

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry)'s reconsideration decision dated May 30, 2017, finding the appellant is not eligible to receive a Monthly Nutritional Supplement (MNS) of vitamin/mineral supplementation and additional nutritional items under sections 7(a) and 7(c) of Schedule "C" of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) because the appellant does not meet the legislated requirements in sections 67(1.1)(b), (c) and (d) of the EAPWDR.

## PART D – Relevant Legislation

The relevant legislation is section 67 and sections 7(a) and 7(c) 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:

1. The appellant's application for the MNS completed by herself and her physician on March 1, 2017, in which it appears that the appellant has completed sections 1 and 2 herself listing diagnoses of Anorexia Nervosa and Bulimia Nervosa with symptoms of malnutrition, dehydration and vitamin deficiency. When asked to identify and describe in detail which of the listed symptoms the appellant suffers from, the appellant's physician placed a check mark beside underweight status and significant weight loss with the word "Anorexia" beside each. The physician reports that the appellant is 158cm tall and weighs 45.5kg. Under Vitamin or Mineral Supplementation, the physician identifies the need for a multivitamin. Asked how the multivitamin will alleviate the identified symptoms, the physician writes, "prevent vitamin def with her restricted diet". Asked how the multivitamin will prevent imminent danger to the appellant's life, the physician did not comment. Under Nutritional Items, the physician identified the need for the additional nutritional item "ensure 3 daily \*long term\*". Asked if the appellant has a medical condition that results in the inability to absorb sufficient calories from a regular diet, the physician writes: "Yes, needs extra calories to maintain weight". Asked to describe how the supplement will alleviate the identified symptoms, the physician writes: "calorie dense [illegible] will help keep her from malnutrition due to behaviors of Anorexia Nervosa". Asked to describe how the nutritional items will prevent imminent danger to the appellant's life, the physician writes, "prevent malnutrition". Under additional comments, the physician writes, "ensure x 3 /day".

2. An undated letter from the appellant which accompanied the application stating:

*Please find attached my complete Application for monthly nutritional supplement. I have always had this supplement and for some reason it has dropped of the amount of my monthly deposit this year. ... I depend on this added income to purchase the required supplements to maintain my health.*

*Please also note that my doctor has noted "long term" in part 6. Hopefully this shows that this is an ongoing need and will prevent extra confusion next year.*

3. The appellant's application for reconsideration in which she writes:

*I am writing to ask for reconsideration of the decision made on my application for MNS and Vitamins and Minerals supplement. I have been in receipt of both of these supplements for years and I am confused as to why I have been declined no as nothing as far as my medical status has changed or improved.*

*Under section 67(1.1)(b) the following boxes should be checked as directly apply to my situation.*

*-malnutrition-my body is very malnourished and lacks enough energy to perform everyday tasks without fueling it with calorie dense Ensure*

*-underweight status –I am clinically underweight at a low BMI of 18.2. I have been underweight for years due to the severity of my eating disorder. Without proper supplements and nutrients my weight drops to dangerous levels.*

*significant weight loss-without calorically dense nutrients my weight decreases even more leaving me in the danger zone for cardiac issues.*

*-significant muscle mass loss-muscle mass loss is significant and weakness while performing everyday tasks is exhausting. Lack of strength to do "Normal" things a major problem.*

*-significant neurological degeneration-I have just been referred to a neurologist to assess neuro function as I have lost feeling in my lower legs.*

*For all of the above reasons it is imperative that I am able to maintain a high calorie, nutrient dense diet in order to be able to function. Without financial support for these items my health will continue to deteriorate and hospitalization is probable.*

*My weight loss has been gradual over many years, without proper supplementation in my diet my weight will drop upwards of 20lbs. Being that I am already under weight, this degree of weight fluctuation can be very problematic and even fatal. It is essential that my weight remain stable at this point as any weight loss puts me at risk for many more health complications. I am chronically nutrient deficient and supplements are keeping my electrolytes and vitamins and minerals at safe levels. Without these vitamins and minerals, my levels drop, my ability to perform everyday tasks becomes exhausting and almost impossible as physical energy is non existent.*

*Although I maintain a high calorie diet, my body requires the extra caloric intake of at least 3 ensure a day to prevent further weight loss.*

...

4. At appeal the appellant submitted a letter dated June 19, 2017, from her physician which states:

*[The appellant] is a patient of mine with an existing eating disorder. This has lead to significant weight loss over the past 6 months. She has had an eating disorder for over 20 years. Her BMI is down to 11.1 putting her at risk for sudden cardiac death. She developed gastric ulcers as a complication of her condition. She was hospitalized for hypercalcemia, anemia and bleeding gastric ulcer late in 2016.*

*She is not able to eat the food necessary to sustain some basic macro and micro nutrients. She needs protein supplementation (Ensure), and the following micronutrient supplements: iron, calcium, magnesium, vitamin D and potassium.*

*I support her application for monthly nutritional supplement from the ministry.*

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated May 30, 2017, finding the appellant is not eligible to receive a Monthly Nutritional Supplement (MNS) of vitamin/mineral supplementation and additional nutritional items under sections 7(a) and 7(c) of Schedule "C" of the EAPWDR because the appellant does not meet the legislated requirements in section 67(1.1)(b), (c) and (d) of the EAPWDR.

The relevant legislation is section 67 and sections 7(a) and 7(c) 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.

### Written Hearing

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*.

### Admissibility of New Information

Section 22(4) of the *Employment and Assistance Act* states that the panel is empowered to admit as evidence only “the information and records that were before the minister when the decision being appealed was made” and “oral or written testimony in support of” the record of the ministry decision. If the additional evidence substantiates or corroborates the information and records before the minister at the reconsideration stage, the evidence should be admitted; if it does not, then it does not meet the test of admissibility under s. 22(4)(b) of the *Employment and Assistance Act* and should not be admitted.

The ministry states that it considers that if it had had the new information provided by the appellant at appeal before it at the time of the reconsideration decision it may have made a different decision.

In this case, the additional information makes four relevant statements:

1. *The appellant has experienced significant weight loss over the past 6 months.* As the physician indicated in the application that the appellant had the symptom of “significant weight loss” the panel finds that this additional information is in support of that indication and so admissible.
2. *The appellant’s BMI is down to 11.1.* As the application and the appellant’s accompanying letter both state that the appellant’s BMI was around 18 at the time of the reconsideration decision, the panel finds that this statement that the appellant’s weight has dropped lower *after* the date of the decision cannot be “in support of” the evidence that was before the ministry at the time of the decision, is therefore new evidence and so is not admissible.
3. *The appellant is in danger of sudden cardiac death.* None of the evidence before the ministry at the time of the reconsideration decision indicates that the appellant is in danger of sudden cardiac death. Also, it appears that this danger is a result of her continued weight loss from a BMI of 18 to a BMI of 11 *after* the date of the reconsideration decision. Again, the panel finds that this evidence deals with matters that arose *after* the date of the decision so that it cannot be “in support of” the evidence that was before the ministry at the time of the decision, is therefore new evidence and so is not admissible.
4. *The appellant suffered a number of medical complications and was hospitalized in late 2016.* As there was no indication of these facts in any of the materials before the

ministry at the time of the reconsideration decision, the panel finds that this cannot be “in support of” the evidence that was before the ministry at the time of the decision, is therefore new evidence and so is not admissible.

5. *The appellant is not able to eat the food necessary to sustain certain macro and micro nutrients and she requires protein supplementation and certain vitamins and minerals.* As the physician indicated in the application that the appellant requires both vitamin and mineral and nutritional supplementation, the panel finds that this statement provides context and further details “in support of” those statements and so is admissible.

#### The Appellant’s Position

In her written submission the appellant states: “My initial application was denied I feel due to lack of information provided by my GP on the application and I feel it is fair to appeal the ministry’s decision with more detailed medical information.”

#### The Ministry’s Position

The ministry relied upon its reconsideration decision. In that decision the ministry found that:

1. The appellant meets the requirements of section 67(1.1)(a).
2. While there is enough information in the application for the ministry to establish that the appellant suffers from underweight status (BMI is 18), there is not enough to establish that the appellant has suffered significant weight loss. A simple check mark and the word “Anorexia” does not provide the ministry with enough information to confirm that the appellant has suffered significant weight loss. Such information would indicate both the amount of weight lost and the period over which it was lost.
3. As regards the requirement of section 67(1.1)(c) as it applies to vitamin/mineral supplementation, in the appellant’s application the physician does not indicate how vitamin and mineral supplementation will address her symptom of underweight status.
4. As regards the requirement of section 67(1.1)(d) as it applies to vitamin/mineral supplementation, there is no confirmation that failure to obtain the vitamin/mineral supplementation would result in imminent danger to the appellant’s life (left blank).
5. As regards the requirement of section 67(1.1)(c) as it applies to nutritional supplementation, in the appellant’s application the physician does not indicate that the appellant suffers from a symptom set out in section 67(1.1)(b) that requires nutritional supplementation such as malnutrition or significant weight loss. Also, there is not enough information to establish that the appellant requires the supplementation over and above her regular diet.
6. As regards the requirement of section 67(1.1)(d) as it applies to nutritional supplementation, the response “prevent malnutrition” does not describe an *imminent* danger to the appellant’s life.

#### The Panel’s Decision

Note: The panel did consider the appellant’s evidence that she had been receiving the vitamin/mineral and nutritional supplements previously and did not understand why they had been discontinued. However, the panel found that there was insufficient evidence for the panel to take this information into consideration and, without that context, could make no determinations in this matter.

Section 67(1.1)(b): significant weight loss. There was little *medical* evidence before the ministry that the appellant had lost a significant amount of weight. What evidence there was indicates that the appellant has had an eating disorder for 20 years that has led to her being underweight. To be able to find that the appellant had suffered *significant* weight loss, the ministry would need information regarding how much weight the appellant has lost over what period. The physician's bald statement, in both the application and in the new information deemed admissible at appeal, that the appellant has experienced significant weight loss does not provide the ministry with the information it needs in order to determine that the appellant has suffered *significant* weight loss. The panel finds that, based on the limited evidence provided, it was reasonable for the ministry to conclude that this symptom was not made out.

Section 67(1.1)(b): other symptoms. In her reconsideration submission, the appellant describes how she is suffering from other symptoms. While this information can be used for context, the legislation requires that the symptoms be identified by a medical practitioner. As the appellant's physician did not indicate any other symptoms, it was reasonable for the ministry to find that the it did not have sufficient evidence that the appellant suffers from any other of the listed symptoms.

Section 67(1.1)(c): vitamin/mineral supplements to alleviate the symptom. Asked to describe how the vitamin/mineral supplement will alleviate the appellant's symptom, the appellant's physician writes: "prevent vitamin def with her restricted diet". The ministry found that this statement did not establish that vitamin/mineral supplements are necessary to alleviate the symptom of underweight status. The new information submitted at appeal and deemed admissible repeats the physician's statement that the appellant requires this supplement in order to address the fact that she cannot get the vitamins and minerals she needs because her Anorexia limits her diet. However, the question the application asks is how this supplement will "alleviate the specific symptoms identified". The physician does not adequately make this connection between the supplement and the symptom. As well, logically, it is difficult to understand how taking vitamins and minerals would address the appellant's underweight symptom. Therefore, the panel finds that it was reasonable for the ministry to conclude that there was insufficient evidence to establish that vitamin/mineral supplements are necessary to alleviate the symptom of underweight status.

Section 67(1.1)(d): imminent danger to the appellant's life, vitamin/mineral supplement. Asked to describe how the vitamin/mineral supplement will prevent imminent danger to the appellant's life, the appellant's physician did not respond. The ministry found that this did not establish that vitamin/mineral supplements are necessary to prevent imminent danger to the appellant's life. The new information submitted at appeal and deemed admissible does not address this matter. Given that the appellant's physician did not provide any information in this matter, the panel finds that it was reasonable for the ministry to conclude that there was insufficient evidence to establish that vitamin/mineral supplements are necessary to prevent imminent danger to the appellant's life.

Section 67(1.1)(c): nutritional supplement to alleviate the symptom. Asked to describe how the nutritional supplement will alleviate the appellant's symptom, the appellant's physician states that a calorie dense supplement is necessary for the appellant to avoid malnutrition. The ministry found that this statement did not establish that nutritional supplement is necessary to alleviate the symptom of deterioration of underweight status. The new information submitted at appeal and deemed admissible states that the appellant requires Ensure as a protein supplement. Protein supplementation is not caloric supplementation, and as this later evidence therefore contradicts the evidence in the application, the panel chooses not to consider it. In this instance, the physician has indicated that caloric supplementation over and above what the appellant can consume in the form of a regular diet due to her Anorexia is required to address the symptom of underweight status. Logically, this makes sense as extra calories would be required to raise the appellant's weight. The panel finds that this

meets the legislated requirements and that it was not reasonable for the ministry to conclude that there was insufficient evidence to establish that the nutritional supplement is necessary to alleviate the symptom of underweight status.

Section 67(1.1)(d): imminent danger to the appellant's life, nutritional supplement. Asked to describe how the nutritional supplement will prevent imminent danger to the appellant's life, the appellant's physician wrote "prevent malnutrition". The ministry found that this did not establish that nutritional supplement is necessary to prevent *imminent* danger to the appellant's life. The new information submitted at appeal in this regard has been deemed inadmissible. The legislation requires that the danger to the appellant's life be "imminent", that is "impending" or "about to happen". While the appellant may be in danger of suffering from malnutrition at some point without the nutritional supplement, the phrase "prevent malnutrition" does not indicate that the danger to the appellant's life is impending or about to happen. The panel finds that it was reasonable for the ministry to conclude that there was insufficient evidence to establish that the nutritional supplement is necessary to prevent imminent danger to the appellant's life.

Based on the above analysis, the panel finds that the appellant's application does not meet the legislative criteria in section 67(1.1)(b), (c) and (d) for the vitamin/mineral supplement and sections 67(1.1)(b) and (d) for the nutritional supplement. Accordingly, the Panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's reconsideration decision.