

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated November 23, 2016 which denied the appellant's request for a Monthly Nutritional Supplement for vitamin/mineral supplements and additional nutritional items. The ministry found that the requirements of Section 67(1.1) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as there is insufficient information to establish that:

- the appellant is being treated by a practitioner for a chronic, progressive deterioration of health on account of a severe medical condition pursuant to section 67 (1.1) (a);
- as a direct result of the chronic, progressive deterioration of health, the appellant displays two or more of the listed symptoms pursuant to section 67 (1.1)(b);
- the appellant requires the requested items to alleviate the symptoms [as listed in section 67 (1.1) ( b)] of a chronic, progressive deterioration of health pursuant to section 67 (1.1) (c); and
- failure to obtain the requested items will result in imminent danger to the appellant's life pursuant to section 67(1.1) (d).

## PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67(1.1).

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

1) Application for Monthly Nutritional Supplement (MNS) dated August 4, 2016 signed by the appellant's physician and stating in part that:

- the appellant's severe medical condition is tinnitus;
- as a direct result of her medical condition she is being treated for her chronic, progressive deterioration of health by receiving vitamins/minerals via IV (intravenous) to stabilize health and reduce symptoms. No additional comments or reports were provided;
- in response to the question whether as a direct result of the chronic progressive deterioration in health, does the appellant display two or more symptoms, the physician indicated malnutrition (with the comment "stress affecting poor absorption of nutrients associated with worsening of symptoms of tinnitus") and moderate to severe immune suppression (with the comment "history of infections due to stress fro, tinnitus suppressing immune function"). No additional comments or reports were provided;
- the appellant's height and weight were recorded;
- in response to a request to specify the vitamin or mineral supplements required the physician indicated multivitamins/minerals, calcium, magnesium, chromium, vitamin C and D, neuro replete, digestive enzyme and B complex;
- in response to the question how will these items alleviate the specific symptoms identified the physician stated "these vitamins/minerals will provide basic nutrients for daily function and will help with the brain and nervous system to function properly while also minimizing effects of stress on her body and immune function"
- in response to the question how will these items prevent imminent danger to the appellant's life the physician stated "...will keep her stable physically and mentally, and give her the proper nutrients to recover and stabilize";
- in response to the question specify the nutritional items required and expected duration of need, the physician indicated fish oils (ongoing), Chinese formulas, and HMF probiotic;
- the physician also stated that "stress suppresses digestive function and has affected absorption of the nutrients which has led to worsening of the tinnitus symptoms and [illegible] immune function";
- in response to the question how will these items alleviate the specific symptoms identified and provide caloric supplements to the regular diet, the physician stated " fish oils will provide the necessary oils/fats for calories and the probiotics will support digestive [and] immune function";
- in response to the question how will these nutritional items prevent imminent danger to the appellant's life, the physician stated " they will improve immune function, reducing likelihood of infection [and] improve stress response and reduce symptoms of tinnitus".

2) Request for reconsideration (RFR), signed and undated, in which the appellant describes her medical condition, impacts to employment, impacts to physical and mental functioning (such as not eating for days, depression, panic attacks and dizziness), and a need for supplements.

### **Evidence at Appeal**

Notice of Appeal (NOA), signed and dated November 29, 2016, in which the appellant states she has a permanent functional disability and her supplements keep her alive by aiding with stress, anxiety, sleeplessness, depression.

## Evidence at the Hearing

At the hearing the appellant stated:

- in 2009 while at work she was exposed to loud noise which caused ear damage;
- WorkSafe BC ruled her ear damage as a permanent functional disability and provided her with compensation;
- the first 6 months after the ear damage was the worst as the pain of the constant (24/7) ringing was bad;
- she cannot hear others and stopped sleeping and eating as a result of the tinnitus;
- she sought out all possible medical resources only to discover that there is no cure;
- she turned to a naturopath who discovered that the symptoms can be better managed with yoga, meditation and supplements;
- for the past month she has not had access to her supplements and has noticed that she is not sleeping, feels on edge and hopelessness and is having catastrophic thoughts;
- her weight fluctuates, when she cannot swallow she loses weight but when the ability to swallow returns she will gain weight back;
- lack of treatment does not make the condition worse as for example cancer would without treatment but supplement treatment manages the tinnitus. She continues to experience both good and bad days;
- she feels that she has lost muscle mass, experiences muscle wasting, gets depressed and has immune suppression;
- she has independently discovered that protein powder keeps her going as she cannot digest meat; and
- her doctor has not specifically recommended protein powder or indicate it as a supplement that is required on her MNS application but the doctor is aware that she takes it.

At the hearing the ministry relied on its original decision and did not answer the panel's questions regarding the reconsideration decision.

## 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 a vitamin/mineral supplement 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 67 (1.1)(a)**

Section 67(1.1)(a) states that an individual must presently be treated for a chronic progressive deterioration of health due to a severe medical condition. According to the appellant, her medical condition is due to an ear injury and her medical condition is not progressively deteriorating but she does experience both good and bad days. The ministry argues that the physician has identified that the appellant suffers from a severe medical condition but has not provided sufficient evidence to demonstrate that the medical condition is a chronic progressive deterioration of health. It also argues that the tinnitus is a symptom of a primary medical condition and no evidence has been provided to demonstrate that it has the capacity to be chronic and progressive. The panel notes that when completing the application, the physician indicated that the appellant's moods, appetite, and overall health is affecting by her medical condition and that this is worse by stress. It is also indicated that the appellant receives vitamins/minerals via IV to stabilize health and reduce symptoms.

However, the physician did not explain or provide information to explain the nature of the chronic progressive deterioration of the appellant's health. The panel finds that the ministry reasonably concluded that the evidence does not support a finding of chronic progressive deterioration of health pursuant to section 67 (1.1)(a) of the EAPWDR.

**Section 67(1.1)(b)**

Section 67 (1.1) (b) of the EAPWDR states that as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the listed symptoms. The evidence provided by appellant's physician establishes that the appellant displays the symptoms of malnutrition and moderate to severe immune suppression. To this the appellant added significant muscle mass loss. The ministry argued that it has not been established that the appellant has a chronic progressive deterioration of health and therefore it cannot be established that she suffers symptoms as result of her chronic progressive deteriorating health. The panel notes that the legislation clearly sets out that a chronic progressive deterioration to health is a precondition to meeting the criteria set out in section 67 (1.1)(b) of the EAPWDR. The panel further notes that the physician indicates that both malnutrition and moderate to severe immune suppression are due to stress. In the application stress is not indicated as the medical condition for which the appellant is being treated rather it is tinnitus. As a result the panel finds that the ministry reasonably determined that the evidence does not demonstrate that the appellant meets the criteria as set out in section 67 (1.1)(b) of the EAPWDR.

**Section 67 (1.1) (c)**

Section 67 (1.1) (c) of the EAPWDR states that for the purpose of alleviating a symptom referred to in section 67 (1.1) (b) of the EAPWDR, the appellant requires one or more of the items set out in section 7 of Schedule C. The ministry argues that the evidence provided by the physician does not establish that the appellant requires a vitamin/mineral supplement and/or nutritional items to alleviate the symptoms identified in section 67 (1.1) (b) of the EAPWDR. The panel notes that it has not been established that the appellant suffers from a chronic progressive deterioration of health and that the appellant displays the listed symptoms as a result of a chronic progressive deterioration of health. Therefore it cannot be established that the appellant requires vitamins/mineral supplements and/or nutritional items to alleviate the symptoms listed under section 67 (1.1) (b). As a result the panel finds that the ministry reasonably determined that the evidence does not demonstrate that the appellant meets the criteria as set out in section 67 (1.1)(c) of the EAPWDR.

**Section 67 (1.1) (d)**

Section 67 (1.1) (d) requires that a failure to obtain the nutritional items will result in imminent danger to the appellant's life. The ministry argues that the physician has not established that the appellant's tinnitus puts her in imminent danger and that a failure to obtain the nutritional items requested will result in imminent danger to the appellant's life. The appellant stated that she requires a vitamins/minerals supplement and nutritional items to stabilize her condition and that she will not die immediately without them. In fact she stated that she has not had access to these items for the past month. As a result, the panel finds the ministry reasonably determined that the evidence does not confirm that failure to obtain the nutritional items requested would result in imminent danger to the appellant's life pursuant to section 67(1.1) (d) of the EAPWDR.



**Conclusion**

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a Monthly Nutritional Supplement for additional nutritional items because the requirements of Section 67(1.1) of the EAPWDR were not met, was reasonably supported by the evidence and the panel confirms the ministry's decision. The appellant was not successful in her appeal.