

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated January 29, 2021 which denied the appellant's request for a Monthly Nutritional Supplement (MNS) for vitamin/ minerals as well as additional nutritional items. The ministry held that the requirements of Section 67(1.1) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) and Section 7 of Schedule C were not met as there was not sufficient information to establish that the medical practitioner confirmed:

- As a direct result of a chronic, progressive deterioration of health the appellant displays two or more of the listed symptoms;
- Failure to obtain vitamin/mineral supplementation will result in imminent danger to the appellant's life; and,
- The appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate a symptom of the chronic, progressive deterioration of health and to prevent imminent danger to the appellant's life.

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) Application for MNS dated November 29, 2020 signed by the appellant's medical practitioner (MP) and stating in part that:
 - The appellant's severe medical conditions are Irritable Bowel (intolerant/ malabsorption of food) and chronic gastritis (restriction on certain foods);
 - 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. [The appellant] has the above malabsorption with diarrhea plus testosterone deficiency."
 - In response to the question whether as a direct result of the chronic progressive deterioration in health, does the appellant display two or more symptoms, the MP indicated malnutrition and the symptom of significant weight loss ("diarrhea, IBS [Irritable Bowel Syndrome]").
 - The appellant's height and weight are noted;
 - In response to a request to specify the vitamin or mineral supplement(s) required and the expected duration of need, the MP wrote "iron and multivitamins."
 - Asked to describe how these items will alleviate the specific symptoms identified, the MP wrote "increased absorption of essential vitamins."
 - Asked to describe how the vitamin or mineral supplement(s) will prevent imminent danger to the appellant's life, the MP wrote "prevent weight loss."
 - In response to a request to specify the additional nutritional items required and the expected duration of need, the MP wrote "requires fruit/ vegetables/ grains/ protein -indefinitely;"
 - 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 wrote: "Irritable Bowel Syndrome";
 - 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 wrote: "more absorption;"
 - Asked to describe how the nutritional items will prevent imminent danger to the appellant's life, the MP wrote: "prevent weight loss;" and
 - The MP did not provide any additional comments;
- 2) Checklist dated January 14, 2021 in which the MP indicated that:
 - The appellant's medical conditions are IBS, chronic gastritis, testosterone deficiency, and gluten intolerance/ celiac disease.
 - In the MP's opinion, the appellant is being treated for a chronic, progressive deterioration of health by taking medications for daily symptoms relating to the medical conditions, including abdominal pain, cramping, bloating, diarrhea, and indigestion pain. The appellant also receives intramuscular injections two times per month to treat testosterone deficiency.
 - The appellant experiences the following symptoms as a direct result of a chronic, progressive deterioration of health: malnutrition (unable to eat a variety of foods due to IBS and intolerance to lactose and gluten; IBS causes chronic and severe

diarrhea which leads to inability to absorb sufficient calories and nutrients), significant weight loss (over the past 2.5 years the appellant has lost 20 to 30 lbs. due to complications from malabsorption of calories) and significant muscle mass loss (caused by testosterone deficiency).

- The appellant requires supplementation of vitamins and minerals including Vitamin D, Vitamin B complex, iron, potassium, magnesium and calcium to help alleviate malnutrition and overall mood.
- Fiber and probiotics are required to alleviate symptoms of IBS, weight and muscle mass loss, as well as improve absorption of essential vitamins.
- The appellant requires additional nutritional items to provide caloric supplementation to a regular dietary intake including higher intake of protein in addition to a gluten and lactose-free diet, items included in low-FODMAP diet (fresh fish/meat, fresh fruits and veggies), nutritional drinks such as Ensure.
- The appellant requires these additional nutritional items as a result of malnutrition from an inability to absorb enough calories. This will prevent further weight and muscle mass loss.
- Failure to obtain the identified items will result in imminent danger to the appellant's life. Without these items, the appellant is at risk of further deterioration of health.

3) Request for Reconsideration dated January 13, 2021.

Additional information

In the Notice of Appeal dated February 9, 2021, the appellant expressed disagreement with the ministry's reconsideration decision and wrote that the appellant disagrees with the ministry's interpretation of the legislation.

Prior to the hearing, the appellant provided the following additional documents:

1) Checklist dated February 21, 2021 in which the MP indicated:

- The appellant has the additional medical conditions of depression and anxiety.
- In the MP's opinion, the appellant is being treated for a chronic, progressive deterioration of health and is taking medications for depression and anxiety, which are significantly impacted by the symptoms of IBS, gastritis, celiac disease, and testosterone deficiency.
- The appellant experiences the following symptoms as a direct result of a chronic, progressive deterioration of health: significant muscle mass loss caused by testosterone deficiency, as well as the appellant's inability to absorb sufficient nutrients because of IBS; the appellant suffers from generalized muscle weakness, and significant weight loss as the appellant's weight can fluctuate between 3 to 8 lbs. on a weekly basis with 20 to 30 lbs. lost up and down (weight October 2020 154 lbs. at February 2021 174 lbs.- "today").
- The appellant requires supplementation of vitamins and minerals, including Vitamin D, Vitamin B complex, iron, potassium, magnesium and calcium to help prevent further muscle and weight loss, as well as alleviate malnutrition and help with overall mood.
- In addition to a regular dietary intake, the appellant requires daily intake of extra

calories in the form of fresh produce, fish and poultry, as well as nutritional drinks such as Ensure (3 cans per day).

- Failure to obtain the identified items will result in imminent danger to the appellant's life. Without these items the appellant is at risk of further deterioration of physical and mental health.

2) Disability Alliance BC Help Sheet #4 (2018) for B.C. Disability Benefits, specifically MNS.

At the hearing, the appellant stated:

- The ministry has approved the fact that the appellant has severe medical conditions.
- In the new checklist, the appellant's doctor added the appellant's other medical conditions of depression and anxiety. The ministry approved the appellant's Persons With Disabilities (PWD) designation based on these conditions and the appellant thought the information provided in support of the PWD application would be considered by the ministry in making the decision about the MNS.
- The appellant takes a specified medication for anxiety.
- When it came to the appellant's symptoms, the ministry only approved malnutrition and did not approve significant weight loss or significant muscle mass loss.
- The ministry referred to the appellant's BMI and the appellant believes this is not applicable to the application and has no bearing on the symptoms identified.
- According to the Disability Alliance BC Help Sheet #4, a biochemical analysis is not required to establish a symptom and the BMI should be excluded from consideration.
- In terms of the symptom of significant weight loss, the ministry's calculation of the average amount of weight lost per month based on the total weight lost (i.e. 30 lbs.) divided by the total time period (i.e. 2.5 years, or 30 months) is audacious. Nowhere did the doctor indicate that the appellant has lost an average of 1 pound per month. There is no medical authority for the ministry's conclusion.
- The appellant has experienced significant muscle mass loss because of an inability to absorb nutrients due to the IBS. IBS causes the appellant's system to flush out all the nutrients and the appellant's body cannot absorb sufficient nutrients.
- The appellant's ideal weight is 170 to 174 lbs. Small amounts of weight loss are devastating to the appellant's medical conditions. The appellant's weight goes up and down by as much as 3 to 8 lbs. on a weekly basis. In October 2020 the appellant was down to 154 lbs. and was started on a new medication to help stabilize the appellant's weight. Although the medication worked well at first, it is not currently working as well. The appellant's weight is back up to 174 lbs.
- The appellant experiences bouts of diarrhea 3 or 4 times per day and this will last for 3 or 4 days in a row. The appellant has little or no control over the bowels and this condition makes it very difficult for the appellant to schedule appointments or to go out of the appellant's residence. The appellant's anxiety and depression are impacted by the symptoms associated with the physical medical conditions (IBS, chronic gastritis, testosterone deficiency, and gluten intolerance/ celiac disease).
- The appellant started injections about 5 years ago to treat testosterone deficiency. This treatment is a testosterone replacement therapy. The injections also helped the appellant cope with the symptoms and improved the appellant's anxiety and depression. The injections are not currently helping as much as they first did.
- The appellant's nails have been falling out and there are spots all over the appellant's

face.

- The nutritional items identified by the doctor will be sufficient to provide the appellant with caloric support.

The ministry relied on its reconsideration decision as read at the hearing. The ministry also clarified at the hearing that:

- The ministry did not have the checklist dated February 21, 2021 available when the reconsideration decision was made.
- The ministry is not aware of the type of evidence that would be required to support a confirmation of the symptom of significant muscle mass loss.
- The appellant is currently in receipt of a gluten-free diet supplement.

Admissibility of Additional Information

The ministry did not object to the admissibility of the additional documents submitted by the appellant. The panel admitted the checklist dated February 21, 2021 as relating primarily to the ministry's denial of the MNS for vitamins/minerals and additional nutritional items and, therefore, as being reasonably required for a full and fair disclosure of all matters related to the decision under appeal pursuant to Section 22(4) of the *Employment and Assistance Act*.

The arguments on the appellant's behalf, including references to the Disability Alliance BC Help Sheet #4, will be addressed in Part F- Reasons for Panel Decision, below.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry decision, which denied the appellant's request for a Monthly Nutritional Supplement for vitamins/ minerals as well as additional nutritional items because the requirements of Section 67(1.1) of the EAPWDR and Section 7 of Schedule C were not met, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

The applicable sections of the EAPWDR are set out in the Schedule at the end of these Reasons.

Section 67(1.1)(a) of the EAPWDR- Severe Medical Condition with Chronic, Progressive Deterioration of Health

In the reconsideration decision, the ministry was satisfied that the MP confirmed that the appellant has a chronic, progressive deterioration of health due to severe medical conditions, specifically Irritable Bowel, chronic gastritis and gluten intolerance/ celiac disease, therefore, the eligibility criterion in Section 67(1.1)(a) of the EAPWDR had been met.

Section 67(1.1)(b) of the EAPWDR- Symptoms

Ministry's Position

In the reconsideration decision, the ministry was satisfied that the appellant displays the symptom of malnutrition but the ministry was not satisfied that the appellant displays the symptoms of significant weight loss or significant muscle mass loss and, therefore, the ministry found that the eligibility criterion in Section 67(1.1)(b) of the EAPWDR had not been met. The ministry wrote that significant weight loss is not confirmed as a weight loss of 20 to 30 lbs. over 2.5 years is approximately 1 pound per month on average and, as such, is not a "significant" weight loss for the period of time indicated and the appellant's weight is currently in the normal range. The ministry calculated the appellant's BMI to be 23 and wrote that this is within the normal range according to a BMI calculator using a person's height and weight at www.calculator.net.

Although the ministry acknowledged that muscle mass loss and weight loss can occur with a testosterone deficiency, the ministry also wrote that significant muscle mass loss is not confirmed as the MP has not provided enough information to describe the amount of muscle mass loss the appellant has experienced over a specified period of time and notes that the appellant is being treated by medications for this condition. The ministry wrote that given the appellant is still within the normal weight range and the appellant's weight loss has not been significant, the ministry found that there is insufficient evidence to establish that the appellant's muscle mass loss has been "significant."

Appellant's Position

In the Notice of Appeal, the appellant wrote that the appellant disagrees with the ministry's interpretation of the legislation. The appellant argued at the hearing that the MP had provided sufficient information in the MNS application and the additional checklists to confirm that the appellant displays at least two symptoms. The appellant stated at the hearing that the ministry referred to the appellant's BMI and the appellant believes this is not applicable to the application for MNS and has no bearing on the symptoms identified. The appellant referred to the Disability Alliance Help Sheet #4, which indicated that a biochemical analysis is not required to establish a symptom, and the appellant argued that the appellant's BMI should be excluded from consideration.

In terms of the symptom of significant weight loss, the appellant argued that there is no medical authority for the ministry's calculation of the average amount of weight lost per month based on the total weight lost (i.e. 30 lbs.) divided by the total time period (i.e. 2.5 years, or 30 months) since nowhere did the doctor indicate that the appellant has lost an average of 1 pound per month. The appellant stated that the appellant's ideal weight is 170 to 174 lbs. and the appellant's weight goes up and down by as much as 3 to 8 lbs. on a weekly basis. In October 2020 the appellant was down to 154 lbs. and was started on a new medication to help stabilize the appellant's weight. The appellant stated that the medication worked well at first and the appellant's weight is back up to 174 lbs. but the medication is not currently working as well. The appellant stated that significant muscle mass loss has been experienced because of an inability to absorb nutrients due to the IBS, which causes the appellant's system to flush out all the nutrients and the appellant's body cannot absorb sufficient nutrients.

Panel decision

Section 67(1.1)(b) of the EAPWDR requires that a medical practitioner or nurse practitioner confirms that as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the symptoms listed, specifically: 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. In the MNS application, in response to the question whether the appellant display two or more symptoms as a direct result of the chronic progressive deterioration in health, the MP indicated malnutrition with a simple checkmark and no detailed description, as requested in the form. In the checklist dated January 14, 2021, the MP elaborated that the appellant experiences malnutrition as the appellant is "unable to eat a variety of foods due to IBS and intolerance to lactose and gluten" and "IBS causes chronic and severe diarrhea which leads to inability to absorb sufficient calories and nutrients." In the reconsideration decision, the ministry found that the MP confirmed the symptom of malnutrition and the ministry wrote that malnutrition was "confirmed due to reports of IBS, chronic gastritis, chronic and severe diarrhea, and

malabsorption of calories and nutrients.”

In the MNS application, in response to the question whether the appellant displayed two or more symptoms, the MP also indicated significant weight loss and wrote “diarrhea, IBS.” In the January 14, 2021 checklist the MP indicated the symptom of significant weight loss and wrote “over the past 2.5 years [the appellant] has lost 20 to 30 lbs. due to complications from malabsorption of calories.” In the reconsideration decision, the ministry wrote that significant weight loss is not confirmed as a weight loss of 20 to 30 lbs. over 2.5 years is approximately 1 pound per month on average and, as such, is not a “significant” weight loss for the time indicated. The appellant pointed out that nowhere did the doctor indicate that the appellant has lost an average of 1 pound per month. In the checklist dated February 21, 2021, the MP indicated that significant weight loss is shown by fluctuations in weight of 3 to 8 lbs. on a weekly basis with 20 to 30 lbs. lost “up and down,” clarifying that the appellant’s weight is volatile and not a straight-line degradation as estimated by the ministry.

Although the ministry referred to the appellant’s BMI being in the normal range, the panel notes that the BMI provides a snapshot or a status at one point in time and may be relevant to a consideration of the symptom of underweight status, but it is not useful for establishing a change in status such as a “loss” of either weight or muscle mass as there are no points of comparison. For example, a person might have a base line weight in the “overweight” range given their weight and height and may end up with a BMI in the “normal” range after losing a large amount of weight over a short period of time. In this example, being in the “normal” range from a static BMI calculation does not preclude a finding of the symptom of significant weight loss.

The MP also indicated in the checklist that the appellant’s weight in October 2020 was 154 lbs., and the appellant’s weight in February 2021 was 174 lbs., or a gain of 20 lbs. over a 4-month period. At the hearing, the appellant stated that In October 2020 the appellant was down to 154 lbs. and was started on a new medication to help stabilize the appellant’s weight. The appellant stated that although the medication worked well at first, it is not currently working as well; however, there was no information provided from the MP regarding further fluctuations in the appellant’s weight. Given the information from the MP in the February 21, 2021 checklist indicating a gain of 20 lbs. in the appellant’s weight and in the absence of further evidence from the MP, the panel finds that the ministry reasonably concluded that the MP had not confirmed the symptom of significant weight loss.

While the MP did not indicate the symptom of significant muscle mass loss in the MNS application, in the January 14, 2021 checklist the MP indicated the appellant experiences significant muscle mass loss and wrote “caused by testosterone deficiency.” In the reconsideration decision, the ministry acknowledged that muscle mass loss can occur with a testosterone deficiency but wrote that significant muscle mass loss is not confirmed as the MP has not provided enough information to describe the amount of muscle mass loss the appellant

has experienced over a specified period of time and noted that the appellant is being treated by medications for testosterone deficiency. At the hearing, the ministry stated that the ministry is not aware of the type of evidence that would be required to support a confirmation by the MP of the symptom of significant muscle mass loss.

In the additional checklist dated February 21, 2021, the MP indicated that the appellant experiences significant muscle mass loss “caused by testosterone deficiency as well as by [the appellant’s] inability to absorb sufficient nutrients because of IBS.” At the hearing the appellant stated that the appellant started injections about 5 years ago for a testosterone replacement therapy; however, the appellant also stated that the injections are not currently helping as much as they first did. The appellant stated at the hearing that significant muscle mass loss has been experienced because of an inability to absorb nutrients due to the IBS. The appellant stated that the IBS causes the appellant’s system to flush out all the nutrients and the appellant’s body cannot absorb sufficient nutrients. In the February 21, 2021 checklist, the MP indicated agreement that the appellant experiences significant muscle mass loss and wrote that the appellant “suffers from generalized muscle weakness.”

In consideration of the additional information from the MP reporting ‘generalized muscle weakness’ that indicates a lack of muscle mass throughout the body, which information the ministry did not have at the time of reconsideration, as well as the ministry’s acceptance that the appellant displays the related symptom of malnutrition “due to reports of IBS, chronic gastritis, chronic and severe diarrhea, and malabsorption of calories and nutrients,” the panel finds that the ministry was unreasonable to determine that the MP has not confirmed the symptom of significant muscle mass loss. Therefore, the panel finds that the ministry unreasonably concluded there was insufficient evidence to establish that the MP confirmed that as a direct result of the chronic, progressive deterioration of health, the appellant displays two of the listed symptoms (malnutrition and significant muscle mass loss) and that the eligibility criterion in Section 67(1.1)(b) of the EAPWDR had not been met.

Section 67(1.1)(c) and (d) of the EAPWDR- Vitamins and Minerals

Ministry’s Position

In the reconsideration decision, the ministry was satisfied that the vitamin/mineral supplementation is intended to alleviate the symptom of malnutrition and, therefore, the appellant’s request met the eligibility criterion on Section 67 (1.1)(c) of the EAPWDR. However, the ministry was not satisfied that failure to obtain the vitamins and minerals listed will result in an “imminent” danger to the appellant’s life as required in Section 67(1.1)(d) of the EAPWDR. Although the ministry acknowledged that the MP confirmed that the appellant requires vitamins and minerals to alleviate malnutrition and have also been requested to alleviate mood and prevent weight loss, the ministry wrote that the symptom of weight loss has not been established and the information does not establish that the appellant is in “imminent” danger if

the appellant does not receive these supplements. The ministry wrote that as the appellant's weight is in the high-normal range and the appellant has only lost an average of 1 pound per month over the past 2.5 years, it cannot be established that failure to obtain the vitamin/ mineral supplements will result in imminent danger to the appellant's life on the basis of weight loss. The ministry wrote that there was no indication that the appellant's mental health has been significantly impacted by the medical conditions and, therefore, it cannot be established that vitamin/ mineral supplementation is required to prevent imminent danger to the appellant's life due to mood. The ministry concluded that as the appellant's request did not meet the requirements of Section 67(1.1)(d) of the EAPWDR, the appellant was not eligible for the MNS of vitamin/mineral supplementation.

Appellant's Position

At the hearing, the appellant argued that the MP had provided sufficient information in the MNS application and the additional checklists to confirm the appellant's need for the vitamins and minerals. The appellant argued that the additional information provided by the MP in the checklist dated February 21, 2021 confirmed the appellant's other medical conditions of depression and anxiety. The appellant stated at the hearing that the ministry approved the appellant's PWD designation based on these mental health conditions and the appellant thought the information provided in support of the PWD application would be considered by the ministry in making the decision about the MNS. The appellant stated that medication is being taken to treat anxiety. The appellant stated that bouts of diarrhea are experienced 3 or 4 times per day, and this will last for 3 or 4 days in a row. The appellant stated there is little or no control over the bowels and this condition makes it very difficult for the appellant to schedule appointments or to go out of the appellant's residence. The appellant stated that the appellant's anxiety and depression are impacted by the symptoms associated with the physical medical conditions, including IBS, chronic gastritis, testosterone deficiency, and gluten intolerance/ celiac disease. The appellant stated the appellant's nails have been falling out and there are spots all over the appellant's face.

Panel decision

Section 7(a) of Schedule C and Section 67(1.1)(c) and (d) of the EAPWDR say that in order to receive a nutritional supplement, the MP must confirm that, for the purpose of alleviating a symptom displayed (i.e. either malnutrition or significant muscle mass loss), the person requires vitamins and minerals specified in the request and failure to obtain the vitamins and minerals will result in imminent danger to the person's life. In the reconsideration decision, the ministry was satisfied that the vitamin/mineral supplementation, as specified in the MNS application as well as the checklist provided at reconsideration, is required to alleviate the symptom of malnutrition and, therefore, the appellant's request met the eligibility criterion on Section 67 (1.1)(c) of the EAPWDR.

In the checklist provided at reconsideration, the MP indicated that the appellant requires supplementation of vitamins and minerals including Vitamin D, Vitamin B complex, iron, potassium, magnesium and calcium to help alleviate malnutrition and “overall mood.” In the reconsideration decision, the ministry wrote that there was no indication that the appellant’s mental health has been significantly impacted by the medical conditions and, therefore, it cannot be established that vitamin/ mineral supplementation is required to prevent imminent danger to the appellant’s life due to mood. The appellant stated at the hearing that the ministry approved the appellant’s PWD designation based on these mental health conditions and the appellant thought the information provided in support of the PWD application would be considered by the ministry in making the decision about the MNS; however, the panel notes that Section 67(1.1)(d) of the EAPWDR requires that the MP confirm *in the request for the MNS* that failure to obtain the items will result in imminent danger to the person's life.

In the checklist dated February 21, 2021 the MP indicated that the appellant has been diagnosed with the additional medical conditions of depression and anxiety and that, in the MP’s “medical opinion,” the appellant is being treated for a chronic, progressive deterioration of health and is taking medications for depression and anxiety, which are significantly impacted by the symptoms of IBS, gastritis, celiac disease, and testosterone deficiency. The MP also indicated in the new information that the appellant requires supplementation of vitamins and minerals “to help prevent further muscle and weight loss; as well as alleviate malnutrition and help with overall mood.” The ministry was satisfied at reconsideration that the vitamins and minerals are required to alleviate the symptom of malnutrition and the appellant stated at the hearing that the appellant’s nails have been falling out and there are spots all over the appellant’s face.

The appellant spoke at the hearing about experiencing bouts of diarrhea 3 or 4 times per day and said this will last for 3 or 4 days in a row. The appellant stated there is little or no control over the bowels and this condition makes it very difficult for the appellant to schedule appointments or to go out of the appellant’s residence. The appellant stated that these symptoms associated with the physical medical conditions (IBS, chronic gastritis, testosterone deficiency, and gluten intolerance/ celiac disease) impact the appellant’s depression and anxiety. In the new checklist the MP indicated agreement with the statement that failure to obtain the vitamins and minerals will result in imminent danger to the appellant’s life and that “without these items, [the appellant] is at risk of further deterioration of physical and mental health.”

In view of the additional information from the MP provided in the February 21, 2021 checklist together with the elaboration by the appellant at the hearing, the panel finds there is sufficient evidence to establish that the MP confirmed that failure to obtain the vitamins and minerals will result in imminent danger to the appellant's life due to risk of further deterioration of a combination of the appellant’s physical and mental health conditions. Therefore, the panel finds that the ministry unreasonably concluded that the eligibility criterion in Section 67(1.1)(d) of the

EAPWDR had not been met.

Section 67(1.1)(c) & (d) and Schedule C, Section 7(a)- Additional Nutritional Items

Ministry's Position

The ministry wrote in the reconsideration decision that the ministry was not satisfied that the information in the MNS Application and the Request for Reconsideration confirms that the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake and to prevent imminent danger to the appellant's life. The ministry wrote that the need for protein supplements, fruits, veggies, grains, and fresh meats is not considered indicative of a need for caloric supplementation. The ministry wrote that although the MP reported that the appellant's IBS results in the inability to absorb sufficient calories, the appellant's weight is in the normal range and it was not confirmed that the appellant is experiencing significant weight loss or significant muscle mass loss. The ministry wrote that therefore the ministry was unable to conclude that the nutritional items are required for caloric supplementation over and above a regular dietary intake. The ministry wrote that the request appears more related to the need for vitamins and minerals to alleviate malnutrition and the special low-FODMAP diet to help manage the IBS symptoms such as helping to reduce the frequency of diarrhea, which would allow the appellant to absorb more calories.

The ministry was also not satisfied that the information provided by the MP that "failure to obtain the checked items will result in imminent danger to [the appellant's] life" and "without these items, [the appellant] is at risk of further deterioration" constitutes confirmation that failure to provide additional nutritional items will result in an imminent danger to the appellant's life. The ministry concluded that as the appellant's request did not meet the requirements of Section 7 of Schedule C and Section 67(1.1)(c) and (d) of the EAPWDR, the appellant was not eligible for the MNS of additional nutritional items.

Appellant's Position

In the Notice of Appeal, the appellant wrote that the appellant disagrees with the ministry's interpretation of the legislation. At the hearing, the appellant made the same argument as referred to above regarding the request for vitamins and minerals. The appellant stated at the hearing that the nutritional items identified by the doctor will be sufficient to provide the appellant with caloric support.

Panel decision

Section 7(a) of Schedule C and Section 67(1.1)(c) of the EAPWDR say that a medical or nurse practitioner must confirm that, for the purpose of alleviating a symptom referred to in sub-section (b), the appellant requires the additional nutritional items that are part of a caloric supplementation to a regular dietary intake as specified in the request. The panel notes that the

sections require that the MP *confirm* specific required information in the request for the MNS. In the checklist provided at reconsideration, the MP indicated that the appellant requires additional nutritional items to provide caloric supplementation to a regular dietary intake including higher intake of protein in addition to a gluten and lactose-free diet, items included in low-FODMAP diet (fresh fish/meat, fresh fruits and veggies), and nutritional drinks such as Ensure. While a higher intake of protein, a gluten and lactose-free diet, and a low-FODMAP diet were reasonably considered by the ministry to compose special types of diets (high protein diet, gluten-free diet, lactose-free diet, low-FODMAP diet) as part of a regular dietary intake for which the appellant already receives a gluten-free diet supplement, the panel finds that the ministry was not reasonable to determine that the required nutritional drinks, such as Ensure, are part of a regular dietary intake. In the additional checklist dated February 21, 2021 the MP indicated again that in addition to a regular dietary intake the appellant requires daily intake of extra calories, including nutritional drinks such as Ensure at the rate of 3 cans per day.

The MP indicated in the checklist provided at reconsideration that the appellant requires the additional nutritional items due to malnutrition from an inability to absorb enough calories, and that the items will prevent further weight and muscle mass loss. The ministry wrote in the reconsideration decision that the MP did not provide sufficient evidence to demonstrate that the appellant is displaying two or more symptoms which would indicate a need for caloric supplementation. The ministry acknowledged in the reconsideration decision that the appellant displays the symptom of malnutrition. The panel found that the ministry was reasonable to conclude that the MP had not confirmed that the appellant displays the symptom of significant weight loss; however, the panel found that the ministry was not reasonable to conclude that there was insufficient information that the MP confirmed that the appellant displays the symptom of significant muscle mass loss, as previously discussed.

Section 7(a) of Schedule C and Section 67(1.1)(d) of the EAPWDR also require that the MP confirm 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 appellant's life. In the checklist dated February 21, 2021 the MP indicated that the appellant has been diagnosed with the additional medical conditions of depression and anxiety and that, in the MP's "medical opinion," the appellant is being treated for a chronic, progressive deterioration of health and is taking medications for depression and anxiety, which are significantly impacted by the symptoms of IBS, gastritis, celiac disease, and testosterone deficiency. The MP also indicated in the new information that the appellant requires daily intake of extra calories, including nutritional drinks such as Ensure at the rate of 3 cans per day. The MP indicated in the checklist that failure to obtain the nutritional items will result in imminent danger to the appellant's life and the MP indicated that, without these items, the appellant is "at risk of further deterioration of physical and mental health."

At the hearing, the appellant spoke about experiencing bouts of diarrhea 3 or 4 times per day and said this will last for 3 or 4 days in a row. The appellant stated there is little or no control

over the bowels and this condition makes it very difficult for the appellant to schedule appointments or to go out of the appellant's residence. The appellant stated that these symptoms associated with the physical medical conditions (IBS, chronic gastritis, testosterone deficiency, and gluten intolerance/ celiac disease) impact the appellant's depression and anxiety. The appellant stated at the hearing that the appellant's nails have been falling out and there are spots all over the appellant's face.

In view of the additional information from the MP provided in the February 21, 2021 checklist together with the elaboration by the appellant at the hearing, the panel finds there is sufficient evidence to establish that the MP confirmed that failure to obtain the additional nutritional items will result in imminent danger to the appellant's life due to risk of further deterioration of a combination of the appellant's physical and mental health conditions. Therefore, the panel finds that the ministry was not reasonable to conclude that the eligibility criteria in Section 7(a) of Schedule C and Section 67(1.1)(d) of the EAPWDR had not been met.

Conclusion

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

Schedule

Section 67(1.1) of the EAPWDR sets out the eligibility requirements which are at issue on this appeal for providing the vitamins/ minerals and 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.

APPEAL NUMBER
2021-00032

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 back 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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021-03-02

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-03-02

PRINT NAME

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)