

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated April 23, 2018 which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and additional nutritional items. The ministry held that the requirements of Section 67(1.1) and Section 7 of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as there is not sufficient information to establish that a medical practitioner or nurse practitioner has confirmed:

- the appellant requires vitamins and minerals to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life, pursuant to Section 67(1.1)(a), (b), (c) and (d); and,
- 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 the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life, under Section 67(1.1)(a), (b), (c) and (d).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67(1.1) and Schedule C, Section 7

PART E – SUMMARY OF FACTS

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

- 1) Nutrition Progress Report dated January 13, 2016 in which a physician wrote that the appellant's nutrition intervention included a change in her diet to fibre-restricted, gluten-free, lactose-restricted regular diet. Education was provided regarding a high calorie/high protein dairy-free diet and a suggestion that the appellant take Vitamin D and Vitamin B12 daily and increase calcium intake;
- 2) Application for Monthly Nutritional Supplement (MNS) dated November 23, 2017 in which the appellant's medical practitioner (MP) reported:
 - the appellant's severe medical condition is Crohn's Disease, described as "form of Irritable Bowel Disease;"
 - in response to the question whether, as a direct result of the severe medical condition, the appellant is being treated for a chronic, progressive deterioration of health, the MP wrote: "Yes- increase in caloric intake and optimization of micronutrients to increase weight;"
 - 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 the symptoms of underweight status, significant weight loss, and significant muscle mass loss, and wrote: "unable to exercise regularly due to weight loss and medical condition;"
 - the appellant's height and weight are not recorded;
 - in response to a request to specify the vitamin or mineral supplements required and the expected duration of need, the MP wrote "vitamin D" and "B12;"
 - asked to describe how the item will alleviate the specific symptoms identified, the MP wrote "optimize micronutrients and weight while alleviating pain;"
 - in response to the request to describe how the vitamins and minerals will prevent imminent danger to the appellant's life, the MP wrote "needs to maintain weight;"
 - in response to a request to specify the additional nutritional items required, the MP wrote: "fibre restricted, gluten free, lactose restricted;"
 - 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 responded "yes- Crohn's;"
 - asked 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 noted "as outlined in question 5" [optimize micronutrients and weight while alleviating pain];
 - in response to a request to describe how the nutritional items requested will prevent imminent danger to the appellant's life, the MP wrote "will help to maintain her weight and health;"
- 3) Statements from a health clinic for a follow- up visit on April 13, 2017 and covering the period April 17, 2017 through March 28, 2018 for IV Therapy/Treatments for "celiac support IV" at a cost of \$74 for each treatment; and,
- 4) Request for Reconsideration dated April 4, 2018 with attached letter from the appellant.

In her Request for Reconsideration, the appellant wrote that:

- She feels that her family physician did not elaborate adequately in completion of the MNS application dated November 23, 2017.
- Up until she developed Crohn's Disease, she was a vibrant teenager with normal weight range and energy levels.
- Crohn's Disease started to affect her ability to maintain a healthy weight because she could not consume enough food in a single day to keep up with her body's response to the inflammation. Her weight started to drop.
- She required surgery to remove 15 cm of her lower bowel. At this time, she was struggling to maintain a body weight of up to 105 lbs. She became malnourished.
- Her stomach has great difficulty in absorbing nutrients through her food and over-the-counter vitamins, which caused further pain. Her energy levels were at a severely low level and she was pretty much house-bound at this point in her life.
- Her physician did not provide her height and weight, which she describes. According to the Canadian Guidelines for Body Weight Classification in Adults, her BMI places her in the category as having "increased risk for developing further health problems."
- Regarding vitamins and minerals, she consulted a Naturopathic doctor who explained that persons with Crohn's are not able to properly absorb nutrients. The Naturopathic doctor recommended a treatment of vitamins and B12 supplements as she believed the appellant's lack of energy was directly due to her vitamin stores being completely depleted due to mal-absorption. She is unable to tolerate oral vitamins and, since April 2017, she has taken 13 Celiac IV treatments.
- Since taking this therapy, she has increased her energy levels. She is starting to feel better and is exercising at the gym a couple of times per week to help her rebuild the significant muscle mass which she lost. She needs to continue with the therapy but it is not covered by MSP and she must pay \$74 for each treatment.
- Regarding the nutritional items, her current body weight is below the average body weight for females in her age range. In order to maintain her current low weight, she needs a surplus of calories each day. She must also avoid foods that fuel her Crohn, which include gluten, high fibre, lactose and dairy. The special diet foods are much higher in cost than regular foods and her grocery costs are considerably higher than for persons who do not have to maintain these diet requirements.
- If she does not continue to eat the recommended foods, the result will be continuous flare-ups, which are very painful and take several days to recover from. Over the long term, this could result in imminent danger to her life because of the resultant risk of developing another stricture due to inflammation.

Additional information

At the hearing, the appellant stated that:

- She was diagnosed as a teenager with Crohn's Disease and, several years ago, she had surgery to remove 15 cm of her ileum, or her lower bowel. After the surgery, she was in a lot of pain and she was not able to leave her home.
- She went to a Naturopathic doctor and the doctor recommended IV treatments since she cannot digest vitamins in pill form. These treatments are not covered by MSP so she must pay for them out of her own pocket. She has to have the treatments at least once per month and a maximum of 2 times per month. She needs the IV supplements.

- After a year taking these treatments, she can go to school, maintain a part-time job. The IV treatments are improving her energy levels as she used to be fatigued. All of her nutrient store levels were depleted. At this point, her energy stores have been replenished.
- She is allergic to gluten, dairy and nuts. With gluten, her body flushes all the nutrients out of her system and it is a real challenge to maintain her weight.
- The cost of gluten-free foods is typically twice as much as regular foods. The ministry provides her with a supplement of \$40 per month for gluten-free and dairy-free diet, and this has helped.
- With her current weight and height, she is classified as “underweight” status.
- The IV treatments include Vitamins D, C, B, Iron, and a few other compounds. This is a prescription from the Naturopathic doctor.
- Although the MP who completed the MNS application is not her regular family doctor, she is in the same clinic and was the doctor who referred her for surgery. The appellant also has a gastroenterologist who she sees.
- She has been on a medication as well for the past 6 months that works in her gut and minimizes the white blood cells circulating so there is not as much pain.
- If the treatments are taken away, she would be back to being bed-ridden and house-bound, which is not something wanted by any young person.

At the hearing, the appellant’s father stated that:

- It has taken a lot to get the appellant’s weight to where it is now. A year ago, she could not consider holding down a job. It was also hard on her self-esteem. She has been able to get control of her life. The appellant is enrolled in a course now, but before she was not sure what her future prospects would be.
- They see the appellant in the morning now, rather than only the late afternoon. They are seeing an opportunity for the appellant to get to work and to start paying taxes.
- The appellant does not want to be reliant on assistance and, hopefully, it is a stop-gap in her life until she can get out on her own, to allow her to be independent.
- Interpretation of the requirement that without these items there will be an imminent danger to the person's life to be that without the supplements the person would perish, seems very restrictive and few people would qualify except in extreme cases.
- It can be seen that the appellant is a slight person with tiny wrists and, over the last 12 months, has worked hard to put on the weight she has.

The ministry relied on the reconsideration decision, as summarized at the hearing.

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

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) 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.

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.

Chronic Progressive Deterioration of Health

The ministry must be satisfied that the requirement in Section 67(1.1)(a) of the EAPWDR has been met and the MP has confirmed that the person is being treated by the MP for a chronic, progressive deterioration of health on account of a severe medical condition. In the reconsideration decision, the ministry acknowledged that the MP confirmed that the appellant has a severe medical condition, specifically Crohn's Disease; however, the ministry was not satisfied that the MP confirmed that, as a result of Crohn's Disease, the appellant is being treated for a chronic, progressive deterioration of health. The ministry wrote that the MP indicated in the MNS application, in response to the question whether the appellant is being treated for a chronic, progressive deterioration of health, that: "Yes- increase in caloric intake and optimization of micronutrients to increase weight" and thereby addressed the appellant's treatment but did not confirm that the appellant is experiencing an ongoing worsening of her health as required by Section 67(1.1)(a) of the EAPWDR.

In her Request for Reconsideration, the appellant wrote that since her surgery and 13 Celiac IV treatments, she has increased her energy levels. She is starting to feel better and is exercising at the gym a couple of times per week to help her rebuild her muscle mass, which she lost. At the hearing, the appellant stated that if the Celiac IV treatments are taken away, she would be back to being bed-ridden and house-bound, which is not something desired by any young person. While the appellant believes that she would experience a chronic, progressive deterioration of her health without the treatments, the MP simply responded "yes" and did not provide further information to support a chronic and progressive worsening of the appellant's health. In the absence of further information from the MP, the panel finds that the ministry reasonably concluded that there was insufficient information from the MP to confirm that the appellant has experienced a chronic and progressive deterioration of her health pursuant to Section 67(1.1)(a) of the EAPWDR.

Symptoms

The ministry must be satisfied that the requirement in Section 67(1.1)(b) of the EAPWDR has been met and the MP has confirmed that, as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the listed symptoms. The ministry wrote in the reconsideration decision that the MP did not confirm that the appellant displays two or more of the listed symptoms. The ministry wrote that while the MP indicated the symptoms of underweight status, significant weight loss, and significant muscle mass loss, she did not provide information to explain the degree or severity of the symptoms identified, such as the appellant's height and weight, or the amount of weight or muscle mass loss and the period of time in which the loss occurred. The ministry considered that, in response to the question whether the appellant displays two or more of the symptoms listed in section 67(1.1)(b) of the EAPWDR, the only narrative provided by the MP is in regard to the symptom of significant muscle mass loss, for which she commented that the appellant is "unable to exercise regularly

due to weight loss and medical condition.” The ministry considered that the MNS application asks that the symptoms are described “in detail” and the panel finds that the ministry was reasonable to require further information from the MP to show that the weight loss and the muscle mass loss are “significant.”

Regarding the symptom of underweight status, the appellant provided her height and weight in her Request for Reconsideration and wrote that, according to the Canadian Guidelines for Body Weight Classification in Adults, her BMI places her in the category as having “increased risk for developing further health problems.” The appellant also wrote that her current body weight is below the average body weight for females in her age range. At the hearing, the appellant stated that, given her current weight and height, her BMI classifies her as “underweight” status. In the reconsideration decision, the ministry acknowledged that the appellant’s BMI places the appellant in the “low normal” to “upper underweight” range and wrote that the ministry considers the appellant’s information in conjunction with that of the MP, but noted that the MP had not recorded the appellant’s height and weight in the MNS application. Unlike the other symptoms that are qualitative and require that the loss is “significant,” underweight status is merely a function of one’s BMI. As the MP responded “yes” to the underweight status and the appellant subsequently provided her height and weight to establish her BMI, the panel finds that it was not reasonable for the ministry to require further information from the MP to establish that the appellant is displaying this symptom.

However, as previously discussed, the ministry reasonably determined there was insufficient information from the MP to confirm that the appellant has experienced a chronic and progressive deterioration of her health and the relevant symptoms must be a direct result of the chronic, progressive deterioration of health. Overall, the panel finds that the ministry was reasonable to conclude that the MP has not confirmed that the appellant displays two or more of the symptoms listed in section 67(1.1)(b) of the EAPWDR that are as a direct result of the chronic progressive deterioration of health.

Vitamins and Minerals

The ministry must be satisfied that the requirement in Section 67(1.1)(c) of the EAPWDR has been met and the MP has confirmed that, for the purpose of alleviating one of the symptoms referred to in sub-section (b), the appellant requires the vitamins and minerals as set out in Section 7 of Schedule C. The ministry wrote that since it has not been established that the appellant is displaying a listed symptom, as well as the statements made by the MP being general in nature, the ministry was not satisfied that the information demonstrates that vitamin/mineral supplements are required to alleviate a symptom of a chronic, progressive deterioration of health and to prevent imminent danger to the appellant’s life. In the MNS application dated November 23, 2017, the MP wrote in response to a request to specify the vitamin or mineral supplements required: “vitamin D” and “B12” and, asked to describe how the item will alleviate the specific symptoms identified, wrote: “optimize micronutrients and weight while alleviating pain.” The ministry also considered the Nutrition Progress Report dated January 13, 2016 in which the physician suggested that the appellant take Vitamin D and Vitamin B12 daily and increase her calcium intake.

In her Request for Reconsideration, the appellant wrote that the Naturopathic doctor recommended a treatment of vitamins and B12 supplements as she believed the appellant's lack of energy was directly due to her vitamin stores being completely depleted due to mal-absorption. The appellant wrote that she is unable to tolerate oral vitamins and, since April 2017, she has taken 13 Celiac IV treatments. At the hearing, the appellant explained that the IV treatments include Vitamins D, C, B, Iron, and a few other compounds, and that these treatments are on a prescription from the Naturopathic doctor. The appellant wrote in her Request for Reconsideration that, since taking this therapy, she has increased her energy levels and is exercising at the gym to help rebuild the muscle mass which she lost. At the hearing, the appellant stated that after a year taking these treatments, she can now go to school and maintain a part-time job. The IV treatments are improving her energy levels as she used to be fatigued and all of her nutrient store levels were depleted. The appellant stated that at this point, her energy stores have been replenished. The appellant stated that with her current weight and height, she is still classified as "underweight" status. The appellant's father stated at the hearing that it has taken a lot to get the appellant's weight to where it is now. He stated that it can be seen that the appellant is a slight person with tiny wrists and, over the last 12 months, she has worked hard to put on the weight she has.

While the MP wrote that the vitamins/mineralize will "optimize" the appellant's weight and the appellant stated that her treatments have given her sufficient energy to exercise to improve her muscle mass and she has been able to gain weight but is still underweight, the panel finds that the ministry reasonably determined that as it has not been established that the appellant is displaying a symptom as a direct result of a chronic, progressive deterioration of her health, it cannot be established that the appellant requires vitamin and mineral supplementation to alleviate a symptom.

The ministry must also be satisfied that the requirement in Section 67(1.1)(d) of the EAPWDR has been met and the MP has confirmed that failure to obtain the vitamins and minerals will result in imminent danger to the person's life. In response to the request to describe how the vitamins and minerals will prevent imminent danger to the appellant's life, the MP wrote "needs to maintain weight." At the hearing, the appellant stated that if the vitamin/mineral IV treatments are taken away, she would be back to being bed-ridden and house-bound, which is not something wanted by any young person. The appellant's father argued that interpretation of the requirement to be that without the supplements the person would perish, seems very restrictive and few people would qualify except in extreme cases. Given that there are no words of urgency used by the MP to denote 'imminent danger,' the panel finds that the ministry reasonably concluded that there is not sufficient information from a MP to establish that failure to obtain the vitamins and minerals will result in imminent danger to the appellant's life, pursuant to Section 67(1.1)(d) of the EAPWDR.

Additional Nutritional Items

The ministry must be satisfied that the requirements in Section 67(1.1)(c) of the EAPWDR and Section 7 of Schedule C have been met and the MP has confirmed 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. In response to a request to specify the additional nutritional items required, the MP wrote “fibre restricted, gluten free, lactose restricted” and the ministry wrote in the reconsideration decision that a restricted diet is not considered indicative of a need for caloric supplementation to a regular dietary intake.

The appellant wrote in her Request for Reconsideration that in order to maintain her current low weight, she needs a surplus of calories each day and she must also avoid foods that fuel her Crohn’s, including gluten, high fibre, lactose and dairy. The appellant wrote that the special diet foods are much higher in cost than regular foods and her grocery costs are considerably higher than for persons who do not have to maintain these diet requirements. The appellant stated at the hearing that when she consumes gluten, her body flushes all the nutrients out of her system and it is a real challenge to maintain her weight. The appellant also acknowledged that the ministry provides her with a supplement of \$40 per month for gluten-free and dairy-free diet.

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 responded “yes- Crohn’s.” Asked 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 noted in the MNS application: “as outlined in question 5” [optimize micronutrients and weight while alleviating pain]. The panel finds that the ministry reasonably determined that the evidence from the MP does not clearly indicate that caloric supplementation over and above regular dietary intake is required. While the MP wrote that the additional nutritional items will “optimize” the appellant’s weight and the appellant stated that she needs a surplus of calories each day, the panel finds that the ministry reasonably determined that as it has not been established that the appellant is displaying a symptom as a direct result of a chronic, progressive deterioration of her health, it cannot be established that the appellant requires additional nutritional supplementation to alleviate a symptom.

The ministry must also be satisfied that the requirement in Section 67(1.1)(d) of the EAPWDR has been met and the MP has confirmed 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 wrote in the reconsideration decision that the statement by the MP that the nutritional items requested “will help to maintain her weight and health” is insufficient evidence to establish that the appellant requires nutritional items to prevent imminent danger to the appellant's life. The ministry also considered the physician’s information in the Nutrition Progress Report dated January 13, 2016 that the appellant’s nutrition intervention included a change in her diet to fibre-restricted, gluten-free, lactose-restricted regular diet and that education was provided to the appellant regarding a high calorie/high protein dairy-free diet, and wrote that this information does not suggest that the appellant requires nutritional items in the form of caloric supplementation due to an imminent danger to the appellant’s life.

In her Request for Reconsideration, the appellant wrote that if she does not continue to eat the recommended foods, the result will be continuous flare-ups, which are very painful and take several days from which to recover. The appellant wrote that, over the long term, this could

result in imminent danger to her life because of the resultant risk of developing another stricture due to inflammation. The appellant wrote that she feels that her family physician did not elaborate adequately in completion of the MNS application. At the hearing, the appellant explained that although the MP who completed the MNS application is not her regular doctor, she is in the same clinic as her family physician and was the doctor who referred her for surgery. The appellant stated that she also has a gastroenterologist who she sees for her condition.

There was no further information from either the MP or a gastroenterology specialist provided on the appeal and, given that there are no words of urgency used by the MP to denote 'imminent danger,' the panel finds that the ministry reasonably concluded that there is not sufficient information from a practitioner to establish that failure to obtain additional nutritional items that are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the appellant's life, pursuant to Section 67(1.1)(d) of the EAPWDR.

Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a MNS for vitamins and minerals and additional nutritional items because the requirements of Section 67(1.1) of the EAPWDR and Section 7 of Schedule C of the EAPWDR were not met, was reasonably supported by the evidence. The panel confirms the ministry's decision. The appellant's appeal, therefore, is not successful.