

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated January 23, 2020 which denied the appellant’s request for the monthly nutritional supplement (MNS) of *vitamin/mineral supplements* because the appellant does not meet the eligibility criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), subsections 67 (1.1) (b), (c) and (d).

The Ministry determined that the eligibility requirements were not met as the appellant’s physician did not specify how the supplements requested will alleviate the legislated symptoms accepted upon reconsideration and that the information provided by the appellant’s physician in the MNS application does not constitute confirmation that failure to obtain vitamin/mineral supplementation will result in imminent danger to life.

PART D – RELEVANT LEGISLATION

EAPWDR subsection 67 (1.1) (b), (c) and (d) and Schedule C, subsection 7 (a).

PART E – SUMMARY OF FACTS

The information before the Ministry at reconsideration included the following:

An undated note, received by the Ministry January 10, 2020 according to its date stamp, signed by the appellant's physician and stating:

I would ask you to consider the supplements required for [the appellant]. He suffers from chronic debilitating pain in the right leg as well as lower back. He has neuropathic pain on the left side with numbness of the upper back area. He has osteoarthritis in both his feet which also results in severe pain. On exam [the appellant] does have muscle deterioration on both his quadriceps as well as both gastrocs. Decreasing pain would allow him to work on these deficits.

He is allergic to all typical pain meds and finds the supplements quite helpful in alleviating pain

The appellant's application for monthly nutritional supplement dated November 19, 2019 with Part C completed by the appellant's physician and with a notation that the document was faxed November 21, 2019. Part C has not been dated by the physician.

In part C, the appellant's physician indicates a diagnosis of "osteoarthritis" with the following description: *constantly severe debilitating pain hand, feet, knees. And further, a diagnosis of "DDD" with the notation "back pain."*

The physician's note continues as follows: *"deteriorating pain; allergic to aspirin, nsajds."*

In the form where the question is posed to the physician in respect of significant muscle mass loss the physician has answered "yes." It is noted that at the top of this form, the form states please describe in detail."

In the form where the question is posed to the physician in respect of significant neurological degeneration the physician has answered "yes with no further details.

The form indicates, in an attachment dated October 10, 2019 signed by the appellant's physician, that the appellant's pain is helped by taking a variety of supplements of note glucosamine and Chondriatin SMS, turmeric, Selenium and Omega-3.

The appellant's physician indicates these items will reduce pain and inflammation.

In answering the question as to how the item or items will prevent imminent danger to the applicant's life the physician has stated: *"[decrease] [here the physician has used a symbol which is reasonably interpreted as the word "decrease"] debilitating pain and [decrease] chances of mental illness. Prevent taking of opioids."*

In the appellant's notice of appeal, in respect of why the appellant disagrees with the Ministry's reconsideration decision, the appellant has written: *"I believe I met the condition to receive the monthly supplements assistance."*

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the Ministry reconsideration decision that denied the appellant's request for the Monthly Nutritional Supplement (MNS) of *vitamin/mineral supplements*.

The panel notes that the appellant attended the in person hearing and made submissions. However, a representative of the Ministry did not attend the hearing. Service upon the Ministry of the notice of hearing was confirmed by way of evidence of successful delivery dated January 31, 2020.

A MNS is provided to recipients eligible for the persons with disabilities (PWD) designation who are in receipt of disability assistance and who have a severe medical condition causing a chronic, progressive deterioration of health with symptoms of wasting. The supplement is intended to prevent imminent danger to the person's life by providing essential, specified items to supplement regular nutritional needs.

Legislation**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, nurse practitioner or dietitian, in which the practitioner or dietitian has confirmed all of the following:

- (a) the person with disabilities to whom the request relates is being treated by a medical practitioner or nurse 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.

Schedule C Health Supplements

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.

Appellant's position

Before the panel the appellant expressed that he felt he was eligible for the MNS. He submitted that he met the two conditions referred to in the reconsideration decision. In particular, the appellant referred to muscle mass loss and neurological degeneration.

The appellant explained that he has an L3-L4 disc herniation which causes him severe pain, numbness and pain in his leg. He stated that this pain affects his sleep and his ability to relax. He stated that he has pain in his feet and his toes feel broken. Even touching his feet is painful. He has osteoarthritis in his feet, knee and back. He stated that this is a very painful condition and it makes it very painful for him to walk.

The appellant stated that for his pain he can only take Tylenol or Tylenol #3. But he cannot take Tylenol #3 due to risk of addiction.

The appellant stated that he has obtained orthotics for his feet but that there was no significant improvement. He still has pain. He has been referred to a podiatrist.

The appellant stated that he has trouble sitting for long.

The appellant stated that due to his allergies to medication he requires an alternative to anti-inflammatory medication. He stated that he uses glucosamine as well as vitamin B12 and vitamin D3, as well as a zinc, selenium and turmeric. The appellant noted that this was the only solution to reduce his inflammation.

The appellant stated that he had recently been prescribed a medication called gabapentin. He has not obtained any relief from this medication. It only resulted in fatigue and his condition did not improve.

The appellant stated that he is very limited in what he can do and he does not know what else to do.

Ministry position

No Ministry representative attended the hearing. The panel infers therefore that the Ministry relies upon the reconsideration decision.

In the reconsideration decision, the Ministry accepted the symptom of significant muscle deterioration as reported by the appellant's physician.

However, in respect of the second symptom described by the appellant's physician, being neurological degeneration, the Ministry did not accept that symptom as information was not provided to confirm that the appellant experiences degeneration. The Ministry noted that while the appellant's physician reported that the appellant experiences numbness in his upper back, no further information was provided to confirm that neurological degeneration has occurred to a significant degree.

In particular, the Ministry determined that a medical practitioner, nurse practitioner, or registered dietitian had not confirmed the appellant was displaying at least two of the symptoms as set out in EAPWD Regulation subsection 67 (1.1) (b) as a direct result of a chronic, progressive deterioration of health.

In respect of vitamin/mineral supplementation, the Ministry noted that in the appellant's MNS application the appellant's physician had written that: "His pain is helped by taking a variety of supplements, "...of note glucosamine + Chondroitin SMS, Turmeric, selenium and Omega-3." The physician noted that the appellant would require these supplements "indefinitely."

In describing how these will alleviate a specific symptom identified, the appellant's physician stated: "reduce pain and inflammation."

In describing how vitamin/mineral supplementation will prevent imminent danger to the appellant's life, the appellant's physician writes: "Decreased debilitating pain and decreased chances of mental illness. Prevent taking of opioids."

The Ministry's position is that the information provided does not demonstrate that the appellant meets the legislative requirements for the provision of vitamin/mineral supplements in that:

- The appellant's physician does not specify how the supplements requested will alleviate the legislative symptom accepted upon reconsideration i.e. significant muscle mass loss. The physician notes that the supplements will "reduce pain and inflammation." However, "pain and inflammation" are not symptoms included in the MNS legislation.
- The information provided by the appellant's physician does not constitute a confirmation that failure to obtain vitamin/mineral supplementation will result in imminent danger to life. While the appellant's physician indicates that the use of supplements will "decreased debilitating pain and decreased chances of mental illness. Prevent taking of opioids", the information provided does not establish that without the supplements the appellant's life was in imminent danger.
- In the reconsideration request the appellant includes that he also takes supplements with vitamin C and D3. However, these supplements are not confirmed by the appellant's physician nor are they indicated to prevent a symptom set out in section 67.

The Ministry also notes that in the appellant's application the appellant's physician does not request the MNS of nutritional items and a line is drawn through this section of the application.

Panel decision

Section 67 (1) of the EAPWD Regulation sets out that the Minister may provide a nutritional supplement in accordance with section 7 of Schedule C if the Minister is satisfied, among other things, that 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.

The Ministry is obligated to make an evidence-based decision relying on the information provided by the medical practitioner in the MNS application, in this case the appellant's family physician. However, the Ministry is not obliged to accept the medical practitioner's confirmation that an applicant is displaying a symptom without supporting information.

Subsection 67 (1.1) of the EAPWD Regulation provides that for a person with disabilities to receive a nutritional supplement under the section that the Minister must receive a request, in the form specified by the Minister, completed by medical practitioner or nurse practitioner, in which the practitioner has confirmed, among other things, that as a direct result of the chronic, progressive deterioration of health, the person 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 moderate to severe immune suppression. (Subsection 67 (1.1) (b))

In the MNS application the plaintiff's physician reports that as a direct result of the appellant's chronic, progressive deterioration of health the appellant displays symptoms of significant muscle mass loss, which the Ministry accepts. The appellant's family physician also reports that the appellant displays significant neurological degeneration but no narrative is provided. No explanatory details are provided. No explanation is given.

The family physician has submitted a letter which states that the appellant "...has neuropathic pain on the left side with numbness of the upper back area." That is the extent of the physician's comments and explanation in respect of neurological degeneration.

In the specified form the physician has not indicated how the supplements requested will alleviate the legislative symptom accepted upon reconsideration i.e. significant muscle mass loss. The physician notes that the

supplements will reduce pain and inflammation. However, pain and information are not symptoms included in the MNS legislation.

Neither does the information in the specified form constitute confirmation that failure to obtain vitamin/mineral supplementation will result in imminent danger to life. The physician indicates that use of the supplements will “decreased debilitating pain and decreased chances of mental illness” and “prevent the taking of opioids” but the statements do not establish that without the supplements there will be in imminent danger to life.

As the Ministry points out, the appellant’s reconsideration includes a supplement for vitamin C and D3 but the supplements are not referred to by the appellant’s physician.

In the specified form, the appellant’s physician draws a line through item 6-nutritional items-which the panel takes to mean that the item is not applicable, and there is no information set out in that section of the specified form.

In taking all of the information into account, including the information set out in the form completed by the appellant’s physician, the physician’s letter, and including the submissions of the appellant, the applicable criteria for eligibility for MNS have not been met.

Conclusion

The panel decided that the Ministry’s decision to deny the appellant’s request for a monthly nutritional supplement of vitamin/mineral supplements was reasonably supported by the evidence and a reasonable application of the legislation.

This is because the appellant’s family physician did not provide enough additional supporting information to confirm the appellant had the two medical conditions listed-significant muscle mass loss and significant neurological degeneration. The appellant’s physician also did not explain how providing the supplements requested would alleviate “significant muscle mass loss” and “significant neurological degeneration” and how failure to provide these supplements would result in “imminent danger to a person’s life.”

Therefore, the Ministry’s reconsideration decision is confirmed and the appellant is not successful on appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

LEGISLATIVE AUTHORITY FOR THE DECISION:

PART H – SIGNATURES

PRINT NAME Perry Mazzone

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/ DAY)

		APPEAL NUMBER 2020-00029
PRINT NAME Julie Iuvancigh		
SIGNATURE OF MEMBER	DAY)	
PRINT NAME Nancy Eidsvik		
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/ DAY)	

		APPEAL NUMBER 2020-00029
PART G – ORDER		
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? Yes <input type="checkbox"/> No <input type="checkbox"/>		
LEGISLATIVE AUTHORITY FOR THE DECISION: <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"/>		
PART H – SIGNATURES		
PRINT NAME Perry Mazzone		
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/ DAY)	
PRINT NAME Julie Iuvancigh		
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/ DAY)	
PRINT NAME Nancy Eidsvik		
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/ DAY)	