

### **PART C – DECISION UNDER APPEAL**

The Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated February 20, 2018 determined that the appellant was not eligible for the monthly nutritional supplement (MNS) for nutritional items under section 67(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because it was not established that the requested nutritional items would be required as part of a caloric supplementation to a regular dietary intake to alleviate a symptoms of a chronic, progressive deterioration of health and prevent imminent danger to life pursuant to section 67(1.1) (c) and (d) of the EAPWDR.

The ministry however determined the appellant was eligible for a MNS for vitamins/mineral supplementation to alleviate a symptom set out in s. 67(1.1)(b) of the EAPWDR and to prevent an imminent danger to his life as set out in s. 67(1.1) and Schedule C, subsection 7(c) of the EAPWDR.

### **PART D – RELEVANT LEGISLATION**

EAPWDR, section 67(1.1).

EAPWDR, Schedule C, section 7.

## **PART E – SUMMARY OF FACTS**

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Application for Monthly Nutritional Supplement (MNS) dated January 17, 2018, signed by an unidentified medical practitioner (MP) and stating in part that:
  - the appellant’s severe medical condition was diagnosed as “liver failure” with no information provided in the ‘description’ section of the application;
  - ‘yes’ the appellant is being treated for a chronic progressive deterioration of health and added the comment: “on med[ication] for liver failure”;
  - the chronic progressive deterioration of health is causing malnutrition, significant neurological degeneration (with the comment: “possible secondary to liver failure” and significant deterioration of a vital organ “liver”);
  - the appellant’s height and weight are not provided;
  - under ‘specify the additional nutritional items required and expected duration of need’ the MP wrote an illegible symbol or word;
  - under ‘does the medical condition result in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake?’ the MP indicated “no”
  - under ‘describe how the nutritional items required will alleviate one or more of the symptoms specified and provide caloric supplementation to the regular diet’ the MP indicated “N/A” ; and
  - under ‘describe how the nutritional items requested will prevent imminent danger to life’ the MP left this section blank.
- 2) Discharge Summary from a local hospital, dated September 7, 2017, which provides:
  - a diagnoses, which included, alcoholic hepatitis/liver failure, acute kidney injury, pancreatitis, previous opiate and benzodiazepine seeking and abusive behaviour, autonomic neuropathy with postural hypotension that is likely related to alcohol, and elevated ferritin;
  - a list of medications prescribed at discharge; and
  - treatment/course in hospital.
- 3) Request for Reconsideration, signed and dated February 7, 2018, in which the MP stated “Patient has autonomic and peripheral neuropathy [secondary to] alcohol use”, and the appellant stated the following:
  - the internal medicine doctor (‘specialist’) has diagnosed the appellant with autonomic neuropathy with postural hypotension and alcoholic hepatitis/liver failure which is due to significant neurological degeneration; and
  - “I have two of the symptoms listed”.

### **Evidence on Appeal**

Notice of Appeal (NOA), signed and dated February 22, 2018, which stated in part, “I was denied my nutritional benefits but was approved for vitamins supplements of \$40.00 my cost for my supplements and vitamins are averaging cost of \$142.00 monthly”.

### **Evidence at the Hearing**

The appellant did not attend the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The ministry relied on its reconsideration decision.

## **PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the ministry's decision that the appellant was not eligible for the MNS for nutritional items under section 67(1) of the EAPWDR because it was not established that the requested nutritional items would be required as part of a caloric supplementation to a regular dietary intake to alleviate a symptom of a chronic, progressive deterioration of health and prevent imminent danger to life under section 67(1.1) (c) and (d) of the EAPWDR, was a reasonable application of the legislation or reasonably supported by the evidence.

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.

Section 7 of Schedule C of the EAPWDR provides as follows:

### **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 he meets the criteria for a supplement for vitamins, has two of the required symptoms listed in the legislation and that the cost of his supplements and vitamins are averaging \$142.00 per month.

### *The Ministry's Position*

The ministry argued that it is not satisfied that the appellant requires "nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate a symptom as set out in section 67(1.1)(b) of the EAPWDR due to a progressive deterioration of health and to prevent imminent danger to life, as set in the legislation".

### *The Panel's Decision*

Section 67(1.1)(c) of the EAPWDR and Section 7 of Schedule C require that the medical practitioner or nurse practitioner confirm that for the purpose of alleviating a symptom referred to, the appellant requires the additional nutritional items that are specified in the request as part of a caloric supplementation to a regular dietary intake. The ministry noted that although the appellant displays at least two of the listed symptoms in section 67(1.1)(b), (namely he displays malnutrition, significant neurological degeneration and significant deterioration of a vital organ), the evidence does not demonstrate that the appellant displays symptoms that require a need for a caloric supplementation, such as symptoms of underweight status, significant weight loss or significant muscle mass loss. The ministry also noted that the MP did not specify that any nutritional items are required. Furthermore, the ministry noted that the MP indicated that the appellant does not have a medical condition that prevents the absorption of sufficient calories to satisfy daily requirements through a regular dietary intake, and indicated "N/A" to describe how the nutritional item required will alleviate one or more of the symptoms listed in section 67(1.1)(b).

The ministry found that the Discharge Summary "does not speak to a medical condition resulting in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, nor does [it] speak to a need for caloric supplementation". The panel finds that the information provided by the specialist confirmed diagnosis and treatment course but did not specifically speak to the need of nutritional items or the inability to absorb sufficient calories. As a result, the panel places little weight to the evidence contained in the Discharge Summary.

The panel notes that in the MNS application the MP provided great detail in all the sections related to the need for vitamins. However, since the MP did not state that any nutritional items are required, did not indicate that the appellant has a medical condition that prevents the absorption of sufficient calories to satisfy daily requirements and that the MP indicated "N/A" where asked to 'describe how the nutritional items will alleviate one or more of the symptoms listed in section 67(1.1)(b)', the panel finds the MP did not demonstrate support for the requirement of nutritional items. The panel therefore finds that the ministry reasonably determined that the evidence provided by the appellant's MP did not establish that nutritional items are required to alleviate a symptom of chronic, progressive deterioration of health pursuant to section 67 (1.1) (c) EAPWDR.

Section 67(1.1)(d) requires that the medical practitioner or nurse practitioner confirm that failure to obtain the nutritional items that are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the person's life. The ministry noted that in the MNS application, the MP responded to the question 'how the nutritional items will prevent imminent danger to the appellant's life?', by leaving this section blank. In addition, the panel can identify no other evidence presented to the ministry prior to its reconsideration decision that would establish that any nutritional items were necessary to prevent imminent danger to the appellant's life. Therefore, the panel finds that the ministry reasonably concluded that the MP has not confirmed that failure to obtain the requested additional nutritional items will result in imminent danger to the appellant's life, as required by the legislation.

### **Conclusion:**

The panel finds that the ministry reasonably concluded that the evidence establishes that the appellant's request for MNS of nutritional items did not meet the legislative criteria set out in section 67 (1.1) (b, c and d) of the EAPWDR. The panel confirms the ministry's decision and the appellant is not successful at appeal.