

**PART C – DECISION UNDER APPEAL**

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated March 23, 2021, which held that the appellant is not eligible for a monthly nutritional supplement (MNS) for additional nutritional items or vitamins/minerals because none of the requirements of section 67(1.1)(a)-(d) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) were met. The minister was not satisfied the medical practitioner confirmed that:

- (a) the appellant is being treated by the medical 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 appellant displays two of the listed symptoms;
- (c) for the purpose of alleviating a symptom referred to in paragraph (b), the appellant requires, as set out in section 7(a) of Schedule C, additional nutritional items that are part of a caloric supplementation to a regular dietary intake or vitamins/minerals; and,
- (d) failure to obtain the items will result in imminent danger to the appellant's life.

**PART D – RELEVANT LEGISLATION**

EAPWDR, section 67 and section 7 of Schedule C

**PART E – SUMMARY OF FACTS**

**Summary of Relevant Information Available at Reconsideration**

The appellant is a Person with Disabilities in receipt of disability assistance and a \$35 monthly diabetic dietary supplement.

The appellant submitted the ministry's Application for Monthly Nutritional Supplement (the MNS Application), completed by a medical practitioner on January 7, 2021, summarized below, with the medical practitioner's responses italicized.

Diagnosis:

- *Diabetes, Hypothyroidism, IBS* [irritable bowel syndrome]

The medical practitioner identified the following symptom from those listed in the MNS Application. No additional commentary is provided.

- Significant deterioration of a vital organ – *Fatty Liver*

Where asked to specify an applicant's height and weight to "assist in determining your patient's Body Mass Index (BMI)", *69 inches and weight as 215 lbs*

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The following questions and responses appear in the "vitamin or mineral supplementation" section of the MNS Application.

Specify the vitamin or mineral supplement(s) required and expected duration of need: [emphasis included]:

- *Iberogast BID [twice a day]*

Describe how this item will alleviate the specific symptoms identified:

- *Reduce GI symptoms*

Describe how this item or items will prevent imminent danger to the applicant's life.

- No response provided.

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The following questions and responses appear in the "nutritional items" section of the MNS Application.

Specify the additional nutritional items required and expected duration of need:

- *Fish oils (Omega 3)*
- *Pre and pro Biotics. Required long term.*

Does the applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake? If yes, please describe.

- *IBS*
- *Diabetes*

Describe how the nutritional items will alleviate one or more of the symptoms specified in Question 3 and provide caloric supplementation to the regular diet.

- No response provided.

Describe how the nutritional items requested will prevent imminent danger to the applicant's life.

- No response provided.

.....

At the end of the MNS Application, under the heading, Additional Comments, the medical practitioner provided no response.

At reconsideration, the appellant submitted:

- March 22, 2021, 3-page typewritten letter in which the appellant reports:
  - A long history of chronic diarrhea, currently treated with medications and dietary changes for chronic colitis;
  - Frequently worsening incontinence episodes;
  - Taking medications to help with gut inflammation and bowel irritation;
  - Fatty liver, which is shown to have worsened on the CT;
  - Medical conditions - including esophageal hiatus hernia, enlarged appendix, colonic diverticulosis, and lower lung nodule – which the appellant states are evidence of at least 4 organs that have shown deterioration;
  - Diabetes remains unmanaged, despite multiple medications, with recent bloodwork showing a deterioration;
  - It has been suggested that the appellant consider insulin to manage diabetes better - the appellant requested that the endocrinologist allow the appellant 3 months to implement major changes to the appellant's health, lifestyle, and diet before going on insulin;
  - Glaucoma resulting from diabetes requires twice daily drops;
  - Lipidemia, cardiovascular disease, hypertension;
  - Current creatine kinase lab results show muscle wasting;
  - Blood loss due to GI issues;
  - Severe arthritis, hypothyroidism, bipolar mood;
  - Supplements have been suggested for gut and cardiovascular health, diabetes, mental health and arthritis;
  - Gut health combined with diabetes are of most serious concern to the appellant;
  - Due to the current pandemic, medical doctors only have so much time they can allot to a patient and have limited "bandwidth" in reviewing a patient's medical history to fully complete complex medical forms;

- The optimal diet for the various medical conditions is a combination of more protein (fish and plant based), low sodium, low carbohydrate, high fibre, gluten and lactose free.
- Supplements suggested for use:
  - Gut health: pre and probiotics, charcoal capsules, wild oregano capsules, black cumin seed oil capsules, digestive enzymes, Iberogast drops, and turmeric capsules.
  - Cardiovascular health: Omega 3, CoQ-10, folic acid, daily aspirin.
  - Low hemoglobin: iron supplement.
  - Diabetes: capsules of cinnamon, berberine, chromium, and selenium to modulate glucose.
  - Mental health: vitamins D and B-complex.
  - Arthritis: calcium, magnesium and glucosamine.
- 2-page hospital report respecting a colonoscopy performed on January 8, 2021, stating: a 3mm polyp, which appears to be an adenoma, was resected; there was no finding that would explain the diarrhea; new medication was prescribed which, if it helps significantly, can be used longer term; and that “Some diabetics get significant diarrhea without any obvious cause.”
- January 25, 2021 laboratory requisition ordering tests identifying “chronic colitis” where asked to provide “Diagnosis and indications for guideline protocol and special tests.”
- Medical Imaging Report respecting a CT/Abdominal Pelvis Contrast conducted on January 9, 2021. Findings include: “The liver exhibits heterogeneous low attenuation compatible with fatty infiltration and mild colonic diverticulosis without evidence for acute diverticulitis.”; “Small esophageal hiatus hernia. Mild colonic diverticulosis without evidence for acute diverticulosis. The appendix is dilated to 10mm but there is no peri appendiceal fat stranding to convincingly suggest acute appendicitis.”; and “Fatty infiltration of the liver...Consider correlation with ultrasound.
- January 18, 2021 request by the medical practitioner for an abdominal ultrasound – “recent CT scan – shows nonspecific Nodule.”
- 5-page March 4, 2021 laboratory report for tests ordered by the medical practitioner (includes hematology, urinalysis and other test results).

**Documents Provided on Appeal and Admissibility**

Notice of Appeal dated March 30, 2021, comprised of argument.

April 20, 2021, 3-page typewritten submission comprised of argument and evidence. Providing an update, the appellant reports:

- An upcoming MRI to further investigate fatty liver, fat build up around the appendix, significant abdominal pain, and nodes in the lungs;
- Still being treated for IBD with aggressive medications, which seem to be stabilizing some issues; and,
- Going for additional stool tests to try to help gut health issues.

April 22, 2021, 1-page typewritten submission comprised of argument and evidence. Attached are a lab requisition from the medical practitioner who completed the MNS Application and stool test results. The appellant notes:

that the tests are markers for “chronic colitis” which is what my GI specialist suspects is going on with my Gut health [sic] issues. Combine this with Diabetes and Lipidemia makes for a battle to get my health on track without supplementation of vitamins and minerals.

May 4, 2021 email from the ministry stating that its submission in this matter is the reconsideration summary provided in the Record of Ministry Decision.

The panel admitted the additional medical documentation and the self-reported description of the appellant’s medical conditions provided on appeal in accordance with section 22(4) of the *Employment and Assistance Act* as being information required for a full and fair disclosure of the matters related to the appeal.

Arguments of both parties are set out in Part F of the decision.

**PART F – REASONS FOR PANEL DECISION**

**Issue on Appeal**

The issue under appeal is whether the ministry's reconsideration decision that the appellant is not eligible to receive the MNS of additional nutritional items and vitamins/minerals under section 67(1.1) of the EAPWDR is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances. That is, has the ministry reasonably determined that the medical practitioner has not confirmed that:

- (a) the appellant is being treated by the medical 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 appellant displays two of the listed symptoms;
- (c) for the purpose of alleviating a symptom referred to in paragraph (b), the appellant requires, as set out in section 7(a) of Schedule C, additional nutritional items that are part of a caloric supplementation to a regular dietary intake or vitamins/minerals; and,
- (d) failure to obtain the items will result in imminent danger to the appellant's life.

**Panel Decision**

*Legislative Requirements*

Section 67(1.1) allows for the provision of two types of MNS set out in section 7 of Schedule C – “additional nutritional items” and “vitamins and minerals” - if a medical practitioner, nurse practitioner, or dietitian confirms that the requirements described in paragraphs (a) through (d) are met:

- (a) the person is being treated by a medical or nurse practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;
- (b) the person displays at least two of the symptoms listed in this paragraph (malnutrition, underweight status, significant weight loss, significant muscle mass loss, significant neurological degeneration, moderate to severe immune suppression, and significant deterioration of a vital organ);
- (c) one or more of the items set out in section 7 of Schedule C is required for the purpose of alleviating a symptom listed in paragraph (b); and
- (d) failure to obtain the items will result in imminent danger to the person's life.

While these requirements apply to both MNS, the language of section 7 of Schedule C describing “additional nutritional items” has the effect of adding the requirement to paragraph (c) that the additional nutritional items be required as “part of a caloric supplementation to a regular dietary intake” for the purpose of alleviating a symptom.

The appellant provided general argument as well as argument specific to the legislative criteria.

Where specific argument is provided, it is set out below under the discussion of each criterion. The appellant's general argument is as follows. The ministry unfairly based its decision on the MNS Application without giving due consideration to the appellant's 3-page letter and additional medical documents. It is unfair for the ministry to not provide support because the appellant already receives diabetes support. Stating that doctors are limiting time spent with patients and making more money since the pandemic, thereby not having the time to fill out complicated forms or do thorough medical reviews for patients, the appellant requests that the ministry and tribunal contact the medical practitioner in writing to enquire about the health issues outlined by the appellant. The appellant also requests that the appellant's medical health team (cardiologist, GI specialist, endocrinologist, psychiatrist, and ophthalmologist) be put on notice to speak at the hearing and that the ministry cover any costs. The appellant's medical practitioner is only seeing patients by telephone, so the appellant cannot go to the office and get the medical practitioner to review medical records, the MNS Application or to write a letter detailing additional matters. The pandemic prevents the appellant from drawing the attention of the health minister, provincial health officer and local MLA to the appellant's health needs and need for assistance. The appellant argues that if all the information provided is considered, all the requirements will be met.

*Chronic Progressive Deterioration of Health – Section 67(1.1)(a)*

The appellant's position is that the additional medical documentation and the appellant's own information establish that numerous medications are required to treat multiple medical conditions, including chronic colitis and glaucoma, and that the appellant's incontinence, diabetes and fatty liver are worsening. Therefore, the appellant submits that the information establishes that the appellant is being treated for a chronic progressive deterioration of health.

The ministry argues that while the medical practitioner diagnoses medical conditions, diabetes, hypothyroidism and IBS, she does not provide any information regarding the chronic, progressive deterioration of health or advise that the appellant is in receipt of treatment; as are required by the legislation.

The panel finds that the medical practitioner diagnosed three medical conditions but did not respond when asked if the appellant is being treated for a chronic progressive deterioration of health or provide any commentary elsewhere in the MNS Application indicating that the appellant is experiencing a progressive deterioration of health. The appellant provided laboratory test requisitions identifying the reason for the test as "chronic colitis", but the panel finds that this information simply confirms investigations respecting the appellant's chronic IBS symptoms but does not confirm a progressive deterioration of health. The appellant self-reports being treated for a number of worsening medical conditions but the legislation requires that confirmation of a chronic progressive deterioration of health resulting from a medical condition(s) be provided by a medical or nurse practitioner or a dietician. Accordingly, the panel finds that the ministry was reasonable in concluding that the information was insufficient to meet this requirement.

Symptoms – Section 67(1.1)(b)

The appellant's position is that the requirement that two of the listed symptoms be present is established by the evidence showing the significant deterioration of four organs, in addition to the liver, and the lab results indicating muscle wasting.

The ministry's position is that while the appellant reports having the symptom of significant muscle mass loss, the only symptom identified by a medical or nurse practitioner or dietician is liver deterioration.

The panel finds that the ministry was reasonable in concluding that the only listed symptom confirmed by the medical practitioner is the significant deterioration of the appellant's liver. The medical practitioner provides no evidence of any of the other listed symptoms: malnutrition, underweight status, significant weight loss, significant muscle mass loss, significant neurological degeneration, and moderate to severe immune suppression. The appellant's statements respecting the deterioration of four other organs and muscle wasting are not supported by diagnosis of them from a medical practitioner. The additional medical documentation confirms fatty infiltration of the liver and mild colonic diverticulosis but does not address the symptoms listed in section 67(1.1)(b) and while the appellant interprets laboratory results as confirming muscle wasting, evidence of such a correlation by a medical or nurse practitioner or dietician is not provided. Accordingly, the panel finds the ministry reasonable in concluding that the information does not establish that the appellant experiences two of the listed symptoms.

Additional Nutritional Items - Section 67(1.1)(c) and (d)

The appellant's position is that an optimal diet of more protein (fish and plant based) and high fibre, which is low in sodium and carbohydrates and free of gluten and lactose is required due to multiple medical conditions. For the appellant's diabetes the appellant prefers to attempt "health, lifestyle and diet" to manage better over being prescribed insulin.

The ministry's position is that nutritional items are intended to provide caloric supplementation in addition to a regular dietary intake to assist with symptoms of wasting due to a serious medical condition. The ministry notes that the medical practitioner specifies the requirement for fish oils (Omega 3) and pre and pro biotics and identifies IBS and diabetes when asked if the appellant has a medical condition that results in the inability to absorb sufficient calories through a regular dietary intake. The ministry concludes that the information in the MNS Application and the information provided at reconsideration does not indicate that the appellant requires extra calories – caloric supplementation – over and above those found in the appellant's regular diet. The ministry also finds that the medical practitioner does not specify that additional caloric supplementation is required to prevent imminent danger to the appellant's life.

The panel finds that although the medical practitioner indicates that the appellant's IBS and diabetes result in an inability to absorb sufficient calories through a regular dietary intake, the medical practitioner does not indicate that a source of additional calories is required, instead, an Omega 3 supplement and pre and pro biotics are identified. Additionally, the medical

practitioner provides no indication that the appellant suffers from any of the symptoms typically associated with a need for additional caloric supplementation such as malnutrition, weight loss or underweight status and the information respecting the appellant's height and weight, in the absence of further explanation, is not suggestive of the need for additional calories. The additional medical documentation does not address dietary needs of the appellant. The panel notes that the appellant's own information does not identify the need for caloric supplementation, but rather that the appellant's optimal diet includes increased protein and fibre, and low amounts of other food components. Therefore, the panel finds that the ministry reasonable in concluding that the need for caloric supplementation to a regular dietary intake to alleviate a symptom described in section 67(1.1)(b) has not been established.

Respecting the requirement that the medical practitioner confirm that the additional nutritional items requested are required to prevent imminent danger to the appellant's life, the panel finds no indication by the medical practitioner that the appellant's life is in imminent danger without any of the supplement items (Omega 3, pre and pro biotics) requested. Therefore, the panel finds that the ministry was reasonable in concluding that this requirement was not met.

#### *Vitamin/Mineral Supplementation - Section 67(1.1)(c) and (d)*

##### *Positions of the Parties*

The appellant's position is that, in addition to Iberogast, multiple supplements, including vitamins D and B-complex, calcium, magnesium and iron, have been suggested to address the appellant's medical conditions.

The ministry's position is that the medical practitioner identifies the requirement for Iberogast BID, which is an herbal supplement not a vitamin or mineral supplement and therefore cannot be considered for a MNS vitamin/mineral supplement. The ministry also finds that the medical practitioner's indication that the Iberogast will reduce GI symptoms is not information describing how vitamin or mineral supplements will prevent imminent danger to the appellant's life.

##### *Panel Analysis*

The panel finds that the appellant did not dispute that Iberogast is an herbal supplement and not a vitamin or mineral. Accordingly the panel accepts that determination and finds that the ministry has reasonably concluded that it cannot be provided as a vitamin or mineral MNS. The panel also finds that none of the additional medical documentation describes the need for vitamin or mineral supplementation. The appellant has provided extensive description of the need for various supplements, including vitamins and minerals, however, the legislation requires that the need be confirmed by a medical or nurse practitioner or a dietician. Therefore, the panel finds that the ministry was reasonable in concluding that a medical practitioner has not confirmed that vitamin or mineral supplementation is required to alleviate a symptom described in section 67(1.1)(b).

Independent of the finding above the panel also finds that the medical practitioner has not

provided evidence that failure to provide vitamin or mineral supplementation would result in imminent danger to the appellant's life – the medical practitioner did not respond to the relevant question or provide any other relevant commentary. Therefore, the panel finds that the ministry was reasonable in concluding that this requirement was not met.

### Conclusion

The panel acknowledges the appellant's desire to have members of the appellant's medical team put on notice to provide information to the panel; however, the Tribunal does not have the authority to compel witnesses to provide information, nor the ability to require the ministry to financially compensate witnesses. The panel's decision must be based on the information put before it by the appeal parties.

The panel concludes that the ministry's decision that the requirements of section 67(1.1)(a)-(d) of the EAPWDR for the MNS of additional nutritional items and vitamins and/or minerals were not met was reasonably supported by the evidence. Accordingly, the reconsideration decision is confirmed and the appellant is not successful on appeal.

## Schedule of Legislation

### Employment and Assistance for Persons with Disabilities Regulation, B.C. Reg. 265/2002

#### 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, nurse practitioner or dietician, 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 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

##### 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  
2021-00069

**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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/05/12

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/12

PRINT NAME

Wesley Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/12