

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated January 15, 2018 which denied the appellant's request for a Monthly Nutritional Supplement (MNS) for nutritional items and vitamin/mineral supplements. The ministry found that the appellant has Person with Disabilities (PWD) designation and is being treated by a medical practitioner for a chronic, progressive deterioration of health and therefore Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) Section 67(1.1) (a) was met. The ministry found that the requirements of Section 67(1.1) (b), (c) and (d) and Section 7 of Schedule C of the EAPWDR were not met as there is not sufficient information to establish that a medical practitioner or nurse practitioner has confirmed:

- That as a direct result to the chronic, progressive deterioration of health, that the appellant displays two or more of the following symptoms: malnutrition, underweight status, significant weight loss, significant muscle mass loss, significant neurological degeneration, significant deterioration of a vital organ, and or moderate to severe immune suppression (Section 67(1.1) (a)).
- That the appellant requires vitamins and minerals to alleviate a symptom of his chronic, progressive deterioration of health and to prevent imminent danger to life, pursuant to Section 67(1.1) (c) and (d).
- That the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake, pursuant to Section 7 of Schedule C, to alleviate a symptom of his chronic, progressive deterioration of health and to prevent imminent danger to life, under Section 67(1.1) (c) and (d).

## PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67 and Schedule C, Section 7.

## PART E – Summary of Facts

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

- A Monthly Nutritional Supplement (MNS) application completed by appellant's medical practitioner (MP) on October 26, 2017 in which the MP reported:
  - The appellant's severe medical condition is weight loss NYD (not yet diagnosed).
  - In response to the question whether as a direct result of the chronic progressive deterioration in health, does the appellant display two or more of the symptoms listed in section 67(1.1) (b) of the EAPWDR, the MP indicated currently being investigated, the symptoms of malnutrition (note: "yes, weight loss NYD, lost 30 lbs over last few years"), underweight status (note: left blank), significant muscle mass loss (note: "yes 30lb over last few years"), and moderate to severe immune suppression (note: left blank);
  - In response to a request to specify the vitamin or mineral supplements required and the expected duration of need, the MP wrote "dietary supplement (permanent)."
  - In response to describe how the item will alleviate the specific symptoms identified, the MP wrote "will help maintain health."
  - In response to the request to describe how the vitamins and minerals will prevent imminent danger to the appellant's life, the MP wrote "hopefully will gain weight."
  - In response to a request to specify the additional nutritional items required, the MP left blank.
  - In response to the question whether the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the MP wrote "yes, weight loss, NYD."
  - In response to describe how the nutritional items required will alleviate one or more of the symptoms described and provide caloric supplementation to the regular diet, the MP wrote "will improve weight."
  - In response to a request to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the MP wrote "as above."
- Request for Reconsideration dated November 23, 2017.
- The appellant's MP provides a handwritten statement in the Request for Reconsideration stating that the "history of severe anxiety/depression, schizo-affective disorder on daily psychiatric medications" and states "last 3 years had lost 30lb decreased appetite, severe anxiety prevents from proper food preparation and normal eating, ongoing depression contribute to lost appetite, motivation in preparing foods currently is coming for regular visits so far all medical work up negative in my opinion food supplement will help my patient to maintain health and prevent further deterioration of symptoms."

### **Additional Information**

- The appellant's Notice of Appeal dated January 23, 2018, the appellant expressed his disagreement with the ministry reconsideration decision and wrote that "I believe I may qualify for the vitamin/mineral supplement as my severe anxiety makes me feel suicidal and currently getting my levels tested to see if I am low in certain levels that support mental health."
- The ministry relied on the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry decision, which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and additional nutritional items because the requirements of Section 67(1.1) (b), (c) and (d) of the EAPWDR and Section 7 of Schedule C of the EAPWDR were not met, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 67(1.1) of the EAPWDR sets out the eligibility requirements which are at issue on this appeal for providing the additional nutritional supplement, as follows:

### ***Nutritional supplement***

**67** (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.]

### ***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.

### **Symptoms**

At reconsideration, the ministry acknowledged that MP confirmed that the information provided with the MNS application

established that the appellant meets the eligibility criterion set out in the EAPWD regulation subsection 67(1.1) (a). The ministry notes that the appellants BMI is 22.6 which is in the normal range and that a weight loss of 30lb over a three-year period does not establish that the weight loss is significant, as set out in the legislation. The ministry further notes that the appellant's MP statement "[...] weight loss NYD, lost 30lb over last few year," does not provide information that is a malnutrition explanation. The ministry further explains and states that this explanation does speak to deficiencies of specific vitamins/ minerals and does not explain how weight loss has caused malnutrition. The ministry notes the MP does not speak of the symptoms of malnutrition within his reconsideration statements and that makes it difficult to establish the symptoms of malnutrition based on the MP's assessment. The ministry found that the appellant's MP has not confirmed that there are at least two of the symptoms set out in the EAPWD Regulation, subsection 67(1.1) (b).

Given that the weight loss was over a few years and the appellant's current BMI is within a normal range, the ministry has reasonably concluded that significant weight loss has not been established on the evidence. The panel also finds that the ministry reasonably determined that the symptom of malnutrition was not established on the evidence as the MP does not identify specific nutritional deficiencies, or explain how the weight loss caused malnutrition, which is especially important given that the appellant's BMI remains in the normal range.

### **Vitamin/Mineral Supplementation**

Section 67(1.1) (c) requires that the item(s) sought must be set out in Schedule C, section 7, specified in the request, and be required for the purpose of alleviating a symptom referred to in paragraph (b).

The appellant's MP provides a handwritten statement in the Request for Reconsideration stating that the "history of severe anxiety/depression, schizo-affective disorder on daily psychiatric medications" and states "last 3 years had lost 30lb decreased appetite, severe anxiety prevents from proper food preparation and normal eating, ongoing depression contribute to lost appetite, motivation in preparing foods currently is coming for regular visits so far all medical work up negative in my opinion food supplement will help my patient to maintain health and prevent further deterioration of symptoms."

The ministry referenced the MNS application where the MP noted in specifying the vitamin or mineral supplements required the MP writes, "dietary supplements (permanent)", how these items alleviate specify symptoms the MP wrote "will help maintain weight", in describing how vitamin/mineral supplementation will prevent imminent danger to appellant's life MP wrote "hopefully will gain weight." The ministry noted the following:

- Since malnutrition and significant weight loss were not established therefore it cannot be determined that a supplementation is needed to alleviate the symptoms as set out in subsection 67(1.1) (b). It has not been established that the appellant is displaying a symptom as listed in Part C, Section 3 of the MNS application, it cannot be established that the appellant requires vitamin / mineral supplementation to alleviate symptom.
- MP has not provided enough evidence to establish that due to chronic, progressive deterioration of health resulting from a medical condition that the appellant's symptoms of malnutrition specifically where it indicates a need for vitamin / supplementation.
- MP statement that "dietary supplements (permanent), the ministry found this does not establish the vitamin/mineral supplements are required.
- The ministry found that although the MP states "will help maintain weight" the symptoms of significant weight loss have not been established.
- The MP's statement of "hopefully will gain weight," the ministry found that does not establish that the failure to obtain vitamin /mineral supplements will result in imminent danger to the appellant's life.
- The ministry found the MP does not describe a need for vitamin/mineral supplements in his reconsideration statement.
- The MP's reconsideration statement "[...] food supplement will help my patient to maintain health and prevent further deterioration of symptoms," the ministry found does not establish that failure to obtain vitamin/min supplement will result in imminent danger to the appellant's life.

The ministry found that the information provided doesn't demonstrate that the legislative requirements for the provision of vitamin / mineral supplements is met specifically Section 67 (1.1) (c).

The panel finds that the ministry's conclusion on the vitamin/mineral supplementation items criterion was reasonable. The panel notes, the MP practitioner does not establish that the appellant requires a vitamin/mineral supplementation for the purpose of alleviating a symptom and failure to obtain this supplementation would result in imminent danger to the

appellant's life. The MP does not describe deficiencies of specific vitamins/ minerals, does not explain how weight loss has caused malnutrition. Additionally, the MP's comments do not reflect the urgency or immediacy of need that would reasonably associated with imminent danger to life.

### **Nutritional Items**

The ministry found that the appellant did not satisfy the nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate symptoms as set in subsection 67 (1.1) (b) due to a progressive deterioration of health and to prevent imminent danger to life, as set in the legislation.

The ministry notes the following:

- The MP does not describe nutritional items that the appellant requires.
- Nutritional items are intended as part of a caloric supplementation to a regular dietary intake to alleviate symptoms as set out in subsection 67 (1.1)(b). The ministry found that it has not been established that the appellant is displaying symptoms as listed in Part C, Section 3 of the MNS application, and it cannot be established that the appellant requires nutritional items to alleviate symptoms.
- Ministry finds that the MP does not provide enough evidence to demonstrate that the appellant is displaying a symptom set out in subsection 67(1.1) (b) which would indicate a need for caloric supplementation, such as underweight status, significant weight loss, or significant muscle mass loss.
- BMI is 22.6 which is within the normal range.
- The ministry found that the MP states the vitamin/mineral supplements "will improve weight" although the symptom of significant weight loss has not been established.
- The MP's reconsideration statement "[...] food supplement will help my patient to maintain health and prevent further deterioration of symptoms," the ministry found does not establish that failure to obtain vitamin/min supplement will result in imminent danger to the appellant's life.

The ministry found that the eligibility criteria set out in the EAPWD Regulation, subsections 67 (1.1) (b), (c) and (d) have not been met.

The panel finds that the ministry's conclusion on the nutritional items was reasonable. The MP has not provided a description of the nutritional items required to alleviate any of the symptoms. Additionally, the MP does indicate that the appellant has issues with weight loss but indicates that this is because the appellant has lost his appetite and motivation to prepare food as a result of his mental health conditions, not that caloric supplementation in addition to a regular dietary intake is required. The panel concludes that it is reasonable for the ministry to have found the appellant did not meet the requirements of Section 67 (1.1) (b) and (c).

The panel finds that the ministry reasonably determined that the evidence does not establish that supplementation will prevent imminent danger to life. The panel agrees with the ministry's assessment that the information provided by the MP that the nutritional items will aid appellant to maintain health and prevent further deterioration of symptoms, does not satisfy the legislative requirement for 'imminent' danger as it does not refer to an immediacy indicating that there is a danger to the appellant's life that is likely to happen soon. The ministry was reasonable in determining that the Appellant does not meet the requirements of sub-section 67(1.1) (d) of the EAPWDR.

### **Conclusion**

The panel found the ministry's conclusions on each criterion at issue to be reasonable. Therefore, the panel finds that the ministry's decision finding the appellant ineligible for the Monthly Nutritional Supplement was a reasonable application of the legislation in the circumstances of the appellant.

The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.