

PART C – DECISION UNDER APPEAL

In its reconsideration decision dated May 31, 2021 the Ministry of Social Development and Poverty Reduction (the ministry) determined that the appellant was not eligible for a monthly nutritional supplement (MNS) for additional nutritional items or vitamins/minerals. The ministry was satisfied that a nurse practitioner (NP) has confirmed the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition as set out in section 67 (1.1)(a). However, the ministry was not satisfied that

- (b) as a direct result of the chronic, progressive deterioration of health, the appellant displays 2 of the listed symptoms;
- (c) for the purpose of alleviating a symptom referred to in paragraph (b), the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake as set out in Schedule C section 7(a), or vitamins/minerals as set out in section 7(c); and
- (d) failure to obtain the items will result in imminent danger to the appellant's life.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation section 67(1.1)
Employment and Assistance for Persons with Disabilities Regulation Schedule C section 7

PART E – SUMMARY OF FACTS

The appellant is a person with disabilities who receives disability assistance.

The appellant is currently in receipt of a high protein diet supplement in the amount of \$40.00.

In a letter dated March 3, 2021 the appellant's NP writes that due to Crohn's disease, they

- require a high protein diet free of gluten and lactose, and
- vitamin D, B12, iron and collagen supplementation.

In an Application for Monthly Nutritional Supplement dated March 23, 2021 the appellant's Nurse Practitioner (NP) indicates that:

- The diagnosis is Crohn's – Irritable Bowel Disease (IBD)
- The appellant suffers from abdominal pain, diarrhea, fatigue, weight loss, malnutrition, gluten intolerance.
- As a result of the severe medical condition the appellant had been seen by a GI (which the panel assumes stands for Gastro-Intestinal doctor) in another city, the treatment plan not effective. "Awaiting local GI specialist".
- Section 3 of the form is titled "As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms? If so, please describe in detail"; there is a list of 7 symptoms.
- To "malnutrition" the NP wrote: reduced appetite, fatigue, poor concentration.
- To "Significant deterioration of a vital organ (please specify)" the NP wrote: "terminal ileum, involvement – absorption issues secondary to same"
- The NP noted the appellant's height as 155cm, the weight as 115 lbs.
- Vitamin or Mineral Supplementation
 - The NP specifies_Vitamin B12, Iron, Vitamin D, Collagen [the panel notes that collagen is a protein, not a mineral or vitamin] is required indefinitely - "to maintain energy levels and functioning of vital organs".
 - The NP indicates that these items will prevent imminent danger to the applicant's life because they "would support vital organ function, energy levels and bone loss."
- Nutritional Items
 - The NP notes the appellant indefinitely requires additional gluten-free ("gluten intolerance") and high protein nutritional items.
 - To the question "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?" the NP writes that Crohn's Disease has caused scar tissue in the appellant's terminal ileum effecting the absorption of nutrients.
 - The NP indicates further that the required nutritional items will "prevent malnutrition resulting in reduced appetite, fatigue, poor concentration, bone loss and organ dysfunction";
 - These items will prevent imminent danger to the applicant's life as they "prevent nutritional deficiency".

On May 26, 2021, the ministry received a letter from the appellant and from NP, as well as a lab report.

- In the letter the appellant states that:
 - In the past and present they experienced multiple times extreme fatigue, nausea, vomiting, diarrhea.
 - They were unable to get the proper nutrition to maintain functioning and a healthy weight.

- The inflammation and deterioration of the appellant's intestines leads to the development of scar tissue and malnourishment.
- Being underweight directly impacts the vital organs, and if left untreated will lead to early death.
- Crohn's is unpredictable and flare-ups can happen over and over, scar tissue gets worse further affecting the ability to digest food and get the proper amount of nutrient absorption.
- The inflammation makes it hard for the body to break down food and absorb the vitamins from the food.
- If the appellant doesn't take supplements and medications, their health will deteriorate.
- The appellant wants to take care of their body properly but gluten free food, vitamins, minerals, and extra protein are very expensive.
- The NP writes:
 - It is important to ensure the appellant's health is stable.
 - In 2017 the appellant experienced a severe flare up where they became malnourished and hypotensive [abnormally low blood pressure].
 - The appellant has intermittently required immunosuppressive medication for the treatment of their disease.
 - Prior to taking supplements, the appellant was found to be deficient in B12, iron, and vitamin D. The NP does not feel comfortable asking the appellant to stop taking these in order to prove low level on laboratory testing.
 - The appellant is unable to tolerate any amount of gluten in the diet without experiencing nausea, vomiting, and diarrhea.
 - In the past the appellant has experienced significant weight loss. Supplementing with protein in addition to high protein diet has helped maintain a healthy weight.
- A 4 page lab report provides test results from March 3, 2017, April 21, 2017 and October 15, 2019.

In the Notice of Appeal dated June 2, 2021 the appellant wrote:

- "If I do not take supplements it does put my life in imminent danger. I am in the process of deteriorating and I don't want to wait until it is too late to get help to get what I need."

On August 9, 2021 the appellant submitted

- a prescription by the GI dated July 7, 2021 for Iron, Vitamin B 12 and Vitamin D supplements, and
- a 2 page lab report dated June 23, 2021.

At the hearing the appellant reviewed previous information and added that

- they have been in and out of hospitals for many years because of Crohn's disease.
- In 2014 they were first diagnosed with Crohn's disease.
- 1 year ago the appellant's appendix was removed which led to significant weight loss.
- 1 year ago the appellant moved to BC from another province. They had taken vitamins off and on, depending on available funds.
- They are not currently hospitalized - the last time was in 2017.
- They have been struggling with Vitamin B, D and iron insufficiency as it is common in Crohn's disease.
- Currently the appellant takes vitamins/minerals only sporadically, not regularly as they should.
- Because of the scar tissue of the ileum it is more difficult for the body to absorb nutrients.
- Since March 2021 in the appellant lost weight and weighs now approximately 105 lbs.
- There are other health issues like mental health issues and a mass on the liver.

- The appellant does not have a very good immune system; they took immune suppressant medication which led to negative side-effects;
- Currently they are not on medication to avoid these negative side-effects.
- The appellant has a new GI with whom they have consulted; tests were arranged and more tests are coming up.
- The GI is trying to find the right medication that does not impact the appellant's liver function and causes low Vitamin D.
- The GI said the appellant's iron is insufficient.
- The recent lab report shows additional inflammation.
- The appellant feels heart palpitation, their body is weak and feels as if it is deteriorating.
- They tried to get as much information as possible from the GI but he is very busy and it is difficult to get documentation.
- Definitions in the legislation are too loose and legislation should be more clear; practitioners don't know what the ministry is looking for.
- The appellant hopes to get approved for vitamins and minerals to avoid hospitalization.

The ministry presented the reasons for the reconsideration decision and added that

- had they received the new lab report and prescription at the time of the initial application or at reconsideration they would likely have accepted the malnutrition symptom.
- The ministry considers brain, heart, kidneys, liver and lungs to be the vital organs. These 5 organs also come up most frequently in google searches. If it is possible to survive without a certain organ it is not considered a vital organ. People can live without their ileum when it is bypassed or removed.
- A caloric supplement would typically be indicated for muscle loss and weight loss.

Admissibility

The ministry did not object to the admissibility of the August 9, 2021 submission. The panel determined that the additional documentary evidence as well as the appellant's testimony at the hearing were admissible under s. 22(4) of the EAA as necessary for a full and fair disclosure of the matters related to the appeal and admitted this information under section 22(4) of the EAA.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's decision that the appellant was not eligible for a Monthly Nutritional Supplement [MNS] of nutritional items and vitamin/mineral supplements is a reasonable application of the legislation or reasonably supported by the evidence. That is, has the ministry reasonably determined that the nurse practitioner has not confirmed that,

- (b) as a direct result of the chronic, progressive deterioration of health, the appellant displays 2 of the listed symptoms;
- (c) for the purpose of alleviating a symptom referred to in paragraph (b), as set out in Schedule C section 7, the appellant requires 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.

(a) Chronic progressive deterioration of health on an account of a severe medical condition

The ministry determined that this requirement has been met.

(b) 2 or more symptoms

Malnutrition

- The NP identifies malnutrition as a symptom of the appellant's Crohn's disease and describes it as reduced appetite, fatigue and poor concentration.
- The NP writes that gluten-free and high protein diets as well as Vitamin B12, Iron and Vitamin D supplements are required indefinitely.
- The NP affirms further that Crohn's disease prevents the effective absorption of nutrients.
- The appellant's GI prescribes Iron, Vitamin B and Vitamin D supplements.

While the ministry determined that the information provided by the NP at reconsideration does not establish that the appellant displays the symptoms of malnutrition because the appellant is within a normal BMI range the panel finds that, given all of the above evidence, the ministry's determination to solely rely on the appellant's BMI is not reasonable: The NP has confirmed the symptom of malnutrition as a direct result of the chronic progressive deterioration of health on account of the appellant's severe medical condition, provided details and an explanation on how

this medical condition prevents the effective absorption of nutrients, and confirmed that for the purpose of alleviating the symptom of malnutrition the appellant indefinitely requires Iron, Vitamin B and Vitamin D supplements. The GI's prescription of Iron, Vitamin B12 and Vitamin D supplements confirms the NP's confirmation.

Underweight Status

- The NP noted the appellant's height as 155cm and the weight as 115lbs which the ministry concluded represents a BMI within the normal range.
- At the hearing the appellant stated that their current weight is approximately 105lbs.
- There is no current information from a medical practitioner, nurse practitioner or registered dietitian that confirms a change in weight.

The panel finds that the above evidence does not demonstrate that the appellant displays the symptom of underweight status.

Significant weight loss and Significant Muscle Mass Loss

While the appellant's NP writes that in the past the appellant has experienced significant weight loss the panel finds the ministry reasonably determined that significant weight loss or muscle mass loss has not been confirmed to be occurring recently or currently.

Significant neurological degeneration

The panel finds there is no evidence of significant neurological degeneration.

Moderate to Severe Immune Suppression

- The NP noted that the appellant has intermittently required immunosuppressive medication for the treatment of their disease.
- At the hearing the appellant stated that they do not take medication currently and their GI is trying to find the right medication that does not impact the appellant's liver function and causes low Vitamin D levels.

Based on this evidence the panel finds that the ministry reasonably determined that it has not been established that the appellant is currently experiencing the symptom of moderate to severe immune suppression.

Significant Deterioration of a Vital organ

- Under "Significant deterioration of a vital organ (please specify)" the NP writes: "terminal ileum, involvement - issues secondary to same".
- The NP states further that the appellant's medical condition has caused scar tissue in the terminal ileum affecting the absorption of nutrients.
- The appellant explained that scar tissue of the ileum gets worse further affecting the ability to digest food.

The appellant argues that the terminal ileum is a vital organ because mal-absorption of nutrients affects all organs and damage to this organ affects other organs such as the brain. The definitions on what constitutes a vital organ are not clear.

The ministry determined that the information provided by the NP at reconsideration does not establish that the appellant is displaying the symptom of significant deterioration of a vital organ, and the terminal ileum is not considered a vital organ.

The panel notes that the Cambridge English Dictionary defines "vital organ" as "the main organs inside

the body, such as the heart, lungs and brain that are necessary for life”. The panel considers the ministry’s definition of “vital organs”, namely brain, heart, kidneys, liver and lungs, to be reasonable. This definition does not include the terminal ileum. Therefore, the panel finds the ministry’s determination that the appellant has not established the symptom of significant deterioration of a vital organ to be reasonable.

Based on the above analysis of the 7 symptoms the panel finds that the ministry reasonably determined that a medical/nurse practitioner or dietitian has not confirmed that the appellant is displaying at least 2 of the 7 symptoms set out in the EAPWD Regulation, subsection 67(1.1)(b) and therefore does not meet the eligibility criterion set out in this section.

(c) and (d) Additional Nutritional Items as part of Caloric Supplementation

- The NP specifies that the appellant requires a gluten free and high protein diet indefinitely. The appellant is gluten intolerant.
- The NP reports that Crohn’s disease has caused scar tissue on the appellant’s terminal ileum, effecting the absorption of nutrients and resulting in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.
- In describing how additional nutritional items will alleviate one or more of the symptoms specified and provide caloric supplementation to the regular diet, the NP writes: “Prevent malnutrition, resulting in reduced appetite, fatigue, poor concentration, bone loss, and organ dysfunction.”
- In describing how the nutritional items requested will prevent imminent danger to life, the NP writes: “Prevent nutritional deficiency.”

The appellant argues that they are at risk and don’t want things to get worse. They need gluten-free and high protein nutritional items. Supplementing with protein in addition to high protein diet has helped maintain a healthy weight. The additional nutritional items will prevent imminent danger to the appellant’s life by preventing nutritional deficiency.

As previously discussed, the panel finds the ministry had reasonably determined that the information provided does not establish that a medical/nurse practitioner or dietitian has confirmed the appellant is currently displaying at least two of the symptoms set out in the legislation and the application. As a result, the panel finds the ministry reasonably determined that the items requested will alleviate one of the symptoms identified above.

While the NP indicates that the requested additional items will prevent imminent danger to life by “Prevent[ing] nutritional deficiency” the panel finds that the ministry reasonably determined that this information does not establish that failure to obtain the items requested will result in *imminent* danger to the appellant’s life.

While the appellant’s NP specifies a gluten free and high protein diet and writes that supplementing with protein in addition to a high protein diet has prevented weight loss and helped to maintain a healthy weight the panel finds that the ministry reasonably established that this recommendation of a specific diet does not establish that the appellant requires caloric supplementation to a regular dietary intake. Information has not been provided to establish that the appellant requires additional calories at this time, nor that the appellant is currently displaying the symptoms of underweight status, significant weight loss, or significant muscle mass loss, which would indicate a need for caloric supplementation.

(c) and (d) Vitamin/Mineral Supplementation

- In specifying the vitamin or mineral supplements required, the NP writes: “Vitamin B12, Iron, Vitamin D, collagen [the panel notes collagen is a protein] – indefinitely.”

- In describing how these will alleviate a specific symptom identified, the NP states: “Required to maintain energy level and functioning of vital organs.”
- In describing how vitamin/mineral supplementation will prevent imminent danger to your life, the NP writes: “It will support vital organ function, energy levels, and bone loss.”
- The NP confirmed that prior to taking supplements, the appellant was found to be deficient in B12, iron, and vitamin D.
- The appellant’s GI prescribes Iron, Vitamin B and Vitamin D supplements.

The appellant argues that the inflammation makes it hard for the body to break down food and absorb the vitamins. They need B12, iron and Vitamin D supplements because otherwise they will be hospitalized and their life will be in imminent danger.

The panel finds the ministry reasonably determined that the information provided demonstrates the appellant does not meet the legislative requirements for the provision of vitamin/mineral supplements. While the NP specifies the appellant requires Iron and Vitamin B 12 and D, and while the GI prescribes these items, the panel finds, as previously discussed, that the ministry reasonably determined that the information provided does not establish that a medical/nurse practitioner or dietitian has confirmed the appellant is currently displaying at least two or more of the symptoms set out in legislation and the application. While the appellant argues that without Iron, Vitamin D and B supplements their health will deteriorate the panel finds that the ministry reasonably concluded that the information provided by the NP does not constitute confirmation that failure to obtain vitamin/mineral supplementation will result in *imminent* danger to life.

Conclusion

The panel concludes that the ministry’s decision that the requirements of section 67(1.1)(b),(c) and (d) for the MNS of additional nutritional supplements and vitamins/minerals were not met was supported by the evidence. Accordingly, the reconsideration decision is confirmed and the appellant is not successful on appeal.

Applicable 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.

(2) In order to determine or confirm the need or continuing need of a person for whom a supplement is provided under subsection (1), the minister may at any time require that the person obtain an opinion from a medical practitioner, nurse practitioner or dietitian other than the medical practitioner, nurse practitioner or dietitian who completed the form referred to in subsection (1.1).

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
2021-0114

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

Inge Morrissey

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/08/11

PRINT NAME

Linda Smerychynski

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/08/11

PRINT NAME

Joe Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/08/11