

## **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of January 17, 2018 (the “Reconsideration Decision”), which denied the Appellant a nutritional supplement because the Appellant had not satisfied the criteria set out in section 67(1.1)(b) of the *Employment and Assistance Regulation* (“EAR”), which requires the confirmation by a medical doctor that an applicant displays any two or more of the following:

- malnutrition;
- underweight status;
- significant weight loss;
- significant muscle mass loss;
- significant neurological degeneration;
- significant deterioration of a vital organ; or
- moderate to severe immune suppression

and that such symptoms are a *direct result* of a chronic, progressive deterioration of health caused by a severe medical condition.

The Ministry also determined that the Appellant had not met the criteria set out in sections 67(1.1)(c) and (d) of the EAR because the Appellant’s doctor had not confirmed that the requested supplement would alleviate any of the above-described symptoms and that failure to obtain the supplement would result in “imminent danger” to the Appellant’s life.

## **PART D – RELEVANT LEGISLATION**

Section 61.01, EAR  
Section 67, EAR  
Section 7, Schedule C to the EAR

## PART E – SUMMARY OF FACTS

### *Background*

The Appellant is a recipient of disability assistance. The Appellant applied for a monthly nutritional supplement on June 23, 2017.

### *Information before the Ministry*

At the time of the Reconsideration Decision, the information and documents before the Ministry included:

- the Application for Monthly Nutritional Supplement (the “Application”), completed by the Appellant and the Appellant’s doctor who wrote that:
  - the Appellant has suffered from ulcerative colitis since 2002;
  - the Appellant had suffered a recent concussion in a car accident;
  - the Appellant has chronic back and neck pain from the same car accident;
  - the Appellant has ongoing difficulty maintaining his weight and energy;
  - the Appellant displayed symptoms of:
    - malnutrition, due to a “difficulty obtaining healthy food”;
    - underweight status, due to “difficulty maintaining adequate weight”;
    - significant weight loss;
    - significant muscle mass loss, due to “inability to exercise”;
    - significant neurological degeneration; and
    - significant deterioration of a vital organ- “gastrointestinal track (sic)”
  - the Appellant weighs 177 pounds and stands 6’1” tall;
  - the Appellant requires a “protein supplement or shake to maintain adequate nutrition or muscle mass”;
  - the Appellant has “difficulty absorbing (sic) carbohydrates” and “needs high caloric diet via protein”;
  - a “high calorie protein supplement will allow for adequate weight management & Muscle mass”; and
  - a nutritional supplement “will allow for adequate maintenance of weight and muscle mass”;
- the Monthly Nutritional Supplement Decision Summary;
- letter from the Ministry to the Appellant, dated November 8, 2017, informing the Appellant of the Ministry’s original decision on his application for a nutritional supplement; and
- the Appellant’s Request for Reconsideration (“RFR”), dated December 14, 2017, in which the Appellant asked for an extension of time to get additional forms from his family doctor.

The Appellant filed a Notice of Appeal, dated February 8, 2018.

### *The Hearing*

The Appellant did not attend at the hearing and, after having confirmed that the Appellant had been notified of the date and time of the hearing, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The Ministry relied on the Reconsideration Decision at the hearing of the appeal and also advised that the Appellant is currently in receipt of a dietary supplement in the amount of \$40.00 per calendar month, pursuant to section 6 of Schedule C to the EAR and section 66 of the EAR on the basis that he requires a high protein diet supplement.

## PART F – REASONS FOR PANEL DECISION

The issues on appeal are whether the Ministry was reasonable in its determination that:

- the Appellant had not satisfied the criteria set out in section 67(1.1)(b) of the EAR for a nutritional supplement because a medical doctor had not confirmed that the Appellant displays any 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; or
    - moderate to severe immune suppression
- and that such symptoms are a direct result of a chronic, progressive deterioration of health caused by a severe medical condition; and
- that the Appellant had not met the criteria set out in sections 67(1.1)(c) and (d) of the EAR because the Appellant's doctor had not confirmed that the requested supplement would alleviate the any of the above-described symptoms and that failure to obtain the supplement would result in "imminent danger" to the Appellant's life.

### *Relevant Legislation*

Section 61.01 of the EAR defines the terms "nutritional supplement":

**"nutrition-related supplement"** means any of the following supplements:

- (a) a supplement under section 66 [*diet supplement*];
- (b) a supplement under section 67 [*nutritional supplement – monthly*], other than a supplement for vitamins and minerals;
- (c) a supplement under section 67.001 [*nutritional supplement – short-term*];
- (d) a supplement under section 67.01 [*tube feed nutritional supplement*];
- (e) a supplement under section 2 (3) of Schedule C that is related to nutrition;

Section 67 sets out the criteria that must be met for a recipient to be eligible for a nutritional supplement:

### **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

The supplements that may be provided and the amount that may be provided for those supplements under section 67 of the EAR are described in section 7 of Schedule C to the EAR as follows:

### **Monthly nutritional supplement**

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.

### *Panel Decision*

Of the five categories of "nutrition-related supplements" described in section 61.01 of the EAR, it is only those set out in section 67 that could apply to the Appellant. The supplement referred to in section 66 is one that the Appellant is already receiving. The supplement referenced in section 67.01 of the EAR is for a tube-feeding nutritional supplement, which has not been recommended by the Appellant's doctor. The supplement available under section 67.001 of the EAR is a short term supplement available to an eligible recipient who is recovering from surgery, a severe injury, a serious disease, or the side effects of medical treatment, none of which apply to the Appellant on the evidence contained in the Application. Finally, any supplement that could be provided under section 2(3) of Schedule C to the EAR would be in respect of a supplement that had been available under previous legislation but is not available under the EAR. In this case, the high calorie protein supplement described by the Appellant's doctor is available under the EAR for recipients who meet the legislative criteria set out in any of sections 66, 67, 67.001, or 67.01.

The requirements for eligibility for a nutritional supplement are set out in section 67(1.1) of the EAR. These requirements include confirmation by a medical practitioner or nurse practitioner that the applicant is being treated for a "chronic, progressive deterioration of health on account of a severe medical condition" and displays two or of the following symptoms *as a direct result* of the chronic condition:

- (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; and
- (vii) moderate to severe immune suppression.

An applicant must also demonstrate that the nutritional supplement sought is required to alleviate at least one of the above-described symptoms and that imminent danger to the applicant's life will result if the applicant does not obtain the supplement.

In the Appellant's case, the Ministry was satisfied that that Appellant had met the criteria of demonstrating that he was being treated for a "chronic, progressive deterioration of health on account of a severe medical condition", namely ulcerative colitis.

The Ministry was not satisfied that the Appellant had met the second requirement that a medical practitioner or nurse practitioner confirm that the Appellant was suffering from at least two of the symptoms described in sections 67(1.1)(b)(i) through (vii) of the EAR as a *direct result* of his ulcerative colitis.

While the Appellant's doctor did indicate, in question 3 of the Application, that the Appellant was suffering from all of the symptoms described in sections 67(1.1)(b)(i) through (vii) of the EAR, the Appellant's doctor did not indicate that any of the symptoms were a *direct result* of his ulcerative colitis, except for the "significant deterioration of a vital organ." With respect to malnutrition, the Appellant's doctor noted simply that the Appellant has "difficulty obtaining healthy food." The only other symptoms about which the Appellant's doctor makes note are "underweight status", which he notes causes "difficulty maintaining adequate weight", and "significant muscle mass loss", which the Appellant's doctor describes as resulting from an "inability to exercise, fatigue." The doctor does not indicate how or if the Appellant's inability to exercise, his fatigue, his difficulty in maintaining adequate weight, and his difficulty obtaining healthy food are a *direct result* of the Appellant's ulcerative colitis. It is only the significant deterioration of a vital organ that the Appellant's doctor relates to the Appellant's ulcerative colitis. The Ministry states in the Reconsideration Decision that the "gastrointestinal track (sic)" is not a vital organ. The panel notes that "vital organ" is not defined in the EAR but that, typically, the vital organs in the human body are considered to be the brain, heart, kidneys, liver and lungs. For the above reasons, the panel finds that the Ministry was reasonable in its application of section 67(1.1)(b) of the EAR in determining that the Appellant's doctor had not confirmed that the Appellant displayed at least two or more of the symptoms described in section 67(1.1)(b)(i) through (vii) of the EAR and that same were a *direct result* of his ulcerative colitis.

Section 67(c) of the EAR also requires a medical practitioner or nurse practitioner to confirm that a recommended supplement will alleviate at least one of the symptoms described in sections 67(1.1)(b)(i) through (vii) of the EAR and section 67(d) requires confirmation that without the recommended supplement, imminent danger to an applicant's life will result.

The Appellant's doctor set out that a "high calorie protein supplement will allow for adequate weight management & muscle mass" in answer to the question of how a nutritional supplement will alleviate one or more of the symptoms described in sections 67(1.1)(b)(i) through (vii) of the EAR. That answer describe how a nutritional supplement would alleviate two of the symptoms that the Appellant's doctor describes the Appellant as suffering from. However, as those symptoms have not been found to be a *direct result* of the Appellant's ulcerative colitis, the panel finds that the Ministry was reasonable in its determination that the Appellant's doctor had not confirmed that the nutritional supplement recommended would alleviate one or more of the symptoms described in sections 67(1.1)(b)(i) through (vii) of the EAR, as required by section 67(1.1)(c) of the EAR.

In the Application, the Appellant's doctor was asked to complete a section describing how the recommended nutritional supplement would prevent "imminent danger" to the Appellant's life. In answer to that section, the Appellant's doctor merely confirmed that the recommended high calorie protein supplement would "allow for adequate maintenance of weight and muscle mass." While this would seem to describe how the recommended supplement might alleviate two of the specific symptoms described in sections 67(1.1)(b)(i) through (vii) of the EAR, it does not describe how the recommended nutritional supplements would "prevent imminent danger" to the Appellant's life and, in the result, the panel finds that the Ministry was reasonable in its determination that the Appellant's doctor had not confirmed that failure to obtain the recommended supplement would "result in imminent danger" to the Appellant's life.

In view of all of the foregoing, the panel confirms the Ministry's Reconsideration Decision. The Appellant is not successful in the appeal.