



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated December 28, 2016, which denied the appellant’s request for a Monthly Nutritional Supplement (MNS) of nutritional items on the basis that the appellant did not meet the criteria set out in section 67(1.1)(c) and (d) and Schedule C, section 7(a) of the Employment and Assistance for Persons With Disabilities Regulation (“EAPWDR”).

In particular, the ministry found that the information provided did not demonstrate that the appellant’s medical practitioner had described how the specified items would alleviate a specific symptom set out in EAPWDR section 67(1.1)(b), as is required by EAPWDR section 67(1.1)(c), or that the failure to obtain the specified items would result in imminent danger to the appellant’s life as required by EAPWDR section 67(1.1)(d). In addition, the ministry determined that there was insufficient evidence to establish that the requested MNS were required as part of a caloric supplementation to a regular dietary intake as required by EAPWDR Schedule C section 7(a).

### PART D – Relevant Legislation

EAPWDR, section 67 and Schedule C section 7

## PART E – Summary of Facts

The information before the ministry at time of reconsideration included the following:

- Letter dated October 25, 2016 from Health Assistance Branch (HAB) to the appellant informing him that the request for MNS had been denied.
- MNS Decision Summary from HAB dated October 25, 2016 confirming that: the appellant is a person with disabilities; is not currently receiving a short term MNS; the nutritional items requested are prescribed by a medical practitioner; the medical practitioner has described a severe medical condition; the appellant is being treated for a chronic progressive deterioration of health; the appellant is displaying two or more symptoms as a direct result of a chronic, progressive, deterioration of health; the Vitamins/Minerals section was marked as not requested; the Nutritional Items Section was marked as no items requested and no imminent danger to applicant's life.
- Application for MNS dated July 13, 2016 and completed by a medical practitioner confirmed a diagnosis of diabetes and notes severe hyperglycemia with 25 lbs weight loss over 6 months and poverty resulting in sporadic and poor quality food choices. The medical practitioner also notes significant muscle loss. The vitamin or mineral supplementation section was not completed. The Nutritional items section included comments: "balanced diabetic diet all days per month (indefinitely)"; "severe hyperglycemic 2 DM"; "improved control through consistent balanced caloric intake".
- Fax cover sheet from Advocacy group dated November 28, 2016 requesting a reconsideration extension with reason given "waiting for additional information"

The appellant wrote on his Notice of Appeal on January 6, 2017: "On a very limited income. I need to purchase the largest, cheapest food. These are rarely "healthy" nutrition, being a diabetic. This poor food directly affects high blood sugar and has put me in ICU and nearly died 2 times".

At the hearing, the appellant mentioned that the physician had a difficult time answering the question about how the nutritional items requested will prevent imminent danger to his life. They had discussed that the term, imminent danger, to them meant that it is immediate, and with diabetes it's slow, over time. At the time of completing the MNS form, the doctor said he just could not fill out that section. The appellant noted that he went into a coma on December 26, 2016 and his family was told he would most likely die. He came out of his coma on January 3, 2017. The appellant is in receipt of the diabetic diet allowance of \$35 per month and he notes that this helps but is not very much to carry on a balanced diet. He stated that with his budget he has only \$80 per month for food, which means he ends up buying foods that are high in sugars and fats, which then affects his blood sugar count.

At the hearing, the ministry relied on the reconsideration decision and emphasized that there was not enough information from the physician about the specific nutritional requirements needed to provide caloric supplementation to the appellant's regular diet. The ministry gave evidence that they tried to contact the appellant's advocate about getting additional information but did not receive any additional information. The ministry gave an example of how the physician needed to be more specific about the amount of calories the appellant should be having and what specific supplements, other than regular food, are needed. She also pointed out that the question that asks the physician how the nutritional items are required to avoid imminent danger to his life, was not completed.



**Admissibility of New Information:**

The panel found that the information provided by the appellant on his Notice of Appeal regarding his need for healthy nutrition, and his oral testimony emphasizing his need for a healthy, balanced diabetic diet was in support of the information before the ministry at the time of reconsideration. Accordingly, the panel did admit this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with s. 22(4) of the Employment and Assistance Act (EAA). The appellant's written and oral information regarding how he had been in a coma, and that he had nearly died twice, was not before the ministry at the time of the reconsideration decision and is not in support of information before the ministry at the time of reconsideration so the panel finds this is not admissible as evidence, in accordance with s. 22(4) of the EAA.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant funding for the MNS of nutritional items on the basis that the appellant did not meet the criteria set out in section 67(1.1) (c) and (d) and Schedule C, section 7(a) of the EAPWDR was reasonable. In particular, was the reconsideration decision, in which the ministry determined that the information provided did not demonstrate that the appellant's medical practitioner had described how the specified items would alleviate a specific symptom set out in EAPWDR section 67(1.1)(b), that the failure to obtain the specified items would result in imminent danger to the appellant's life and that there was insufficient evidence to establish that the requested MNS were required as part of a caloric supplementation to a regular dietary intake, reasonable.

The relevant legislation is as follows:

### **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

.....

(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.

### **EAPWDR Schedule C, Health Supplement - MNS**

**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.

### **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 his symptoms as is required by EAPWDR section 67(1.1)(c) and was not satisfied that failure to provide the nutritional supplement would result in imminent danger to his life as is required by EAPWDR section 67(1.1)(d). The panel will focus its decision on EAWPDR section 67(1.1)(c) and (d).

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

This section requires a finding that a physician has confirmed that the nutritional supplement sought is caloric supplementation to a regular dietary intake and is for the purpose of alleviation of the appellant's symptoms, which are, in his situation, significant weight loss and significant muscle mass loss.

### **Appellant's Position**

The appellant's position is that he is a severe diabetic and does not have enough funds to purchase the healthy food that he requires. The appellant also stated that he has an inability to absorb sufficient calories. The appellant believes that there are different interpretations of what imminent danger means and that there should be a checkbox that just says there is a medical need.

### **Ministry's Position**

The ministry's position is that there was insufficient information provided by the physician to determine that the nutritional items requested would alleviate his weight or muscle loss or that the nutritional items would be part of a caloric supplementation to his regular diet.

### **Panel Finding**

The appellant's evidence, and emphasis throughout the hearing, was that he required healthy nutrition, which he could not afford on his budget, and he did not reference anything about caloric supplementation. The physician confirmed that the appellant had significant weight loss and muscle loss, however only commented that a balanced, diabetic diet is required. The panel finds that there is no evidence to confirm that he requires caloric supplementation to his regular diet to alleviate his symptoms of weight loss and muscle loss.

The panel therefore finds that the ministry's determination at reconsideration that the appellant was not entitled to MNS required as part of a caloric supplementation to a regular dietary intake as required by Schedule C, section 7(a) for the purpose of alleviation of symptoms of significant weight loss and significant muscle loss referred to in EAPWDR section 67(1.1)(b) 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 a physician has confirmed that failing to provide the nutritional supplement sought will result in imminent danger to the appellant’s life.

#### **Appellant’s Position**

The appellant explained how the physician was not able to complete the imminent danger to his health question because the physician’s interpretation of the word imminent was to mean immediate and the physician couldn’t honestly say that the appellant’s life was immediately in danger.

#### **Ministry’s Position**

The ministry’s position is that there is no evidence that a medical practitioner confirmed that there is imminent danger to the appellant’s life. The section pertaining to imminent danger on the MNS form was not completed by the physician, nor was any additional information submitted.

#### **Panel Finding**

The section on the MNS form, requiring completion by a physician, was not completed in the appellant’s situation, nor was any additional information provided by a physician, therefore the panel finds that there was no evidence that a medical practitioner confirmed that there was imminent danger to the appellant’s life should the nutritional supplement not be provided.

#### **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 his appeal.