

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry)'s reconsideration decision dated March 20, 2017, finding the appellant is not eligible to receive a Monthly Nutritional Supplement (MNS) of caloric supplementation under sections 7(a) of Schedule "C" of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) because the medical information provided by the appellant's medical practitioner did not demonstrate that: (i) the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake as required under section 7(a), and (ii) failure to obtain the MNS of caloric supplementation will result in imminent danger to the appellant's life as required by section 67(1.1)(d) of the EAPWDR.

## PART D – Relevant Legislation

The relevant legislation is section 67 of the EAPWDR and section 7 of Schedule C of the EAPWDR.

## PART E – Summary of Facts

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

1. An Application for Monthly Nutritional Supplement completed by the appellant's physician and endorsed by a Registered Dietician dated December 5, 2016, indicating a diagnosis of:

*“Myalgic Encephalomyelitis/Chronic Fatigue Syndrome [pathological fatigue, post exertional malaise, sleep dysfunction, pain, neurocognitive/autonomic, neuroendocrine and immune manifestations], Fibromyalgia (FM) [fatigue, trouble thinking/remembering, unrefreshed sleep, chronic insomnia, low abdominal pain, depression, headache, widespread body pain], Colitis [inflammation of the colon, extreme pain, bloating nausea, diarrhea], and OCD/Anxiety /Depression.”*

In answer to the question as to whether as a direct result of her condition the appellant is being treated for a chronic, progressive deterioration of health, the appellant's physician refers to an attached Internal Medicine Assessment [see below].

Under Vitamin/Mineral Supplementation, the physician indicates a significant regime of supplements and comments “without these the patient will have further health deterioration, infection risk and injury risk.”

Under Nutritional Items, the physician specified “fresh produce (fruits and vegetables), lean meat, protein, healthy fats, whole grains, other high protein foods (dairy, legumes)”.

Asked if the applicant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the physician states: “Yes, Colitis continues to inflame the digestive system which leads to nutrient malabsorption. ME/FM also contribute to mitochondrial function issues which affect metabolism of nutrients”

Asked to describe how the nutritional items will alleviate symptoms and provide caloric supplementation, the physician writes: “The fresh produce, high protein foods, whole grains and healthy fats will all contribute to improved nutrition, muscle mass, cognition and immunity. All these foods will help the patient meet her nutrient needs.”

Asked how the nutritional items will prevent imminent danger to the appellant's life, the physician writes: “without these items the patient will have continued muscle wasting, malnutrition, decreasing cognition and will be at a higher risk of infection and danger related to injury.”

2. A number of reports prepared by physicians and dieticians the Complex Chronic Disease Program at the BC Women's Hospital and Health Centre detailing the appellant's medical conditions which were summarized in the Application for Monthly Nutritional Supplement.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision finding the appellant is not eligible to receive a Monthly Nutritional Supplement (MNS) of caloric supplementation under sections 7(a) of Schedule "C" of the EAPWDR because the medical information provided by the appellant's medical practitioner did not demonstrate that: (i) the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake as required under section 7(a), and (ii) failure to obtain the MNS of caloric supplementation will result in imminent danger to the appellant's life as required by section 67(1.1)(d) of the EAPWDR.

The relevant legislation is section 67 of the EAPWDR 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).

## **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.

This appeal was held by written hearing by consent of the parties in accordance with section 22(3)(b) of the *Employment and Assistance Act*.

### The Appellant's Position

In her appeal submission the appellant writes: "I believe I meet the criteria – my doctors ... at Complex Chronic Disease Program firmly believe I meet the criteria."

### The Ministry's Position

The ministry relied on its reconsideration decision. In that decision the ministry found that the appellant was not eligible to receive the MNS of caloric supplementation because the medical evidence before it does not indicate that: (i) the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of relieving a symptom of her medical conditions, and (ii) failure to obtain the MNS items will result in imminent danger to the appellant's life.

Note: the appellant is in receipt of assistance for increased protein and vitamin/mineral supplementation.

In particular, the ministry noted:

- Although, due to the appellant's refusal to weigh herself, her BMI cannot be established, the medical records indicate that she is concerned about her weight gain which is not indicative of a person who requires additional calories.
- The medical evidence does not establish either underweight status or significant weight loss.
- Muscle mass loss is due to inactivity and not a result of a medical condition.
- The medical evidence indicates that what is being recommended is a healthier diet rather than caloric supplementation.
- While the appellant's Colitis results in malabsorption, the ministry has approved a MNS vitamin/mineral to address this issue.
- The medical evidence indicates that without this MNS the appellant will suffer continued muscle wasting, malnutrition, decreased cognition and higher risk of infection and injury. However, the muscle wasting is due to inactivity not a medical condition, the malnutrition is being addressed through the vitamin/mineral MNS and the ministry has not accepted that the appellant is suffering from decreased cognition or moderate to severe immune suppression.
- None of the medical evidence suggests that failure to obtain the nutritional supplement MNS will result in imminent danger to the appellant's life.

### The Panel's Decision

In order to qualify for the MNS under sections 7(a) of Schedule "C" of the EAPWDR the appellant must meet all requirements under section 67 of the EAPWDR and section 7(a) itself.

The ministry found that the appellant met all the section 67 requirements except section 67(1.1)(d) that failure to obtain the MNS items will result in *imminent* danger to the applicant's life. The ministry concludes that, "None of the medical evidence suggests that failure to obtain the nutritional supplement MNS will result in imminent danger to the appellant's life." When asked how the nutritional items will prevent imminent danger to the appellant's life, the physician writes: "without these items the patient will have continued muscle wasting, malnutrition, decreasing cognition and will be at a higher risk of infection and danger related to injury." This is insufficient to establish that the appellant's life will be in "imminent danger" if she does not receive this MNS. Accordingly, the panel finds that the ministry's determination that the appellant did not meet the legislative criteria in section 67(1.1)(d) was reasonable.

Section 7(a) requires that the additional nutritional items be required as part of "a caloric supplementation to a regular dietary intake". The ministry found that the medical evidence indicated that the appellant was concerned about her weight gain, that there was insufficient evidence to establish either underweight status or significant weight loss, that muscle wasting was due to inactivity rather than the appellant's medical condition and that what is being recommended is a healthier diet rather than caloric supplementation. In listing "fresh produce (fruits and vegetables), lean meat, protein, healthy fats, whole grains, other high protein foods (dairy, legumes)," when asked what nutritional items the appellant requires, the medical practitioner appears to be recommending certain types of foods rather than simply additional calories as required by the legislation supporting the ministry's position. Accordingly, the panel finds that the ministry's determination that the appellant did not meet the legislative criteria in section 7(a) was reasonable.

Based on the above, the Panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's reconsideration decision.