

**PART C – DECISION UNDER APPEAL**

The Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated May 25, 2020 determined that the appellant was not eligible for the Monthly Nutritional Supplement (MNS) for nutritional items and vitamins/minerals supplements under section 67(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The ministry determined that the appellant met the following criteria:

- The appellant is in receipt of disability assistance and therefore meets the requirements of section 67(1)(a) and (b) of the EAPWDR.
- A medical practitioner has confirmed that the appellant is being treated for a chronic, progressive deterioration of health and therefore meets the requirements of section 67 (1.1)(a) of the EAPWDR.

The ministry determined that the appellant did not meet the following criteria:

- A medical practitioner did not confirm that the appellant displays at least two symptoms set out in section 67 (1.1)(b) as a result of a chronic progressive deterioration of health.
- The requirements set out in section 67 (1.1) (b), (c) and (d) have not been met to be eligible for MNS for vitamins/mineral supplementation. That is, the ministry determined that the evidence from a medical practitioner did not confirm that vitamins/minerals supplements were needed to alleviate symptoms set out in section 67 (1.1) (b).
- The requirements set out in section 67 (1.1) (b), (c) and (d) have not been met to be eligible for MNS for nutritional items. That is, the ministry determined that the evidence from a medical practitioner did not confirm that nutritional items are necessary as a part of caloric supplementation to a regular dietary intake to alleviate symptoms set out in section 67 (1.1)(b).

APPEAL NUMBER  
2020-00150

**PART D – RELEVANT LEGISLATION**

EAPWDR, section 67(1) and (1.1)

EAPWDR, Schedule C, section 7

## **PART E – SUMMARY OF FACTS**

### **Evidence at Reconsideration**

1. Application for Monthly Nutritional Supplement which was signed and dated May 10, 2020 and indicated the following:
  - The appellant's severe medical condition was diagnosed as "IBS" and in the 'description' section of the application the Medical Practitioner (MP) wrote "malnutrition".
  - To the question 'is the appellant being treated for a chronic progressive deterioration of health?' the MP indicated 'yes' and commented "increased nutrition".
  - The chronic progressive deterioration of health is causing 'malnutrition and significant loss of muscle mass' and did not comment further.
  - The appellant's height (69 inches) and weight (200lbs) were provided.
  - In response to 'specify the vitamins or minerals required and expected duration of need' the MP wrote "Multivitamins" and did not indicate the expected duration of the need.
  - In response to 'describe how this item will alleviate the specific symptoms identified', the MP commented "increased immunity".
  - In response to 'describe how this item or items will prevent imminent danger to the applicant's life', the MP indicated "increased general wellness/nutrition".
  - In response to 'specify the additional nutritional items required and expected duration of need', the MP indicated "boost [and] ensure" but did not indicate the expected duration of the need.
  - In response to 'does this applicant have a medical condition resulting in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake?' the MP indicated "malabsorption".
  - In response to '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 commented "boost/ensure will".
  - In response to 'describe how the nutritional items requested will prevent imminent danger to life' the MP commented "increased immunity".
  - Under "additional comments, the MP did not provide any information.
2. Letter dated April 17, 2020, from a community advocate to the MP requesting more information regarding nutritional requirements and the severity of the appellant's medical conditions.
3. Note from the MP, dated May 12, 2020, which indicated that the appellant "needs to have extra nutrition supplement (boost/ensure) due to decrease of muscle mass and to increase the function of [the appellant's] immune system. Without it [the appellant] may suffer and be at risk for infection and death". The MP also indicated that the appellant's "muscle mass is going down".

### **Evidence on Appeal**

Notice of Appeal (NOA), signed and dated June 2, 2020, which stated "I don't believe the ministry is listening to my [doctor]. I need and take these supplements".

The panel considered the information in the NOA as the appellant's argument.

## 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 and vitamin/minerals supplements under section 67(1) of the EAPWDR because it was not established that the requested nutritional items and vitamins/minerals supplements 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) (b), (c) and (d) of the EAPWDR, was a reasonable application of the legislation or reasonably supported by the evidence.

Section 67(1) and (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)** 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.

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 nutritional items and vitamin/mineral supplements are needed due to the complications of IBS which includes malnutrition and significant muscle mass loss. The appellant argued that without the supplements there is imminent danger to life.

*The Ministry's Position*

The ministry argued that it is not satisfied that the evidence established that appellant requires nutritional items and vitamins/minerals supplements 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 and to prevent imminent danger to life, as set out in the legislation pursuant to section 67 (1.1) (b), (c) and (d) of the EAPWDR. The ministry also argued that the evidence does not establish that the appellant suffers from two or more of the symptoms listed in section 67 (1.1) (b) and therefore the legislative requirement had not been met.

*The Panel's Decision*

Section 67(1)(1.1) states that in order to receive a nutritional supplement the ministry must receive a request completed by the medical practitioner or nurse practitioner and the request must confirm that the recipient has a chronic, progressive deterioration of health resulting from a severe medical condition, displays two or more the of symptoms of chronic progressive deterioration of health, requires the requested items to alleviate a symptom of chronic progressive deterioration, and failure to obtain the items requested will result in imminent danger to the recipient's life. In this case, the appellant must

meet these criteria.

*Section 67 (1.1)(b)*

Section 67 (1.1) (b) of the EAPWDR states that as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the listed symptoms. The evidence provided by appellant's MP indicated that the appellant displays the symptoms of malnutrition and significant muscle mass loss. The ministry has argued that the MP evidence did not provide further detail or explanation regarding the appellant's malnutrition even though asked to describe the condition in detail. The ministry also argued that the MP indicated that the appellant's "muscle mass is going down", but no substantive information was provided to establish that the muscle mass loss is significant. Finally, the ministry argued that the appellant's body mass index (which is 29.5) indicates that the appellant is above average according to weight, height and age and no information has been provided to establish that the appellant suffers from wasting.

The panel finds that the information provided by the MP regarding malnutrition and significant muscle mass loss lacks detail and explanation that would be necessary to demonstrate that the appellant presents with such symptoms, and to the degree to which these symptoms present. For example, how was it determined that the appellant does not receive necessary nutrition, or how much or quickly muscle has been lost. The panel also finds that the MP did not provide evidence explaining how IBS and malabsorption cause malnutrition and significant muscle mass loss but do not cause underweight status and/or significant weight loss which are symptoms listed in the MNS application but not indicated as symptoms that the appellant experiences. The legislation requires that the MP or nurse practitioner (NP) confirm information. However, the legislation also states that the information must be in the form the ministry requests. In this case, the MNS application form requests that at MP or NP not only confirm the at least 2 symptoms the recipient experiences but also provide a detailed description. In this case, the appellant's MP did not provide additional information. Without information regarding the causal link between IBS and the symptoms indicated, it is reasonable that a determination in would be difficult to reach. As a result, the panel finds that the ministry reasonably determined that the evidence does not demonstrate that the appellant meets the criteria as set out in section 67 (1.1) (b) of the EAPWDR.

*Nutritional Items*

Section 67 (1.1) (c) of the EAPWDR states that for the purpose of alleviating a symptom referred to in section 67 (1.1) (b) of the EAPWDR, the appellant may be eligible for one or more of the items set out in section 7 of Schedule C. First, the ministry argued that the evidence provided by the MP does not establish that the appellant suffers from two of the symptoms listed in section 67 (1.1) (b). Second, the ministry argued that the MP has not confirmed or provided evidence that confirms that boost and ensure are necessary as caloric supplementation to a regular dietary intake. Third, the ministry argued that the MP did not confirm or demonstrate that boost or ensure will prevent imminent danger to life and only stated that "without it [the appellant] may suffer and be at risk of infection and death". The ministry argued that no information is provided to explain this possible consequence.

The panel considered that the ministry's argument as cited above and that in the MNS application, when asked if the appellant has a medical condition that results in the inability to absorb sufficient daily calories requirements through a regular dietary intake, the MP indicated 'malabsorption'. However, the panel notes that the MP did not indicate that the appellant shows symptoms of significant weight loss or underweight status which may occur if sufficient daily calories are not absorbed. In fact, the appellant is 5 feet 9 inches tall and weighs 200lbs, which is indicative of above average on the Body Mass Index scale and the MP failed to balance this with IBS, malabsorption and the symptoms of malnutrition and significant muscle mass loss.

When asked how nutritional items required will alleviate one or more symptoms listed in the application, the MP indicated “boost/ensure will” and then later stated “without it [the appellant] may suffer and be at risk of infection and death”, but did not explain how boost or ensure would be absorbed if the appellant suffers from malabsorption or how boost and ensure prevent infection. The MP also indicated that boost and ensure will increase the appellant’s immunity and therefore prevent imminent danger to life, but the MP did not explain the correlation between IBS/malabsorption and immunity or the appellant’s need to increase immunity. The panel also finds that the MP failed to describe how IBS manifests with this appellant. That is, there is no information regarding which foods cause irritation of the bowels or whether all foods that cause irritation and how this may be correlated to the symptoms of malnutrition and significant muscle mass loss. This leaves that question ‘does the appellant require nutritional items as caloric supplementation to a regular dietary intake or a change in diet?’. The MP did not indicate that dietary changes in the past failed to meet the appellant’s dietary needs and that boost and ensure do meet these needs.

For reasons cited by the ministry and the panel, the panel finds that the ministry reasonably determined that the evidence provided by the appellant’s MP does not establish that nutritional items are required to alleviate symptoms caused by a chronic, progressive deterioration of health, and that failure to obtain additional nutritional items will result in imminent danger to the appellant’s life pursuant to section 67 (1.1) (c) and (d) of the EAPWDR.

#### *Vitamins/Minerals Supplement*

Section 67 (1.1) (c) of the EAPWDR states that for the purpose of alleviating a symptom referred to in section 67 (1.1) (b) of the EAPWDR, the appellant may be eligible for one or more of the items set out in section 7 of Schedule C. The ministry argued that the evidence provided by the physician does not establish that the appellant requires a vitamins/minerals supplement to alleviate the symptoms identified in section 67 (1.1) (b) of the EAPWDR.

First, the ministry argued that the evidence provided does not establish the symptom of malnutrition for which multivitamins are needed. Second, the ministry argued that the MP indicated that multivitamins will increase the appellant’s immunity yet the MP did not indicate that moderate to severe immune suppression is a presenting symptom nor did the evidence support an indication of immune suppression. Third, the ministry argued that the MP indicated that multivitamins would increase the appellant’s general wellness and nutrition but did not indicate that a failure to obtain multivitamins would result in imminent danger to life.

When the panel considered the MNS application and the evidence provided by the MP, as cited above, it finds that the MP failed to address the application questions directly and sufficiently. For example, the panel finds that the MP failed to provide sufficient evidence to demonstrate how multivitamins would alleviate symptoms of malnutrition or significant muscle mass loss. The panel finds that the MP failed to correlate the need for increased immunity to the relief the symptoms described. Also, the panel finds that the MP did not address how multivitamins would be absorbed if the appellant suffers from malabsorption.

The panel is of the opinion that imminent danger to life means immediate harm or death. The panel finds that the information provided by the MP does not establish an imminent danger to the appellant’s life. For example, the MP indicated that vitamins/mineral supplements were needed for increased general wellness and nutrition. This does not indicate an immediate or pressing need without which harm or death will occur immediately. The panel finds that here the MP describes a board or overall need. Later the MP indicated that without the items requested the appellant “may suffer and be at risk for infection or death”. However, the panel finds that the use of the words ‘may’ and ‘risk’ here express a possibility and are not indicative of immediate or impeding harm or death.

The panel finds that the ministry reasonably determined that the evidence provided by the appellant's MP does not establish that vitamin/mineral supplements are required to alleviate symptoms caused by a chronic, progressive deterioration of health, and that failure to obtain a vitamin/mineral supplement will result in imminent danger to the appellant's life pursuant to section 67 (1.1) (c) and (d) of the EAPWDR.

**Conclusion:**

The panel finds that the ministry reasonably concluded that the evidence establishes that the appellant's request for MNS of nutritional items and vitamins/minerals supplement 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 therefore the appellant is not successful at appeal.



APPEAL NUMBER  
2020-00150

**PART G – ORDER**

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

THE PANEL       CONFIRMS THE MINISTRY DECISION       RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred to the Minister for a decision as to amount?       Yes       No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a)  or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/07/10

PRINT NAME

Anil Aggarwal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/07/10

PRINT NAME

Vivienne Chin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/07/10