

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated May 31, 2021, which held that the appellant did not qualify for a monthly nutritional supplement (MNS) of vitamin/mineral supplements and nutritional items under section 67(1) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

The ministry was satisfied that the appellant is in receipt of disability assistance and is being treated for a chronic, progressive deterioration of health as a direct result of a severe medical condition and therefore meets the requirements of section 67(1.1)(a) of the EAPWDR. The ministry was also satisfied that the vitamin/minerals supplementation is required to alleviate the symptom of the appellant's moderately suppressed immune system so section 67(1.1)(c) of the EAPWDR was satisfied.

However, the ministry was not satisfied that the appellant met the criteria of section 67(1.1)(b) or (d) of the EAPWDR. In particular:

- The ministry determined that the appellant did not display two or more of the symptoms set out in section 67(1.1)(b) of the EAPWDR as a result of a chronic progressive deterioration of health.
- The requirements set out in section 67(1.1) (d) of the EAPWDR were not met as the ministry was not satisfied that failure to obtain the vitamin/mineral supplementation will result in imminent danger to the appellant's life.
- The ministry was not satisfied that the nutritional items are intended as part of a caloric supplementation to a regular dietary intake to alleviate symptoms set out in EAPWDR section 67(1.1)(b), or that failure to obtain the nutritional items would result in imminent danger to the appellant's life.

APPEAL NUMBER
2021-0130

PART D – RELEVANT LEGISLATION

EAPWDR section 67 and Schedule C, section 7

PART E – SUMMARY OF FACTS

On April 12, 2021, the ministry received the appellant's MNS application dated April 8, 2021 (the "MNS Application") completed by the appellant's physician (the "Physician") indicating that the appellant was diagnosed with Crohn's (severe, recurring) with severe abdominal pain, malabsorption, and diarrhea. The Physician indicates that as a result of the chronic, progressive deterioration of health, the appellant displays symptoms of malnutrition, underweight status, significant weight loss, significant muscle mass loss, and moderate to severe immune suppression. The Physician indicates that the appellant is 5'6" and weighs 121 pounds, noting a normal weight of 135 pounds. The Physician recommends that the appellant have vitamin and mineral supplementation of iron with vitamin C, magnesium, calcium, zinc, vitamin D and multivitamins to treat malnutrition causing fatigue. The Physician indicates that the items will prevent imminent danger to the appellant's life as iron deficiency can cause anemia and that has happened to the appellant in the past.

The Physician indicates that the appellant requires nutritional items of digestive enzymes, protein powder and amino acid supplement due to Crohn's with chronic intestinal inflammation/malabsorption that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The Physician indicates that the protein powder and amino acids provide calories and that the digestive enzymes will help the appellant absorb the nutritional items. The Physician indicates that the nutritional items are needed to prevent imminent danger to the appellant's life by preventing further weight loss.

On April 19, 2021, the ministry denied the appellant's MNS request.

On May 14, 2021, the ministry received the appellant's request for reconsideration dated May 13, 2021 (RFR). With the RFR, the appellant provided a letter dated April 24, 2021 (the "Letter") indicating that the Physician had not completed the MNS Application sufficiently, so the appellant was providing further information and documentation.

In the Letter, the appellant reports severe, recurring Crohn's and recurring ulcers in small bowel leading to deterioration of intestine and a possibility of another ileocolic resection. The appellant reports that treatments have not helped and that the condition causes severe mineral and nutrient deficiencies. The appellant states that a diet that is high protein, high calorie, low fibre, low to no gluten, only healthy fats and low to no dairy is required due to the Crohn's. The appellant reports being previously healthy and fit at 135 pounds with loss of weight to 89 pounds and subsequent increase to 121 pounds, which the appellant is struggling to maintain due to malabsorption challenges. The appellant reports significant muscle loss due to inability to exercise. The appellant states that without the MNS the appellant's health will drastically deteriorate.

The appellant states that Crohn's is a debilitating disease that is physically exhausting and causes severe pain, that it cannot be cured, and the only hope is to keep it manageable.

The appellant reports using monthly benefits for disability related costs to purchase vitamins and supplements and to follow a special diet due to Crohn's disease, auto-immune disease and

intestinal track syndrome as the appellant does not absorb nutrients from food or break down food like a normal, healthy system does. The Letter indicates that the appellant has fainted many times and sustained a cracked skull. The appellant indicates that when the covid-19 pandemic began the appellant's roommate left without notice and without paying rent, leaving the appellant to pay the rent and bills. The appellant states that due to being severely immunocompromised the appellant has not been able to find an appropriate roommate during the covid-19 pandemic.

The appellant also provided the following documentation:

- Diagnostic Imaging Report dated February 9, 2018, indicating a transvesical anterior pelvic mass, suspicious for malignancy
- Operative reports dated February 22, 2018, indicating a history of pelvic pain and irritative voiding symptoms, a preoperative diagnosis of an extravesical mass with possible bowel invasion, and procedures of a partial cystectomy and ileocolic resection
- Operative report dated June 13, 2018, indicating small bowel obstruction and small bowel resection
- Colonoscopy Discharge Information dated October 21, 2020 (Colonoscopy Report) indicating ulcerations due to Crohn's in last 5 cm of small bowel

On May 31, 2021, the ministry completed its review. The appellant's Notice of Appeal (NOA) dated June 15, 2021, indicates that the appellant was resubmitting the Physician's form and advising that the appellant has an appointment with a Crohn's specialist.

Additional information provided

Prior to the hearing, the appellant provided a submission which included an updated MNS Application dated July 27, 2021, (the "Updated MNS Application") completed by the Physician indicating that the appellant's diagnosis is chronic autoimmune Crohn's, described as an inflammatory disease of the intestines resulting in constant low levels of red blood cells. The Physician indicates that the appellant is waiting for an ultrasound to investigate possible liver, gallbladder, or recurring cancer.

The Physician indicates that as a result of the chronic, progressive deterioration of health, the appellant displays symptoms of malnutrition, underweight status, significant weight loss (sustained 15 lb loss), significant muscle mass loss, moderate to severe immune suppression and significant deterioration of a vital organ, being intestines. The Physician indicates that the appellant is 5'6" and weighs 114 pounds. The Physician recommends that the appellant have vitamin and mineral supplementation of iron with vitamin C, digestive enzymes, plant based multi vitamin, essential aminos, calcium, magnesium, zinc, etc. magnesium, calcium, zinc, vitamin D, and multivitamins to keep iron sufficient, digest food, and ensure nutrition as the diet and Crohn's do not allow the appellant to sustain and maintain health and weight. The Physician indicates that the items will prevent imminent danger to the appellant's life as the appellant's limited diet and Crohn's do not allow sufficient nutrition to retain health, to improve, or stabilize the appellant's chronic, ongoing disorder.

The Physician indicates that the appellant requires nutritional items of “protein powder, electrolytes, pre probiotics [sic], etc.” on an ongoing basis. The Physician indicates that the appellant’s Crohn’s and chronic intestinal inflammation result in a restrictive diet and malabsorption that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The Physician indicates that the requested nutritional items will help prevent imminent danger to the appellant’s life because if the appellant does not receive proper caloric supplements and vitamins, the Crohn’s will progress, and the appellant’s health will decline. Under additional comments, the Physician indicates that the appellant should not stop taking any of these items as it will be detrimental to health and healing, and stabilization of the Crohn’s disease.

The appellant also provided the following:

- Ferritin Result History, undated indicating the appellant’s ferritin was in the normal range
- Fecal Calprotectin lab results dated July 26, 2021, indicating that the appellant’s fecal calprotectin results collected July 13, 2021, are consistent with inflammatory bowel disease.

The ministry provided a submission dated August 10, 2021, indicating that the ministry was relying on the reconsideration summary provided in the record of ministry decision.

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

Admissibility of New Information

The ministry did not object to the admission of the Updated MNS Application, Ferritin Result History, or Fecal Calprotectin lab results into evidence.

The panel has admitted the information in the NOA, the Updated MNS Application, the Ferritin Result History, and the Fecal Calprotectin lab results into evidence as the information is required for a full and fair disclosure of all matters related to the decision under appeal, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information relates to the appellant’s ongoing Crohn’s disease and the appellant’s ongoing health condition.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant the MNS of vitamin/mineral supplements and nutritional items was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable when concluding it was not satisfied that:

- the appellant did not display two or more of the symptoms set out in section 67(1.1)(b) of the EAPWDR as a result of a chronic progressive deterioration of health;
- the requirements set out in section 67(1.1) (d) of the EAPWDR were not met as the ministry was not satisfied that failure to obtain the vitamin/mineral supplementation will result in imminent danger to the appellant's life; and
- the nutritional items are intended as part of a caloric supplementation to a regular dietary intake to alleviate symptoms as required in EAPWDR section 67 (1.1)(b), or that failure to obtain the nutritional items would result in imminent danger to the appellant's life?

Relevant Legislation

EAPWDR - 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 dietician, 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 the medical practitioner or a 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, nurse practitioner or dietitian referred to in subsection (1.1).

EAPWDR Schedule C, Health Supplement - MNS

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.C. Reg. 68/2010)
- (b) Repealed (B.C. Reg. 68/2010)
- (c) for vitamins and minerals, up to \$40 each month. (B.C. Reg. 68/2010)

Panel Decision

Vitamin/Mineral Supplementation

EAPWDR - Section 67(1.1)(b) – two or more symptoms

The ministry's position is that although the Physician indicated that the appellant displays symptoms of malnutrition, underweight status, significant weight loss, significant muscle mass loss and moderate to severe immune suppression, the information provided only satisfied the ministry that one symptom, being moderate to severe immune suppression, was established.

The ministry noted that EAPWDR section 67(1.1)(b) requires that the appellant display two or more of the legislated symptoms as a result of chronic, progressive deterioration of health.

The ministry's position is that as the Physician indicates that the appellant is 5'6" and weighs 121 lbs, the appellant's BMI is 19.5 which is in the normal range of 115 to 154 pounds, so although the appellant's weight is on the low end of the range, the symptom of underweight status is not supported by the evidence provided.

The ministry's position is that the symptom of significant weight loss has not been established because although the appellant was 121 pounds and is normally 135 pounds, with a loss of 14 pounds or approximately 10% of BMI, there is no indication as to when the weight loss occurred or over what period of time. The ministry also notes that the appellant reported holding at 121 pounds due to the supplements.

The ministry's position is that the symptoms of significant muscle mass loss have not been established as the Physician has not provided any explanation to demonstrate this symptom. The ministry acknowledges that the appellant reports significant muscle mass loss due to inability to exercise, but the evidence provided does not establish this symptom.

The ministry's position is that the symptoms of significant neurological degeneration and significant deterioration of a vital organ are not established as the Physician did not report them on the MNS Application, nor were they established from the Colonoscopy Report. The ministry notes that the Colonoscopy Report indicates mild gastritis and esophageal erosion, but this does not demonstrate significant deterioration of a vital organ.

The appellant's position is that the vitamin/mineral supplementation is necessary to alleviate the symptoms of chronic, progressive deterioration from the appellant's severe recurring Crohn's disease and recurring ulcers in the small bowel. The appellant reports being previously healthy and fit at 135 pounds, dropping down to 89 pounds at one point, and then regaining some weight. At the time of reconsideration, the appellant was holding at 121 pounds. The appellant's position is that the Updated MNS Application demonstrates that there has been further weight loss, that current weight is 114 pounds, and that the information provided demonstrates that two or more of the symptoms required in EAPWDR section 67(1.1)(b) are met.

The panel finds that the ministry was not reasonable in determining that two or more symptoms required in EAPWDR section 67(1.1)(b) were not displayed as a result of the chronic, progressive deterioration of health. The MNS Application indicates weight loss and the Updated MNS Application indicates that since the MNS Application, a period of three months, the appellant has lost an additional 7 pounds, and is currently 114 pounds, which puts the appellant below the normal range for the appellant's height of 5'6". In particular, using the BMI index referred to by the ministry, the appellant's BMI is currently 18.4 which is in the underweight category.

The panel finds that the ministry was not reasonable in determining that the symptom of malnutrition was not established. On the MNS Application, the Physician indicates that the appellant has malabsorption and diarrhea due to the required medication and that the requested vitamin/mineral supplementation is required to treat malnutrition causing fatigue. On the

Updated MNS Application, the Physician indicates that the appellant requires the requested vitamin/mineral supplementation to maintain health and weight and to keep iron sufficient. As the appellant is in the underweight status and the Physician indicates that the appellant displays the symptom of malnutrition, the panel finds that the ministry was not reasonable in determining that this symptom was not established.

As the Physician indicates that the appellant's weight is below the normal range, and as the appellant's BMI is 18.4 which is in the underweight category, the panel finds that the ministry was not reasonable in determining that the symptom of underweight status was not established.

In the reconsideration decision the ministry accepted that a loss of 14 pounds from 135 pounds to 121 pounds was significant, but the ministry was not satisfied that the symptom of significant weight loss was established, as the Physician did not provide information indicating over what period of time the loss occurred. The panel finds that with the additional loss of a further 7 pounds over three months, the information indicates that the appellant has sustained significant weight loss with further loss in the last three months, so the ministry was not reasonable in determining that the symptom of significant weight loss was not met.

The panel finds that the ministry reasonably determined that the symptom of significant muscle mass loss was not met. While the appellant reports significant muscle mass loss due to inability to exercise, the Physician did not provide any information to describe the significant muscle mass loss on either the MNS Application or the Updated MNS Application and the lab tests, and operative reports provided do not provide information pertaining to significant muscle mass loss.

The panel finds that the ministry reasonably determined that the information provided did not establish that the symptom of significant neurological degeneration was met as the Physician did not check off that symptom.

The panel finds that the ministry reasonably determined that the information provided does not establish the symptom of significant deterioration of a vital organ. On the MNS Application, the Physician did not check off this symptom but on the Updated MNS Application, the Physician indicates that the appellant has significant deterioration of a vital organ, being intestines. However, the panel notes that while the 2018 operative reports indicate irritable bowel invasion, small bowel obstruction requiring a small bowel resection, a history of pelvic pain and irritative voiding symptoms, there is no information indicating significant deterioration of the intestines. The Colonoscopy Report indicates that the appellant has ulcerations due to Crohn's in the last 5 cm of small bowel but nothing to indicate significant deterioration of the intestines.

In summary, the panel finds that the ministry was not reasonable in determining that the symptoms of malnutrition and underweight status were not established or that the appellant did not display two or more of the legislated symptoms as a result of the chronic, progressive deterioration of health.

EAPWDR section 67(1.1)(d) – imminent danger to life and Schedule C, section 7 – caloric supplementation

The ministry's position is that the information provided does not establish that failure to obtain vitamin/mineral supplementation will result in imminent danger to the appellant's life so the requirements of EAPWDR section 67(1.1)(d) were not met.

The appellant's position is that Crohn's is a debilitating disease that is physically exhausting and causes severe pain, that it cannot be cured, and the only hope is to keep it manageable. The appellant states that treatments have not helped and that the condition causes severe mineral and nutrient deficiencies. The appellant states that without the MNS the appellant's health will drastically deteriorate.

The panel finds that the ministry reasonably determined that the information provided does not establish that failure to obtain the requested vitamin/mineral supplementation will result in imminent danger to the appellant's life as required by EAPWDR section 67(1.1)(d).

On the MNS Application, the Physician indicates that the items will prevent imminent danger to the appellant's life as iron deficiency can cause anemia and that has happened to the appellant in the past. On the Updated MNS Application, the Physician indicates that the items will prevent imminent danger to the appellant's life as the appellant's limited diet and Crohn's does not allow sufficient nutrition to retain health, to improve, or stabilize the appellant's chronic, ongoing disorder. While the Physician indicates that Crohn's does not allow sufficient nutrition to retain the appellant's health and that the requested items are necessary to stabilize the appellant's chronic ongoing disorder, and that the items will prevent iron deficiency and anemia which the appellant has had in the past, the information does not establish how iron deficiency or anemia will result in imminent danger to the appellant's life. The use of the word "imminent" requires some degree of immediacy or urgency and while the information provided indicates that while the appellant has a progressive, deterioration of health, it does not establish any imminent danger to life.

Nutritional Items

In order to be eligible for nutritional items that are part of caloric supplementation, a recipient of disability assistance must satisfy the ministry that due to a chronic, progressive deterioration of health, the appellant requires nutritional items for caloric supplementation to a regular dietary intake to alleviate a symptom set out in EAPWDR section 67(1.1)(b). In addition, the appellant must satisfy the ministry that failure to obtain the requested items will result in imminent danger to life as required by EAPWDR section 67(1.1)(d).

The ministry's position is that nutritional items for caloric supplementation are usually connected to displaying symptoms of wasting related to low weight, significant weight loss, or significant muscle mass loss. The ministry's position is that the Physician has not provided information to establish these symptoms or information to establish that the appellant's suppressed immune system requires additional nutritional items for caloric supplementation. The reconsideration decision indicates that the appellant is within the normal weight range and while the items listed will aid in digestion, the items listed are not considered indicative of items provided for caloric supplementation.

The appellant's position is that the information provided, particularly the Updated MNS Application and the appellant's self-report of the impacts to health, demonstrates that the appellant suffers from severe and chronic Crohn's disease and inflammatory ulcers that prevent absorption of nutrients resulting in weight loss, significant muscle mass loss, underweight status, malnutrition, moderate to severe immune suppression and significant deterioration of a vital organ.

The Letter indicates that the appellant requires a diet that is high protein, high calorie, low fibre, low to no gluten, only healthy fats, and low to no dairy. The appellant reports being previously healthy and fit at 135 pounds with loss of weight to 89 pounds and subsequent increase to 121 pounds which the appellant is struggling to maintain due to malabsorption challenges. The appellant reports significant muscle loss due to inability to exercise. The appellant states that without the MNS, the appellant's health will drastically deteriorate. The appellant states that Crohn's is a debilitating disease that is physically exhausting and causes severe pain, that it cannot be cured, and the only hope is to keep it manageable.

The panel finds that the ministry was not reasonable in determining that the appellant's need for nutritional items was not needed for caloric supplementation and that the appellant did not satisfy the legislative requirements of EAPWDR section 67(1.1)(b) and (c). In particular, the ministry only assessed the appellant's request in relation to how the need for nutritional items relates to the appellant's suppressed immune system, but as noted above, the panel finds that the information provided on the Updated MNS Application establishes that the appellant displays symptoms of malnutrition, underweight status, significant weight loss, and moderate to severe immune suppression. The information from the Physician indicates that the appellant requires ongoing protein powder, electrolytes, and "pre probiotics" to provide calories and digestive enzymes to help absorb the nutrients. As the appellant displays symptoms of underweight status and significant weight loss, the recommendation for protein powder to provide calories indicates that the appellant's need for special diet is connected to a need for caloric supplementation.

The reconsideration decision indicates that although the Physician confirms that the appellant has a medical condition that results in inability to absorb sufficient calories through a regular dietary intake, it was not confirmed that the appellant is currently consuming a regular dietary intake so it cannot be established that the nutritional items are for caloric supplementation above a regular dietary intake. The panel notes that there is no legislative requirement that the appellant confirm that the appellant is consuming a regular dietary intake, so the panel finds it is not reasonable to deny the appellant's request on that basis. In addition, the Physician states that the appellant's Crohn's and chronic intestinal inflammation result in a restrictive diet and malabsorption that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake which clearly indicates that the appellant requires the nutritional items for caloric supplementation above a regular dietary intake.

However, the panel finds that the ministry was reasonable in determining that the information provided did not establish that failure to obtain the nutritional items will result in imminent danger to the appellant's life. The Physician indicates that the nutritional items are needed to prevent imminent danger to the appellant's life by preventing further weight loss, and that without the nutritional items, the appellant's health will decline. However, there is a significant difference

between a person's health declining and being in imminent danger and the panel finds that the ministry has reasonably determined that the information does not indicate an imminent danger to life. For example, although the appellant is underweight, the appellant is just below the normal range so while that may be detrimental it is not clear that the appellant has imminent danger to life.

Conclusion

The panel finds that, in light of the additional evidence, the ministry was not reasonable in determining that the appellant did not satisfy EAPWDR section 67(1.1)(b) and (c). However, the panel finds that the ministry was reasonable in determining that the appellant did not satisfy the legislative criteria of EAPWDR section 67(1.1)(d) as it was not established that failure to obtain the requested items would result in imminent danger to the appellant's life was reasonable. Therefore, the panel finds that the ministry's decision to deny the appellant an MNS supplement was reasonable and confirms the reconsideration decision.

The appellant is not successful on appeal.

APPEAL NUMBER
2021-0130

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

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/08/30

PRINT NAME

Susan Ferguson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/09/01

PRINT NAME

John Pickford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/09/01