

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated September 26, 2016 which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and additional nutritional items. The ministry held that the requirements of Section 67(1.1) and Section 7 of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as there is not sufficient information to establish that a medical practitioner or nurse practitioner has confirmed:

- the appellant requires vitamins and minerals to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life, pursuant to Section 67(1.1)(c) and (d); and,
- the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake, pursuant to Section 7 of Schedule C, to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life, under Section 67(1.1)(c) and (d).

## 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) Consultation Note dated December 29, 2014 which indicated the diagnosis of primary adrenal insufficiency known as Addison's Disease and hypercalcemia [high calcium] as a complication;
- 2) Letter dated May 4, 2016 in which an endocrinologist wrote that:
  - The appellant has Addison's Disease and hypothyroidism, and had pyelonephritis [kidney infection] in March and was on intravenous antibiotics for one day and then oral antibiotics.
  - She has a Medic Alert bracelet indicating she has adrenal insufficiency;
- 3) Application for Monthly Nutritional Supplement (MNS) dated June 12, 2016 signed by the appellant's medical practitioner (MP) and stating in part that:
  - the appellant's severe medical condition is Addison's Disease, described as "...poor immunity with hyponatremia [low sodium] and hyperkalemia [high potassium];"
  - as a direct result of the severe medical condition, the applicant is being treated for a chronic, progressive deterioration of health, being a loss of immunity;
  - in response to the question whether as a direct result of the chronic progressive deterioration in health, does the appellant display two or more of the symptoms listed in section 67(1.1)(b) of the EAPWDR, the MP indicated the symptoms of significant muscle mass loss, moderate to severe immune suppression, and significant deterioration of a vital organ (adrenal glands) were displayed;
  - the appellant's height and weight are recorded;
  - in response to a request to specify the vitamin or mineral supplements required and the expected duration of need, the MP wrote "yes lifelong;"
  - asked to describe how the item will alleviate the specific symptoms identified, the MP wrote "boost immunity;"
  - in response to the request to describe how the vitamins and minerals will prevent imminent danger to the appellant's life, the MP wrote "prevent infection;"
  - in response to a request to specify the additional nutritional items required, the MP wrote "electrolyte solutions;"
  - in response to the question 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 MP responded "Yes, loss of regulation of calcium and potassium;"
  - 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 MP noted "...regulate muscles mass and boost immunity;"
  - in response to a request to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the MP wrote "...prevent hyponatremia [low sodium] and hyperkalemia [high potassium];and,
- 4) Request for Reconsideration dated September 8, 2016.

In the appellant's Request for Reconsideration, the endocrinologist wrote that the appellant has Addison's Disease, which is a chronic condition requiring life-sustaining medication and symptom exacerbation in response to physical or other stress

### ***Additional information***

In her Notice of Appeal dated October 5, 2016, the appellant expresses her disagreement with the ministry's reconsideration decision and wrote that she knows her body and she is very sick. She thinks vitamins and proper water would help her a lot. She was told by a doctor that she needs to be on a few different vitamins, but she cannot afford them. This scares her as she wants to be as healthy as possible for her children.

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

- 1) Prescription note dated November 7, 2016 in which the MP wrote that the appellant is "...on powerful steroids for Addison's Disease and is immune-compromised and requires Vitamin B and C on a daily basis;"
- 2) Letter dated November 8, 2016 in which the appellant wrote that she is in need of some vitamins that she cannot afford and she needs the monthly supplement. She has a compromised immune system and she is able to catch colds easily. She enclosed a manual that explains Addison's Disease and what she is going through; and,
- 3) Undated article entitled "Causes and Related Autoimmune Diseases."

Prior to the hearing, the ministry provided a letter dated November 15, 2016 in which the ministry wrote that the reconsideration decision is being relied on as its submission on the appeal with respect to the appellant's request for nutritional items. Regarding the appellant's requires for vitamins and minerals, the ministry wrote that if the prescription note dated November 7, 2016 from the MP had been available to the ministry at reconsideration, the ministry may have found that the appellant met the criteria for the MNS for vitamin and mineral supplementation.

### ***Admissibility of Additional Information***

The panel admitted the information in the Prescription note dated November 7, 2016 and the appellant's letter 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 considered the undated article as part of the appellant's argument and not evidence, and the ministry's submission as part of the ministry's argument.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry decision, which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and 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 which are at issue on this appeal for providing the additional 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 provides 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 MP confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically Addison's Disease, pursuant to Section 67(1.1)(a) of the EAPWDR. The ministry also acknowledged that the appellant displays two or more of the listed symptoms, namely muscle mass loss, moderate to severe immune suppression and significant deterioration of a vital organ ("adrenal glands").

### ***Vitamins and Minerals***

The ministry's position at reconsideration was that sufficient information has not been provided from the MP to establish that the appellant requires specific vitamins and minerals to alleviate the symptoms of her chronic, progressive deterioration of health and that obtaining these items will prevent imminent danger to life, as required by Section 67 (1.1)(c) and (d) of the EAPWDR. The ministry argued that the MP does not specify that the appellant requires any vitamin or mineral supplements as the MP wrote simply "yes lifelong" in the section of the MNS application that asks for the required vitamin or mineral supplements and the expected duration of need to be specified. The ministry argued that since the MP has not provided information regarding the type of vitamin/mineral supplements the appellant requires, the ministry was not satisfied that the information demonstrates that vitamin/mineral supplements are required to alleviate the symptoms of the chronic, progressive deterioration of healthy and to prevent imminent danger to life.

The appellant's position is that sufficient information has been provided to establish that vitamins and mineral supplements are required to alleviate one of her symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to her life. The appellant argued that she is in need of some vitamins that she cannot afford and she has a compromised immune system and she is able to catch colds easily.

### ***Panel decision***

Section 67(1.1)(c) of the EAPWDR requires that the MP confirm that, for the purpose of alleviating one of the symptoms referred to in sub-section (b), the appellant requires the vitamins and minerals as set out in Section 7 of Schedule C. In the Application for MNS dated June 6, 2016, the MP wrote in response to a request to specify the vitamin or mineral supplements required and the expected duration of need: "...yes lifelong" and, when asked to describe how the item will alleviate the specific symptoms identified and prevent imminent danger to the appellant's life, the MP wrote "boost immunity" and "prevent infection," respectively. In her Notice of Appeal, the appellant wrote that she knows her body, she is very sick, and she thinks vitamins would help her a lot. In her letter dated November 8, 2016, the appellant wrote that she is in need of some vitamins as she has a compromised immune system and she is able to catch colds easily. In the Prescription note dated November 7, 2016, the MP confirmed that the appellant is "...on powerful steroids for Addison's Disease and is immune-compromised and requires Vitamin B and C on a daily basis." In addition, the appellant's endocrinologist wrote, in the letter dated May 4, 2016, that the appellant had pyelonephritis [kidney infection] in March and was on intravenous antibiotics for one day and then oral antibiotics and that the appellant has a Medic Alert bracelet indicating she has adrenal insufficiency.

In the letter dated November 15, 2016, the ministry wrote that if the prescription note dated November 7, 2016 from the MP had been available to the ministry at reconsideration, the ministry may have found that the appellant met the criteria for the MNS for vitamin and mineral supplementation. With the additional information from the MP and from the ministry, the panel finds that the ministry's conclusion at reconsideration that there is not sufficient information from a MP to

[ ]

establish that the appellant requires specified vitamins and minerals for the purpose of alleviating an identified symptom, namely moderate to severe immune suppression, and that failure to obtain the vitamins and minerals will result in imminent danger to the appellant's life, pursuant to Section 67(1.1)(c) and (d) of the EAPWDR, was not reasonable.

***Additional Nutritional Items***

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 the symptoms of a chronic, progressive deterioration of health and to prevent an imminent danger to the appellant's life. The ministry argued that the MP wrote "electrolyte solutions" and did not provide any other information regarding the specific nutritional items required or the expected duration of need. The ministry further argued that the MP wrote in the Request for Reconsideration that the appellant has Addison's Disease, which is a chronic condition "...requiring life-sustaining medication" and made a recommendation for medication rather than caloric supplementation to the appellant's dietary intake. The ministry argued that the MP indicated in the MNS application that the appellant has "loss of regulation of calcium and potassium" and this does not establish that the appellant has a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The ministry argued that as there is insufficient evidence that the appellant requires nutritional items to prevent imminent danger to the appellant's life.

The appellant's position is that sufficient information has been provided by the MP to establish that the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of a chronic, progressive deterioration of health and to prevent an imminent danger to her life.

***Panel decision***

Section 67(1.1)(c) of the EAPWDR and Section 7 of Schedule C require that the MP confirm that for the purpose of alleviating a symptom referred to, the appellant requires the additional nutritional items that are specified in the request as part of a caloric supplementation to a regular dietary intake. In response to a request to specify the additional nutritional items required, the MP wrote "...electrolyte solutions." In the appellant's Request for Reconsideration, the endocrinologist wrote that the appellant has Addison's Disease, which is a chronic condition requiring life-sustaining medication, and she has symptom exacerbation in response to physical or other stress, with no further information provided regarding nutritional items needed. 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 MP noted "...regulate muscles mass and boost immunity." The panel finds that, in the absence of information to show that electrolyte solutions are nutritional items that are part of a caloric supplementation to a regular dietary intake, the ministry reasonably determined that the recommendation by the MP is for an item that is part of a medication regime rather than for nutritional items. The panel finds that the ministry reasonably concluded that there is not sufficient information from the MP to confirm that the appellant requires specified additional nutritional items 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.

Section 67(1.1)(d) requires that the MP 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 MNS application, the MP responded to the question how the nutritional items will prevent imminent danger to the appellant's life, by noting the nutritional items will "...prevent hyponatremia

[low sodium] and hyperkalemia [high potassium]. In her Notice of Appeal, the appellant wrote that she knows her body, she is very sick, and she thinks vitamins and “proper water” would help her a lot. Although the appellant provided an article entitled “Causes and Related Autoimmune Diseases,” this consisted of general information, which included a description of Addison’s Disease and the potential symptoms, related autoimmune conditions, medications and common concerns, and while helpful to an overall understanding of the appellant’s diagnosed condition, the article did not include information specific to the appellant’s need for nutritional items as part of a caloric supplementation to her regular diet. As discussed above, as the ministry reasonably determined that there was insufficient information to show that electrolyte solutions are nutritional items that are part of a caloric supplementation to a regular dietary intake, the panel finds that the ministry also reasonably concluded that the MP has not confirmed that failure to obtain nutritional items, that are specifically part of a caloric supplementation to a regular dietary intake, will result in imminent danger to the appellant's life, as required by the legislation.

*Conclusion*

The panel finds that, in consideration of the new information provided by the appellant and by the ministry, the ministry's reconsideration decision, which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals because all of the requirements of Section 67(1.1) of the EAPWDR were not met, was not reasonably supported by the evidence. The panel rescinds this part of the ministry decision and the appellant’s appeal is successful in part.

The panel also 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. The panel confirms this part of the ministry's decision.