

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated December 1, 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

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

- 1) Letter dated February 5, 2014 in which a gastroenterologist wrote that he suspected by her symptoms that the appellant has microscopic colitis;
- 2) Surgical Report dated March 3, 2014 with diagnoses including collagenous colitis;
- 3) Letter dated April 11, 2016 in which the gastroenterologist wrote that the appellant has increasing symptoms due to stress as she has recently been diagnosed with breast cancer;
- 4) Letter dated July 13, 2016 regarding the appellant's diagnosis of breast cancer;
- 5) Application for Monthly Nutritional Supplement (MNS) dated August 29, 2016 in which the appellant's medical practitioner (MP) reported:
 - the appellant's severe medical conditions are colitis, described as "ongoing, needs modified diet," breast cancer with "body mass loss" and diabetes- "ongoing;"
 - 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 malnutrition "intermittently", significant muscle mass loss (note: "re: breast cancer"), and significant deterioration of a vital organ (note: "new breast cancer, colitis") 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 "vitamin D/calcium, high protein;"
 - asked to describe how the item will alleviate the specific symptoms identified, the MP wrote "see enclosed conditions;"
 - in response to the request to describe how the vitamins and minerals will prevent imminent danger to the appellant's life, the MP wrote "for the purposes of general nutrition;"
 - in response to a request to specify the additional nutritional items required, the MP left this section blank;
 - 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, collagenous colitis;"
 - 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 "needs supplementation, high protein, diabetic diet;"
 - in response to a request to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the MP wrote "as per medical conditions;"
 - for additional comments, the MP wrote "see enclosed data for substantiated indications;" and,
- 6) Application for MNS dated November 13, 2016, in which the appellant's MP reported:
 - the appellant's severe medical conditions are colitis, which "restricts types of foods," diabetes and "needs diabetic diet", breast cancer and "needs protein supplement" and reflux, which "restricts types of foods."
 - 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 symptom of significant muscle mass loss "re: cancer treatment and colitis;"
 - 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 "calcium/ vitamin D/ would benefit from general supplement;"

- asked to describe how the item will alleviate the specific symptoms identified, the MP wrote "enhance bone strength;"
- in response to the request to describe how the vitamins and minerals will prevent imminent danger to the appellant's life, the MP wrote "requires supplements to restore and maintain health;"
- in response to a request to specify the additional nutritional items required, the MP wrote "needs protein supplement re cancer diagnosis;"
- 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, collagenous colitis, which can cause malabsorption;"
- 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 "needs supplement for vitamins and nutrition/ caloric;"
- in response to a request to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the MP wrote "needs protein restoration;"
- for additional comments, the MP wrote "patient has complicated medical problems with many intercurrent diagnoses; needs overall dietary supplementations."

7) Request for Reconsideration dated September 8, 2016.

In her Request for Reconsideration dated November 7, 2016, the appellant wrote that she meets the requirements.

Additional information

At the hearing, the appellant stated that:

- She had her left breast removed and now she is taking chemotherapy medications. She has been rapidly losing weight since she feels nauseous and can hardly eat anything. She has to take the chemotherapy treatment for 5 years.
- When the doctor filled out the forms, there was no explanation given for why she was losing weight.
- She had the surgery in May 2016 and she has lost 42 lbs. since then, or in about 6 months.
- She has to have the other breast removed too, as a precaution.
- She was taking Ensure as a nutritional supplement. The Ensure helps her because she throws up regular food.
- She has been using a walker and has had muscle mass loss in her legs.
- Her weight loss is related to her malnutrition too.
- The colitis causes diarrhea all the time. She takes a couple of medications for this condition, which she will have to take for the rest of her life.
- She gets flare-up with her colitis quite often and she meets with a specialist doctor about her condition.
- She gets flare-ups of her colitis every 4 to 6 weeks that will last for 3 or 4 days and the constant diarrhea starts to dehydrate her.
- She is fortunate that the hearing is on one of her "good days."



Admissibility of Additional Information

The ministry did not object to the admissibility of the appellant's oral testimony and encouraged the panel to consider this new information. The panel admitted the appellant's oral testimony as clarifying information relating to the impacts from 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 *Employment and Assistance Act*.

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 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 colitis, breast cancer, diabetes, and reflux, pursuant to Section 67(1.1)(a) of the EAPWDR.

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 wrote in the reconsideration decision that the MP did not confirm that the appellant displays two or more of the listed symptoms. The ministry wrote that since it has not been established that the appellant is displaying a listed symptom, as well as the statements made by the MP being general in nature, the ministry was not satisfied that the information demonstrates that vitamin/mineral supplements are required to alleviate a symptom of the chronic, progressive deterioration of health and to prevent imminent danger to the appellant's 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.

Panel decision

Section 67(1.1)(b) of the EAPWDR requires that the MP confirm that, as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the listed symptoms. In the Application for MNS dated August 29, 2016, in response to the question whether, as a direct result of the chronic progressive deterioration in health, the appellant displays two or more of the symptoms listed in section 67(1.1)(b) of the EAPWDR, the MP indicated the symptoms of malnutrition "intermittently," significant muscle mass loss (note: "re: breast cancer"), and significant deterioration of a vital organ (note: "new breast cancer, colitis"). Although the ministry did not accept the confirmation of the symptom of malnutrition as a result of the use by the MP of the word "intermittently," the panel notes that the requirement in the legislation is for the symptom to be "displayed" and that there is no requirement that the symptom be "continuous, or steady in nature."

The appellant stated at the hearing that she had her left breast removed in May 2016 and has lost muscle mass loss in her legs because she is taking a chemotherapy treatment for her breast cancer that makes her nauseous, she has been using a walker, and she has lost 42 lbs. in a 6- month period. The panel finds that this information is supporting evidence of the MP's confirmation of the symptom of significant muscle mass loss. In the MNS Application dated November 13, 2016, in response to the same question the MP identified the symptom of significant muscle mass loss and wrote: "re: cancer treatment and colitis." For the symptom of significant deterioration of a vital organ, the MP wrote "new breast cancer, colitis" and as the condition of colitis involves disease of the colon, which is an essential organ of the human body, the panel finds that this is supporting evidence of the MO's confirmation of the symptom of significant deterioration of a vital organ. Therefore, the panel finds that the ministry was not reasonable to conclude that the MP has not confirmed that the appellant displays two or more of the symptoms listed in section 67(1.1)(b) of the EAPWDR that are as a direct result of the chronic progressive deterioration of health.

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 August 29, 2016 the MP wrote in response to a request to specify the vitamin or mineral supplements required: “vitamin D/calcium, high protein” and asked to describe how the item will alleviate the specific symptoms identified, simply wrote: “see enclosed conditions.” In the Application for MNS dated November 13, 2016, the MP specified “calcium/ vitamin D/ would benefit from general supplement” and stated that these vitamins and mineral supplements would “enhance bone strength.” The panel finds that the ministry reasonably determined that these comments by the MP do not sufficiently explain or describe how the vitamins and minerals specified would alleviate the identified symptoms of malnutrition, significant muscle mass loss, or significant deterioration of a vital organ.

In response to the request to describe how the vitamins and minerals will prevent imminent danger to the appellant’s life, the MP wrote “for the purposes of general nutrition” in the August 29, 2016 Application and “requires supplements to restore and maintain health” in the November 13, 2016 Application. Given that there are no words of urgency used by the MP to denote ‘imminent danger’, the panel finds that the ministry reasonably concluded that there is not sufficient information from a MP to establish 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.

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 wrote that the MP did not provide any information regarding the specific nutritional items required in the August 29, 2016 Application and wrote in the November 13, 2016 Application that the appellant “needs protein supplement re cancer diagnosis,” and high protein and diabetic diets do not meet the intent of the MNS. The ministry wrote that as it has not been established that the appellant is displaying a listed symptom, it cannot be established that the appellant requires nutritional items to alleviate a symptom. The ministry wrote that the statements by the MP in the MNS Applications “needs supplementation, high protein, diabetic diet” and “needs supplement for vitamins and nutrition/ caloric” do not establish how nutritional items would alleviate a specific symptom. The ministry wrote that the statements by the MP “as per medical conditions” and “needs protein restoration” are insufficient evidence to establish 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 she 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 “needs protein supplement re cancer diagnosis.” The appellant stated at the hearing that she has used Ensure as a nutritional supplement in the past and that taking Ensure helps her because she throws up regular food. 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 in the MNS

Applications: “needs supplementation, high protein, diabetic diet” and “needs supplement for vitamins and nutrition/ caloric.” 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, collagenous colitis, which can cause malabsorption.” As previously discussed, the panel finds that the ministry’s conclusion that the MP has not confirmed that the appellant displays two or more of the listed symptoms was not reasonable. Given the specific symptoms of malnutrition, significant muscle mass loss and significant deterioration of a vital organ were identified by the MP, the panel also finds that the ministry unreasonably concluded that the statements by the MP that the appellant “needs supplementation” and “needs supplement for vitamins and nutrition/caloric” are not sufficient confirmation by the MP that the nutritional items would alleviate one of the specified symptoms. The panel finds that the ministry was not reasonable to conclude that there is insufficient 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. The MP confirmed in the applications that the severe medical conditions for which the appellant is being treated are colitis, breast cancer, diabetes, and reflux. At the hearing, the appellant provided further clarification regarding the symptoms of these conditions and the treatment. Regarding her breast cancer, the appellant stated she had her left breast removed in May 2016 and she is taking chemotherapy medications and must do so for 5 years. She has been rapidly losing weight, having lost 42 lbs. in about 6 months, since she feels nauseous and can hardly eat anything. Ensure helps her because she throws up regular food. She has been told that she has to have the other breast removed too, as a precaution. Regarding the colitis, the appellant gets flare-ups every 4 to 6 weeks that will last for 3 or 4 days and the constant diarrhea starts to dehydrate her. The MP responded to the question how the nutritional items will prevent imminent danger to the appellant's life, by noting in the August 29, 2016 Application “as per medical conditions” and, for additional comments, “see enclosed data for substantiated indications.” In the November 13, 2016 Application the MP wrote “needs protein restoration” and, for additional comments, that the appellant “...has complicated medical problems with many intercurrent diagnoses; needs overall dietary supplementations.” In consideration of the information provided by the appellant at the hearing, and considering the entirety of the information provided by the MP, the panel finds that the ministry’s conclusion that the MP has not confirmed that failure to obtain nutritional items that are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the appellant's life is not reasonable.

Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a MNS for vitamins and minerals 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.

The panel finds that, in consideration of the new information provided by the appellant at the hearing, the ministry's reconsideration decision, which denied the appellant's request for a MNS for additional nutritional items 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 refers it back to the ministry for a decision as to the amount. The appellant’s appeal is successful in part.