

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated August 25, 2017 which found that the appellant is not eligible for the Monthly Nutritional Supplements of nutritional items and vitamin/mineral supplements as the appellant did not meet the eligibility criteria set out in Sections 67 (1.1) (b), (c) and (d) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry was not satisfied the evidence established that:

- As a direct result of the chronic, progressive deterioration of health, the appellant 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;
- for the purpose of alleviating a symptom, (noted above), the appellant requires one or more of the items set out in section 7 of Schedule C and specified in the request.
- Failure to obtain the items (noted above) will result in imminent danger to the person's life.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)– Sections 67(1)

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)– Schedule C section 7

## PART E – Summary of Facts

The appellant is a Person with Disabilities in receipt of disability assistance.

June 20, 2017- The ministry received the appellant's application for the Monthly Nutritional Supplements of nutritional items and vitamin/mineral supplements. The application request was denied July 27, 2017.

August 1, 2017- the appellant requested a reconsideration, a signed request for reconsideration was submitted August 15, 2017; the request for reconsideration was reviewed August 25, 2017 where the ministry found the appellant was not eligible for the Monthly Nutritional Supplements of nutritional items and vitamin/mineral supplements.

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

A. Application for Monthly Nutritional Supplement (MNS) dated June 19, 2017 completed by the appellant's doctor which notes:

1. List and description of appellant's severe medical conditions

- Osteoporosis
- Osteoarthritis and degenerative disc disease

2. As a result of severe medical condition(s) is the applicant being treated for a chronic, progressive deterioration of health?

- Degenerative disc disease is chronic, progressive
- Osteoporosis preventable through "suppl etc"

3. When asked if as a direct result of the chronic, progressive deterioration of health noted, does the applicant display two or more of noted symptoms, the doctor identified:

- Significant weight loss-Chronic pain/depression- loss of appetite
- Significant muscle mass loss- Chronic pain/depression- loss of appetite

4. Applicant's height and weight

- 5 feet 2 1/2 inches
- 120 lbs

5. Vitamin or Mineral Supplementation available to alleviate one or more of the symptoms specified in part 3 above if those symptoms are a direct result of a chronic, progressive deterioration of health and to prevent imminent danger to the applicant's life.

- Specify vitamin or mineral supplement(s) required and expected duration of need:
  - Calcium, Vit D and Magnesium
  - No duration was noted
- Describe how the item will alleviate the specific symptom identified:
  - Help with bone growth and strength
  - Vit D help for chronic pain
- Describe how this item or items will prevent imminent danger to the applicant's life:
  - Prevents osteoporosis/compression fractures

6. Nutritional Items are available to an applicant to alleviate one or more of the symptoms specified in part 3 above if those symptoms are a direct result of a chronic, progressive deterioration of health and the nutritional items are medically essential; will provide caloric supplementation to a regular dietary intake and are required to prevent imminent danger to the applicant's life.

- No comments were given in this signed section of the MNS

Under Additional Comments:

- No comments are made

B. A letter from the appellant's doctor which states:

- Patient needs daily supplements due to excessive weight loss (30lbs. over the last year) as a result of chronic pain, depression and anxiety
- Was 140lbs, lost over 30 lbs.
- Appellant needs intake of high calorie drinks like Ensure to get back to normal health. This will be needed for 2 years.

In the appellant's Notice of Appeal, the appellant wrote:

- She disagreed with the ministry decision

In the appellant's Notice of Appeal, the appellant included:

- A letter from the appellant dated September 6, 2017 which states:
  - She was sending in her appeal and the doctors note which she felt may not have been received for reconsideration
  - Her doctor may not have given suffice information on muscle loss- it was over 30-40 lbs. lost, not 20; she has legitimately lost quality of life from this Osteoporosis diagnoses; she obviously has loss muscle mass when it weighs more than fat; she is no longer working due to pain in the neck and arms; she can't afford to pay for the caloric or nutritional supplements; she can't understand why the ministry is making this so hard for her.
- The doctor's note which had been received by the Reconsideration Officer (see above, B, information before the ministry at time of reconsideration)
- New evidence, a doctor's CT Spine Cervical Report dated April 11, 2017 which notes:
  - cervical spondylosis is present
  - degenerative disc disease is early
  - degenerative disc disease resulting in neural foraminal narrowing as described

In the appellant's Request for Reconsideration, the appellant wrote:

- The doctor has filled out more descriptively ensure needs, amounts of weight/muscle loss and duration needed so for 2 years.

Adjournment

On September 27, 2017, the appeal chair adjourned the hearing for appeal 2017-00531 at the request of the appellant as she required more time to collect more evidence from her doctor.

Appellant Submission dated October 12, 2017 contained a note from the appellant and additional notes made by her doctor on her Application for Monthly Nutritional Supplement.

- Appellant's note stated:
  - Her diet supplement was recently approved
  - This information is for the other monthly nutritional vitamins
- On the Application for Monthly Nutritional Supplement, the doctor added the following:
  - **Under symptoms** the doctor noted the appellant had lost 40 lbs. Of weight due to chronic pain and immobility
  - Height was changed from 5.2.1/2 to 5.3
  - Weight was changed from 120 lbs. to 100 lbs.

- **Under vitamin or Mineral supplements** when asked to specify required vitamin or mineral supplements and expected duration of need- the doctor dropped magnesium, kept Vitamin D and added collagen and curcumin. No statement of duration was made.
- How the vitamin or supplement will alleviate the specific symptoms identified the doctor added- anti-inflammatory action, bone building and left off Vitamin D helps for chronic pain
- Describing how the vitamin or supplement will prevent imminent danger to the appellant, the doctor added – prevent further weight loss, muscle building and left off- prevents osteoporosis/compression fractures
- **Under Nutritional Items:** When asked to specify additional nutritional items required and expected duration of need, the doctor added- high protein diet. No statement of duration was made.
- In describing how the nutritional items required will alleviate one or more of the symptoms the doctor stated- help with muscle building, increase mobility.
- When asked how the nutritional items requested will prevent imminent danger to the appellant’s life the doctor stated-prevent further weight loss.

### 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 stated that it did not object to the admission of the evidence presented in the doctor’s CT spine cervical report dated April 11, 2017 but did object to the additional information submitted in the appellant’s submission dated October 12, 2017 as the document contained new information that was not before the ministry at the time of the reconsideration request.

In this case, the additional information makes a number of relevant statements:

1. **The doctor’s CT Spine Cervical Report** dated April 11, 2017, which was submitted as evidence for the appellant’s Notice of Appeal, corroborates the information shared by the appellant and her doctor at the reconsideration stage that she is suffering from a chronic progressive deterioration of health; therefore, the panel finds this evidence admissible.
2. **The appellant’s note**
  - i. The appellant’s note is information in terms of why she is submitting the doctor’s information and also states that she was successful in receiving a diet supplement from the ministry. The panel finds that this information is not in support of the evidence that was before the ministry at the time of the decision, and is therefore new evidence and is not admissible.
3. **On the Application for Monthly Nutritional Supplement, the doctor’s added:**
  - i. The appellant has a symptom of weight loss. The doctor states the appellant has lost 40 lbs. specifying she is currently 100 lbs. As the appellant’s weight at the time of reconsideration decision was reported as 120lbs., this statement that the appellant’s weight has dropped lower *after* the date of the decision, the panel finds it cannot be in support of the evidence that was before the ministry at the time of the decision, and is therefore new evidence and so is not admissible.

- ii. The doctor states additional vitamin or mineral supplements are required and that the items will alleviate specific symptoms identified by anti-inflammatory action and bone build. As the doctor had indicated in the application before the reconsideration officer that vitamin(s) or minerals were required to address bone growth and strength the panel finds that this additional information is in support of that indication and so admissible.
- iii. The doctor states that the vitamin(s) or mineral(s) will prevent imminent danger to the appellant's life as they will prevent further weight loss- muscle building. The panel finds there is insufficient evidence before the ministry at the time of reconsideration that indicates the appellant is in imminent danger due to weight loss and therefore finds the new evidence is not admissible.
- iv. Under Nutritional Items questions, the doctor states additional nutritional items required are "high protein diet" and that this nutritional item will alleviate one or more of the symptoms by helping with muscle building, increase mobility and that the nutritional item will prevent imminent danger to the appellant's life as it will prevent further weight loss. In his letter dated August 11, 2017, the appellant's doctor notes the appellant requires intake of high calorie drinks like Ensure to get her back to normal health. As these questions were not addressed by the doctor in the application before the ministry and the doctor's statements on August 11, 2017 do not refer to alleviating the appellant's symptoms or would prevent imminent danger to her life, the panel finds that this information cannot be in support of the evidence that was before the ministry at the time of the decision and therefore is new evidence is not admissible.

At the hearing, the appellant stated:

- she had been approved for a diet supplement but not the nutritional supplement.
- she wondered if she could record our phone conversation, the appellant was asked not to record the conversation as to do so was against the confidentiality and privacy obligations as per section 88 of the Employment and Assistance Regulations.
- she did not know the doctor had not filled out the entire application and therefore had him complete the form which was submitted October 12, 2017.
- she has been confused with the process receiving wrong advice and incorrect forms to complete.
- her new submission gives her proper weight and height noting her original submission made by the doctor were estimates of her weight and height.
- she has been going through this process too long due to the confusion created by the ministry.

At the hearing, the ministry stated:

- the appellant was not successful in her application as she did not meet the criteria of section 67 (1.1) (b), showing two of the listed symptoms of the section.
- in terms of the two symptoms noted by the appellant's doctor (significant weight loss and significant muscle loss) the ministry representative noted in terms of weight loss the information shared by the appellant's doctor placed her with a BMI in the normal range of weight and that no description verifying wasting was evident to have one conclude the appellant had significant muscle loss.
- that no evidence was given to indicated there was any danger to the life of the appellant
- the new information submitted by the appellant's doctor would have placed the appellant in a BMI that is under-weight.

- the diet supplement was approved as the appellant has osteoporosis but that the nutritional supplement was denied as the appellant showed insufficient evidence she has wasting disease or is suffering from malnutrition.
- when asked by the appellant if she can't ask for another reconsideration what can she do with her new evidence, the ministry worker suggested the appellant make another application.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated August 25, 2017, finding the appellant is not eligible to receive a Monthly Nutritional Supplement (MNS) of vitamin/mineral supplementation and additional nutritional items as 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 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 center 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).

## 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 Appellant's Position

- The appellant argued that due to the confusion caused by the ministry and the lack of an accurate and complete initial application she has been denied the supplements she is entitled. Now that she has more accurate and correct information, she should be successful in her request.

### The Ministry's Position

- Section 67(1.1) (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.
  - The appellant meets the requirements of section.
- Section 67(1.1) (b): The applicant must be displaying two or more symptoms listed as a direct result of a chronic, progressive deterioration of health. The appellant's application indicated significant weight loss and muscle mass loss as two symptoms. The ministry did not accept the appellant's claim as:
  - Weight loss is indicated but no information was provided to confirm the amount loss over what period of time. In the information before the ministry, it would appear the appellant has a BMI of 21.6 which is in the normal range of weight and that the loss of 20lbs. over a year, resulted in the weight within the normal range therefore the ministry cannot be satisfied that her weight loss has been significant.
  - No evidence of wasting or information was provided to confirm the amount of muscle lost by the applicant. The appellant's doctor does not describe the amount of muscle mass loss or the period of time over which the muscle mass occurred. The doctor as well does not describe any change of the appellant's physical appearance which would suggest muscle mass loss, such as wasting.
- Section 67(1.1) (c) vitamin/mineral supplements to alleviate the symptom.
  - The ministry notes the appellant is not eligible for consideration for this section as she did not meet the criteria of section 67(1.1) (b).
  - The doctor recommends vitamin /mineral supplementation to alleviate chronic pain and assist with bone strength which are not established symptoms.
- Section 67(1.1) (d): imminent danger to the appellant's life, vitamin/mineral supplement
  - The doctor does not provide sufficient evidence that due to the appellant's medical condition, she is displaying the symptom of malnutrition, which would indicate the need



for vitamin/mineral supplementation. The doctor's statement "prevents osteoporosis/compression fractures" does not establish that failure to obtain vitamin/mineral supplements will result in imminent danger to her 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 doctor makes no statement.
  - The ministry notes the appellant is not eligible for consideration for this section as she did not meet the criteria of section 67(1.1) (b) which would indicate a need for caloric supplementation, such as malnutrition, underweight status, significant weight loss, or significant muscle mass loss.
  - The appellant's height/weight recorded in her application indicates that her BMI is 21.6 which is in the normal range.
  
- 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 doctor makes no statement.
  - There is insufficient evidence to establish that the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy requirements through a regular dietary intake.
  - Information supplied at the time of reconsideration did not establish that failure to obtain caloric supplementation would result in imminent danger to the appellant's life.

#### Panel's Decision

Section 67(1.1) (b): significant weight loss and significant muscle mass loss. The evidence presented through the appellant's application and letters from her doctor at the time of reconsideration does not supply enough evidence to allow a clear decision to be made. In examining the evidence, the panel recognized that the information shared was confusing as different body weights were given, the appellant's BMI is in the normal range for her height and weight and information was lacking as no time line for weight loss or physical descriptors of muscle mass loss were shared. The panel finds that the ministry was reasonable to determine that the appellant did not meet the criteria of section 67(1.1) (b)

Section 67(1.1) (c): vitamin/mineral supplements to alleviate the symptom. The doctor recommends vitamin /mineral supplementation to alleviate chronic pain and assist with bone strength which are not established symptoms. The panel finds there is insufficient evidence to establish that vitamin/mineral supplements are necessary to alleviate the symptoms noted by the doctor that being significant weight loss and significant muscle mass loss. The panel finds that the ministry was reasonable to determine that the appellant did not meet the criteria of section 67(1.1) (c)

Section 67(1.1) (d): imminent danger to the appellant's life, vitamin/mineral supplement. The doctor's statement "prevents osteoporosis/compression fractures" does not establish that failure to obtain vitamin/mineral supplements will result in imminent danger to her life. The panel finds that the ministry was reasonable to determine that the appellant did not meet the criteria of section 67(1.1) (c)

Section 67(1.1) (c): nutritional supplement to alleviate the symptom and Section 67(1.1) (d): imminent danger to the appellant's life, nutritional supplement. As the appellant's doctor made no comments on the application in terms of nutritional supplements, the panel finds there was insufficient evidence supplied at the time of reconsideration and that the ministry was reasonable to determine that the appellant did not meet the criteria of section 67(1.1) (c) and (d).

**Conclusion**

The panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible to receive a Monthly Nutritional Supplement (MNS) of vitamin/mineral supplementation and additional nutritional items as the appellant does not meet the legislated requirements in section 67(1.1) (b), (c) and (d) for the vitamin/mineral supplement and the nutritional supplement of the EAPWDR was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful in her appeal.