he is also diagnosed with Hep C and depression/head injury. The physician listed the Appellant's symptoms as malnutrition, *poor nutrition*, significant neurological degeneration, *severe and worsening mental health – ongoing psych[?]*, moderate to severe immune suppression, *Hep C + DM1 – high risk for ongoing deterioration including mental function frequent hypoglycemia*. In the section dealing with nutritional items, when asked to describe the medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the physician wrote that he needs access to community supplied meals as he is unable to manage on his own, and an Ensure equivalent will buffer a lack of support. In the section asking how the nutritional items requested will prevent imminent danger to the applicant's life, the physician wrote "Reduce hypoglycemic crisis causing hospital visits and worsening mental and physical status(illegible)."
- The Ministry's MNS Decision Summary dated August 29, 2016.
- The Ministry's letter to the Appellant dated August 30, 2016, advising him of their decision.
- A letter from a physician dated September 12, 2106, stating that the Appellant feels it was unfair to deny his application for MNS, as he was hoping to have money for snacks, which he needs to maintain his glucose levels, not meal replacements.
- A letter from a physician dated September 14, 2016, stating that the Appellant requires a nutritional supplement to use between and in addition to his regular meals, not in replacement of them, that he has Type 1 diabetes, is on injectable insulin and suffers from recurrent and frequent hypoglycemic episodes despite eating three meals a day that have resulted in several hospitalizations in the past. The supplement is to be used between meals to ensure he is not at acute risk of hypoglycemic episodes that are life threatening conditions associated with poorly controlled diabetes.
- The Appellant's Request for Reconsideration, signed September 28, 2016, with a handwritten note from the Appellant in which he wrote that his request for a food supplement would serve to buy Ensure as a snack between meals. He wrote that he has Hep C that is not letting him absorb enough from his meals and had serious diabetic seizures and a coma in the past, and lately has been picked up by an ambulance at least once a week due to low blood sugar, which is life threatening.

In his Notice of Appeal dated October 18, 2016, the Appellant expressed his disagreement with the ministry's decision and wrote that he has a life threatening illness that could be resolved by having Ensure to drink between meals to stop hypoglycemia and severe brain damage.

At the hearing the Ministry relied on the information contained in the Reconsideration Decision.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the decision in which the ministry found the appellant was not eligible for the Monthly Nutritional Supplement (MNS) of nutritional items because his application did not meet the criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67(1.1) (c) and (d) and Schedule C, section 7, specifically that the Appellant did not satisfy the Ministry that the supplement is required to provide caloric supplementation to a regular dietary intake and that failure to provide additional nutritional items will result in an imminent danger to his life.

### Legislation

*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 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.

### *Schedule C*

#### **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 is that the Ministry has misunderstood his request; that he is requesting a supplement to buy Ensure as a snack between meals, not as meal replacements, that the Hep C that is not letting him absorb enough from his meals and that his constant hypoglycemia is a life-threatening condition which causes seizures and comas. The Appellant's physicians wrote that he needs a nutritional supplement in addition to his regular meals to maintain his glucose levels to prevent hypoglycemic episodes and seizures which are life-threatening conditions.

The Ministry's position is that the Appellant's request does not meet the legislative criteria for approval. The Ministry found that the Appellant met the criteria in section 67(1.1)(a), EAPWDR, that he has a chronic, progressive deterioration of health on account of a severe medical condition and that as a result, he displays two or more of the symptoms listed in subsection (b) of section 67(1.1). However, the Ministry found that the Appellant's application did not satisfy the requirements of subsection (c) that the items requested are part of a caloric supplementation to a regular dietary intake and that they are required to alleviate a specific symptom listed in subsection (b) and subsection (d), that failure to obtain the items will result in imminent danger to the Appellant's health. The Ministry argued that the Appellant's request for MNS and subsequent information provided by his physicians does not establish that there is a need for caloric supplementation in addition to a regular dietary intake. The Ministry argued that the information provided speaks to a need for a diabetic diet, but not caloric supplementation, and there is no information provided to show that the Appellant cannot absorb nutrients nor that he is underweight. The Ministry argued that the information provided does not establish that the Appellant requires additional nutritional items for the purpose of alleviating a specific symptom or that failure to obtain the supplement would result in imminent danger to his life.

#### **Panel Decision**

In order for an application for MNS to be approved under section 67 of the EAPWDR, all of the criteria listed in section 67(1.1) and the additional criteria listed in section 7 of Schedule C must be satisfied. The Ministry determined that the Appellant did not meet two criteria; subsection (c), that he requires the requested items to alleviate a symptom listed in subsection (b) and that he meets requirements of section 7 of Schedule C, and subsection (d), that failure to obtain the items will result in imminent danger to his health. (The summary at the conclusion of the Reconsideration is in error, the Ministry concluded earlier in the decision that the Appellant did meet the requirement stated in section 67(1.1)(b).)

The panel notes that the Appellant's medical practitioners did not, in the original application for MNS or subsequently, specifically address the Appellant's need for caloric supplementation, and did not describe how

these items would alleviate the symptoms listed of the symptoms listed in section 67(1.1)(b). The section of the application for MNS asking for a description of how the nutritional items required will alleviate one or more of the symptoms and provide caloric supplementation to the regular diet is left blank. In the letter dated September 14, 2016, a physician wrote that the Appellant requires a nutritional supplement to use between and in addition to his regular meals, not in replacement of them, and that he suffers from recurrent and frequent hypoglycemic episodes despite eating three meals a day; however the physician does not describe how the nutritional items will specifically alleviate one of the applicable symptoms. The subsequent information provided by the Appellant refers to the Hep C not letting him absorb enough from his meals affecting his glucose levels and hypoglycemia; however, a medical practitioner does not describe how the nutritional items would alleviate one of the symptoms described in in section 67(1.1) (b), which does not include hypoglycemia. The Panel therefore finds that the Ministry reasonably determined that the Appellant did not meet this criterion.

While the medical practitioner (MP) wrote in the MNS application that the nutritional items will “reduce hypoglycemic crisis causing hospital visits and worsening mental and physical status,” and the appellant wrote of his emergency hospital visits due to seizures, the panel finds that the ministry reasonably concluded that the MP did not specifically confirm that failure to obtain additional nutritional items *that a part of a caloric supplementation to a regular dietary intake* will result in imminent danger to the appellant’s life, as discussed in more detail above, regarding caloric supplementation. The panel finds that the ministry reasonably concluded that the MP has not confirmed that failure to obtain the requested additional nutritional items that are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the appellant’s life, as required by Section 67(1.1)(d) of the EAPWDR.

The Panel therefore confirms the Ministry decision. The Appellant is not successful on appeal.