

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry)'s reconsideration decision dated February 15, 2017, finding the appellant is not eligible to receive a monthly nutritional supplement (MNS) because she does not meet the legislated criteria in section 67(1.1) or section 7 of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

Specifically, the ministry found that a medical practitioner has not confirmed the following:

- The appellant is being treated for a chronic, progressive deterioration of health (section 67(1.1)(a));
- The appellant displays two or more symptoms as a direct result of a chronic, progressive deterioration of health (section 67(1.1)(b));
- The appellant requires nutritional items under paragraph (c) of section 67(1.1) to alleviate a symptom specified in paragraph (b); and
- Failure to obtain the nutritional items will result in imminent danger to the appellant's life (section 67(1.1)(d)).

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 67 and Schedule 3, section 7.

## PART E – Summary of Facts

The appellant is a person with disabilities in receipt of disability assistance.

The evidence before the ministry at the time of reconsideration consisted of the following:

1. An Application for MNS completed by a medical practitioner (MP) and signed on December 1, 2016, including the following information:
  - a. Diagnoses of “major depressive disorder – severe” and “chronic pain syndrome – severe.”
  - b. When asked if the appellant is being treated for a chronic progressive deterioration of health, the MP writes, “Yes, treated with anti-depressant medication/counseling/physical rehabilitation.”
  - c. The MP indicates symptoms of “significant weight loss” with the note “loss of appetite”; “significant muscle mass loss” with the note “pain causes inability to exercise”; and “moderate to severe immune suppression” with the note “frequent infections.”
  - d. The appellant’s height (5’7”) and weight (125 lbs).
  - e. A request for vitamin or mineral supplement, specifically “multi-vitamins – at least 12-24 months,” stating that this will alleviate the specific symptoms identified through “patient will have more energy & decrease infections,” and that the multivitamins will prevent imminent danger to the applicant’s life by reducing infections and damage from malnutrition.
  - f. No specific request for nutritional items is made (left blank). The MP answered “no” to the question of whether the appellant has an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. Despite not identifying any nutritional items requested, the MP said the items would alleviate symptoms through increased weight gain, therefore “fewer infections and more energy” and would prevent imminent danger to the appellant’s life by decreasing the rate of infections.
2. The ministry’s Nutritional Supplementary Decision Summary dated January 16, 2017 in which the ministry found the appellant had met the criteria in section 67(1.1)(a) (being treated for a chronic, progressive deterioration of health); but had not met the criteria in section 67(1.1) (b), (c), or (d).
3. The appellant’s Request for Reconsideration form attaching a letter/form, which the appellant had prepared for the MP, and which the MP completed and signed on February 1, 2017 (the “February MP Letter”). In the February MP letter, the MP provides more information about the symptom “significant weight loss,” specifically “Due to loss of appetite & inability to exercise 2<sup>nd</sup> to pain in neck & back there has been a reduction in weight from 150 lbs in 2013 to 120 lbs in 2017.” The MP also provides more information about the symptom “significant muscle mass loss” specifically, “Due to inability to exercise I have noticed visible muscle wasting in your arms & legs. There is photographic evidence of your appearance in 2013 which demonstrates a significant reduction in muscle mass.” The MP also recommended that the appellant “use calorie supplements—such as nutritional supplements (boost/ensure) above your normal diet to improve your weight & muscle mass. You need more calories to improve absorption of nutrients.”

In her notice of appeal the appellant states, “The decision was incorrect because my symptoms are a

direct result of a chronic, progressive deterioration of health.”

In her written submissions, dated February 28, 2017, the appellant states the ministry’s reversal, upon reconsideration, of its original decision that she was being treated for a chronic, progressive deterioration of health “is extremely unfair.” She argues reconsideration is not an opportunity for the ministry to “raise the bar” and that “this violates the spirit of the Interpretation Act.” With respect to her request for Vitamin/Mineral Supplementation, the appellant notes that her MP spoke to this matter in the original application—that she requires “a multi-vitamin supplement so that I have more energy and decreased infections.” She also points out, that there is “no reference in Section 67 to a medical requirement for long term nutritional supplementation” in response to the ministry’s finding that requiring multivitamins for 12-24 months suggests a temporary supplement. In response to the ministry’s reconsideration decision concerning her need for nutritional items, the appellant argues that the MP fully addressed the requirements in the February MP Letter. Finally, the appellant submits that the reconsideration decision violates section 8 of the *Interpretation Act* because, “instead of assessing my Request for Reconsideration liberally according to the Act, the Minister has unfairly applied a restrictive interpretation.”

The ministry relied on its reconsideration decision as its written submissions.

## PART F – Reasons for Panel Decision

### The issue under appeal

The issue under appeal is whether the ministry's reconsideration decision, dated February 15, 2017, finding the appellant does not qualify to receive a MNS because she does not meet the legislated criteria was reasonably supported by the evidence or was a reasonable interpretation of the legislation in the circumstances of the appellant.

### The relevant legislation

The relevant legislation is section 67(1) and (1.1) and section 7 of Schedule C of the 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.

(2) In order to determine or confirm the need or continuing need of a person for whom a supplement is provided under subsection (1), the minister may at any time require that the person obtain an opinion from a medical practitioner or nurse practitioner other than the practitioner referred to in subsection (1) (c).

(3) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 8.]

[am. B.C. Regs. 317/2008, s. 8; 68/2010, ss. 1 and 2; 145/2015, Sch. 2, ss. 7 and 8.]

## 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 panel's decision

The appellant must satisfy all the criteria of section 67(1.1) to qualify for an MNS.

*Subsection (a): "being treated ... for a chronic progressive deterioration of health on account of a severe medical condition"*

*The parties' positions:* At reconsideration, the ministry was satisfied that the appellant has a "chronic severe medical condition," but that there was insufficient evidence to establish the presence of a "chronic, progressive deterioration of health" (emphasis in original), so the appellant did not meet the criterion in subsection (a). The appellant argues it is unfair that the ministry "raised the bar" at reconsideration.

*Analysis:* This panel may only determine whether the ministry's decision, at reconsideration, was reasonably supported by the evidence or was a reasonable interpretation of the legislation in the circumstances of the appellant. The panel notes that section 67(1.1)(a) requires treatment for a "chronic, progressive deterioration of health" on account of a "severe medical condition." The MP diagnosed two severe medical conditions (major depressive disorder, and chronic pain syndrome), which the ministry accepts. The word "chronic" in the ministry's statement "that a chronic medical condition is established," appears to come from the diagnosis of "chronic pain syndrome." In contrast, the EAPWDR's use of the word "chronic" is found in the requirement of treatment for a "chronic, progressive deterioration of health." A "chronic, progressive deterioration of health" (i.e., a deterioration of health that is chronic and progressive) may result from a "severe medical condition" or may not. That is why the regulation requires evidence of treatment for a chronic, progressive deterioration of health and not just a severe medical condition. Some people experience a progressive improvement in health from a severe medical condition; some people's health remains constant; and still others experience a chronic, progressive deterioration in health.

Here, the application provides evidence of treatment for severe medical conditions, one of which is chronic: the MP states in the application, “yes – treated with anti-depressant medication / counseling / physical rehabilitation.” However, the application and February MP Letter together provide no evidence of treatment for a chronic, progressive deterioration of health (and no evidence that a chronic, progressive deterioration of health is occurring as a result of a severe medical condition). Such a condition would be expected to be persistent, ongoing, and worsening over time. Accordingly, the ministry’s decision—that the evidence did not speak to a chronic, progressive deterioration of health on account of a severe medical condition—is reasonably supported by the evidence.

*Subsections (b) and (c): “as a direct result of the chronic, progressive deterioration of health, the person displays two or more” symptoms; and “for the purpose of alleviating a symptom ... the person requires one or more of the items set out in section 7 of Schedule C and specified in the request”*

The parties’ positions: The ministry was satisfied that the appellant displayed the symptoms of significant muscle mass loss and moderate to severe immune suppression as a result of her severe medical conditions. However, the ministry was not satisfied that the appellant displayed those symptoms as a result of a chronic, progressive medical condition because it found that she does not suffer from such a condition. Again, the appellant’s position is that this decision is unfair given the ministry found that she does suffer from two symptoms, so in her view she should meet this criteria.

With respect to the request for vitamins/mineral supplement (specifically multi-vitamins), the ministry was not satisfied that the information provided demonstrates a need as set out in the regulation. The appellant’s position is that the MP “stated in the application that I require a multi-vitamin supplement so that I have more energy and decreased infections,” and that there is no reference in section 67 for “a medical requirement for long term nutritional supplementation.”

With respect to the request for nutritional items, the ministry was not satisfied that the appellant required nutritional items as part of a caloric supplementation to a regular dietary intake as set out in the regulation. The appellant’s position is that the MP fully addressed these requirements in the February MP Letter

Analysis: The panel notes that the requirements in subsections (a) to (c) are cumulative. A medical practitioner must first confirm that the applicant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition; then as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the listed symptoms; and then for the purpose of alleviating the symptoms (that occur as a direct result of the chronic, progressive deterioration of health on account of a severe medical condition), the person requires certain items. If the person is not experiencing a chronic, progressive deterioration of health on account of a medical condition, then the person logically cannot be suffering from symptoms of such a condition.

The ministry determined that the appellant displayed significant muscle mass loss and severe immune suppression as a result of her severe medical conditions; however, that does not mean that those symptoms result from a chronic, progressive deterioration of health—indeed, as discussed above, the ministry reasonably determined the evidence did not establish a chronic, progressive deterioration of health.

Similarly, with respect to the requirement in subsection (c) that the item be required to alleviate a symptom, that “symptom” must be understood as a symptom of a chronic, progressive deterioration of health, which has not been established. If the person is not experiencing a chronic, progressive deterioration of health on account of a severe medical condition, then the person cannot logically be suffering from symptoms of such a condition and cannot need items to alleviate those symptoms.

While the MP explains in the application that multi-vitamins would help to alleviate muscle mass loss or moderate to severe immune suppression by increasing energy and decreasing infections, and in the February MP Letter that nutritional items would improve muscle mass through more calories to improve absorption of nutrients, no evidence is found in the materials to establish the fundamental condition that the symptom(s) be one(s) of a chronic, progressive deterioration of health.

As a result, the ministry’s determinations concerning subsections (b) and (c) were both reasonably supported by the evidence and a reasonable interpretation of the legislation in the circumstances of the appellant.

*Subsection (d): “failure to obtain the items ... will result in imminent danger to the person’s life”*

The parties’ positions: The appellant argues the MP stated she requires multi-vitamins to have more energy and decreased infections, and that she requires nutritional supplements to improve her weight and muscle mass. The ministry determined that the MP’s statements do not confirm that failure to obtain either the multi-vitamins or the nutritional supplements would result in imminent danger to the appellant’s life.

Analysis: The EAPWDR requires that a medical practitioner or nurse practitioner confirm that failure to obtain the items requested will result in “imminent danger to the person’s life.” “Imminent” means likely to occur at any moment. In the application, the MP states that multi-vitamins will increase the appellant’s energy and decrease infections, and that nutritional items would decrease the rate of infections. At most, the evidence establishes that a lack of these items may contribute to an increased rate of infections. However, there is no information in either the application or the February MP Letter to indicate any sort of imminent danger to the appellant’s life if she does not obtain multi-vitamins or nutritional supplements. Therefore, the ministry’s decision—that the MP’s statements do not confirm that failure to obtain these items would result in imminent danger to the appellant’s life—is reasonably supported by the evidence.

### Conclusion

Based on the above analysis, the panel finds the ministry reasonably determined that the appellant failed to meet the criteria in section 67(1.1) and section 7 of Schedule C of the EAPWDR and therefore the ministry’s decision not to provide the appellant with a MNS was reasonable. Accordingly, the ministry’s decision is both reasonably supported by the evidence and a reasonable application of the relevant legislation in the circumstances of the appellant. The panel confirms the ministry’s decision. The appellant is not successful in her appeal.