

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of December 3, 2018 (the “Reconsideration Decision”), which denied the Appellant a nutritional supplement because the Appellant had not satisfied the Ministry that she required caloric supplementation to alleviate a symptom set out in section 67(1.1)(b) of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”), as required by section 67(1.1)(c) of the EAPWDR and that failure to obtain caloric supplementation would result in imminent danger to the Appellant’s health, as required by section 67(1.1)(d) of the EAPWDR.

**PART D – RELEVANT LEGISLATION**

Sections 61.01 and 67 of the EAPWDR  
Section 7 of Schedule C to the EAPWDR

## **PART E – SUMMARY OF FACTS**

The Appellant is a sole recipient of disability assistance.

The information before the Ministry at the time of the Reconsideration included the following:

- A letter from a case worker (the “Case Worker”) at a local social services agency, dated August 24, 2018, setting out that:
  - the Appellant suffers from Hashimoto’s Thyroiditis; and
  - the Appellant currently takes medications which she purchases in the United States;
- A letter from an endocrinologist, dated July 11, 2018, which describes:
  - the Appellant’s condition and symptoms; and
  - changes made to the Appellant’s diet;
- The Appellant’s Application For Monthly Nutritional Supplement, dated August 18, 2018 (the “Application”), completed by the Appellant’s family doctor, which:
  - describes the Appellant’s diagnosis (“chronic, progressive deterioration of health secondary to auto-immune disease of thyroid”);
  - lists the Appellant’s symptoms, including:
    - weight gain of “+40 lbs”;
    - significant muscle mass loss as a result of thyroid disease;
    - neurological degeneration, described as “brain fog, memory loss, anxiety”; and
    - significant deterioration of a vital organ (thyroid)
  - specifies the need for a number of vitamins and minerals, including “B complex, Thyroid aid, selenium, ‘Armour’ Brand Thyroid replacement, Omega 3, V1 +D1, Magnesium, Iron, Vitamin C;
  - describes how the vitamins and minerals are expected to alleviate the Appellant’s symptoms and prevent imminent danger to her life;
  - describes no additional nutritional items but sets out that the nutritional items will provide “slowing/management of auto immune thyroiditis, directly influence heart rate, energy levels, weight management, mood, anxiety”; and
- Letter from the Ministry, dated September 26, 2018, with attached decision summary, denying the Appellant both vitamin or mineral supplement and a nutritional supplement;
- An updated letter from the Case Worker, dated November 6, 2018, which:
  - details the history of the Appellant’s illness and struggles with finding the correct medication and a treatment regimen which included a large combination of vitamins; and
  - describes changes to the Appellant’s diet;
- An updated letter from the Appellant’s family doctor, dated November 7, 2018, which describes the Appellant’s symptoms and confirms the information in the Case Worker’s second letter about the health effects on the Appellant when not taking vitamins and supplements; and
- The Appellant’s Request for Reconsideration (“RFR”), dated November 1, 2018, in which she asks for more time in making her submission.

In her Notice of Appeal, the Appellant states that she disagrees with the Reconsideration Decision because the information that had been given and assessed “needs more explanation & documentation” based on the Ministry’s decision, which approved a vitamin and mineral supplement but not a nutritional supplement.

With the Notice of Appeal, the Appellant also submitted the following:

- A third letter from the Case Worker, dated January 16, 2019 (the "Third Letter"), which sets out that:
  - some of the digestive problems that the Appellant experiences along with her illness; and
  - the objective of the Appellant's dietary plan is eliminate foods which trigger the Appellant's autoimmune reactions;
- A second letter from her family doctor, dated January 17, 2019 (the "Second Doctor Letter"), which endorses the Case Worker's Third Letter and notes an improvement in the Appellant's condition since implementing an Autoimmune-Paleo Diet;
- An information/fact sheet from a Naturopathic Medicine institute, which describes an Autoimmune-Paleo Diet and includes a Hashimoto's Diet Template (the "Fact Sheet").

Both the Third Letter and the Second Doctor Letter make reference to information in previous letters by the same authors. They also each contain information concerning the Appellant's symptoms. The panel admits the Third Letter and the Second Letter as written testimony in support of the information and records referred to in the information that was before the Ministry at the time of the Reconsideration Decision, pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

The panel does not admit the portion of the Fact Sheet that describes the Autoimmune-Paleo Diet as that specific dietary regime was not referenced in any materials that were before the Ministry at the time of the Reconsideration Decision.

## PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Reconsideration Decision, which denied the Appellant a nutritional supplement because the Appellant had not satisfied the Ministry that she required caloric supplementation to alleviate a symptom set out in section 67(1.1)(b) of the EAPWDR, as required by section 67(1.1)(c) of the EAPWDR, or that failure to obtain caloric supplementation would result in imminent danger to the Appellant's life, as required by section 67(1.1)(d) was reasonably supported by the evidence before the Ministry or was a reasonable application of the relevant statutory provisions in the Appellant's circumstances.

### *Statutory Framework*

Section 61.01 of the EAPWDR defines the meaning of "nutrition-related supplements" as follows:

**"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;

The requisite criteria for a monthly nutritional supplement, as sought by the Appellant, is described in 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 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 practitioner referred to in subsection (1) (c).

Finally, section 7 of Schedule C to the EAPWDR sets out the amount of that may be paid towards nutritional items that are part of a caloric supplementation and for vitamins and minerals:

### **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.

### *Panel Decision*

In order to be eligible for nutritional items that are part of caloric supplementation, as set out in section 7 of Schedule C to the EAPWDR, a recipient of disability assistance must meet the requirements set out section 67(1) and in subsections (a) through (d) of section 67(1.1) of the EAPWDR:

- (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.

The issue of the Appellant's basic eligibility, having regard to the factors set out in section 67(1) of the EAPWDR was not addressed in the Reconsideration Decision and her basic eligibility to receive a monthly nutritional supplement, having regard to section 67(1) of the EAPWDR, was accepted on her initial application.

On consideration of the criteria set out in subsections (a) and (b) of section 67(1.1) of the EAPWDR, the Ministry was satisfied that:

- the Appellant suffers from a chronic, progressive deterioration of health on account of a severe medical condition. Namely, the Ministry accepted the opinion of the Appellant's doctor that the Appellant suffered from "Chronic, progressive, deterioration of health secondary to auto-immune disease of the thyroid"; and

- the Appellant displays two or more of the symptoms enumerated in section 67(1.1)(b) of the EAPWDR. Namely, the Ministry accepted that the Appellant is displaying significant muscle mass loss and moderate to severe autoimmune suppression.

With respect to the criteria in section 67(1.1)(c) of the EAPWDR, while the Appellant's doctor did explain what minerals and vitamins were recommended and how they would alleviate the Appellant's symptoms in both the Application and in the letter, dated November 7, 2018, there is no such discussion about how caloric supplementation would alleviate any of the symptoms set out in section 67(1.1)(b) of the EAPWDR and, more particularly, the symptoms that the Ministry found the Appellant to be showing signs of.

The Second Doctor, submitted with the Appellant's Notice of Appeal, fails to address how the symptoms displayed by the Appellant would be alleviated with caloric supplementation. Instead, the Appellant's doctor merely adopts the recommendations of the Case Worker who is not a medical practitioner or a nurse practitioner and notes only that the Appellant's condition has improved since implementing an Autoimmune-Paleo diet. In the result, the panel finds that the Ministry's determination that the Appellant did not meet the criteria in section 67(1.1)(c) of the EAPWDR was both reasonably supported by the evidence and a reasonable application of the EAPWDR in the Appellant's circumstances.

The Ministry also determined that the Appellant had not satisfied the criteria in section 67(1.1)(d) of the EAPWDR in that a medical practitioner or nurse practitioner had confirmed that failure to obtain a monthly nutritional supplement, pursuant to section 7 of Schedule C to the EAPWDR, would result in imminent danger to the Appellant's life. In this regard, while the information from the Case Worker is that the Appellant's health has improved since implementing an Autoimmune-Paleo diet and the Appellant's doctor concurs with the assessment of the Case Worker, neither the Case Worker nor the Appellant's doctor suggest that the Appellant's life would be in danger if she did not follow an Autoimmune-Paleo diet or if she did not receive the caloric supplementation provided for under section 7 of Schedule C to the EAPWDR. In the result, the panel finds that the Ministry's determination that the Appellant did not meet the criteria in section 67(1.1)(d) of the EAPWDR was reasonably supported by the evidence and a reasonable application of the EAPWDR in the Appellant's circumstances.

The Appellant is not successful in the appeal.

<b>PART G – ORDER</b>	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION	
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

<b>PART H – SIGNATURES</b>	
PRINT NAME Adam Shee	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/02/25

PRINT NAME Edward G. Wong	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/02/25
PRINT NAME Perry Mazzone	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY)