

### **Part C – Decision Under Appeal**

The appellant filed a Request for Reconsideration of a decision to deny the appellant's application for Monthly Nutritional Supplements ("MNS").

On May 18, 2022, the Ministry of Social Development and Poverty Reduction (the "ministry") reconsidered the appellant's MNS application. The ministry determined that the appellant is not eligible because the minister is not satisfied that the appellant:

1. had a severe condition;
2. had a chronic, progressive deterioration of health directly resulting from the severe condition;
3. displayed malnutrition and underweight status (in this case);
4. would have the displayed symptoms alleviated by the sought MNS; and
5. if failing to obtain the MNS, would result in imminent danger to the appellant's life.

The minister applied the *Employment and Assistance for Persons with Disabilities Regulation*, BC Reg 265/2002 at section 67 which requires the minister to be satisfied of the above based upon the information contained in the MNS application form completed by a medical practitioner, nurse practitioner or dietitian. The information in the MNS application forms provided by the two physicians did not satisfy the minister that any of the criteria were met.

### **Part D – Relevant Legislation**

#### **Re: Reconsideration Decision**

*Employment and Assistance for Persons with Disabilities Regulation (EAPWD Regulation)* sections 67.

*EAPWD Regulation*, Schedule C, section 7.

Please refer to the Schedule of Legislation at the end of this decision that contains relevant extracts.

**Part E – Summary of Facts**

**Background**

The ministry may provide MNS to a person with disabilities who is not receiving certain other benefits. The appellant is a person with disabilities and not receiving benefits that would exclude receiving a MNS under *EAPWD Regulation* subsection 67(1).

*EAPWD Regulation* at subsection 67(1.1) says that a person with disabilities may receive a MNS provided that the minister receives an application, in the form specified by the minister, completed by specified medical professionals. The MNS forms state the requirements set by the regulations and asks questions to obtain that information from the medical professional. They state in bold text:

The Monthly Nutritional Supplement is only available to an applicant receiving treatment from a medical practitioner or nurse practitioner for a chronic, progressive deterioration of health on account of a **SEVERE** medical condition(s), and who, as a direct result of the chronic, progressive deterioration of health, displays two or more of the symptoms set out in Question 3 of the application, and where the items requested in the application will alleviate those specific symptoms **AND** prevent imminent danger to the applicant’s life.

On April 7, 2022, a physician completed a MNS application for the appellant

On May 2, 2022, another physician completed two pages of another MNS application.

The MNS form questions with a table showing the respective responses of the physicians are below (all emphasis shown is in the form):

1. Please list and describe the [appellant’s] **SEVERE** medical condition(s):

Diagnosis	Description	April Form	May Form
		Irritable Bowel Syndrome – According to Patient	[ Page not provided]

2. As a direct result of the **severe** medical condition(s) noted above, is the applicant being treated for a chronic, progressive deterioration of health? If so, please provide details and any information on treatments including any relevant clinical or diagnostic reports.

April Form	May Form
Walk-in Clinic Visit. No Record of Above Condition	[ Page not provided]

3. 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.

[Listed Symptoms]	April Form	May Form
Malnutrition	[No entry]	[No entry]
Underweight status	[No entry]	Reports IBS diagnosis
Significant weight loss	According to Patient Has lost 15lbs (fifteen) in 12/12	[No entry]
Significant muscle mass loss	[No entry]	[No entry]
Significant neurological degeneration	[No entry]	[No entry]

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Moderate to severe immune suppression

[No entry]

[No entry]

Significant deterioration of a vital organ (please specify)

[No entry]

[No entry]

**4. Please specify the applicant's height \_\_\_\_\_ weight \_\_\_\_\_.**

Height and weight will assist in determining your patient's Body Mass Index (BMI)

April Form	May Form
5' 2" 110lbs	[No entry]

**5. VITAMIN OR MINERAL SUPPLEMENTATION:**

Vitamins and minerals are only available to an applicant to alleviate one or more of the symptoms specified in Question 3, if those symptoms are a direct result of a chronic, progressive deterioration of health, and to prevent imminent danger to the applicant's life. **This supplement does not include homeopathic, naturopathic or herbal remedies.**

[Listed Questions]	April Form	May Form
<ul style="list-style-type: none"> <li>Specify the vitamin or mineral supplement(s) required and expected duration of need:</li> </ul>	As Required by Patient	Ongoing Vitamin B12 and Vitamin D 1000m~ daily
<ul style="list-style-type: none"> <li>Describe how this item will alleviate the specific symptoms identified:</li> </ul>	Unsure	Overall Health benefit
<ul style="list-style-type: none"> <li>Describe how this item or items will prevent imminent danger to the applicant's life.</li> </ul>	Unsure	Unsure

**6. NUTRITIONAL ITEMS:**

Nutritional items are only available to an applicant to alleviate one or more of the symptoms specified in Question 3 if those symptoms are a direct result of a chronic, progressive deterioration of health and the nutritional items are medically essential, will provide caloric supplementation to a regular dietary intake and are required to prevent imminent danger to the applicant's life.

[Listed Questions]	April Form	May Form
<ul style="list-style-type: none"> <li>Specify the additional nutritional items required and expected duration of need:</li> </ul>	Unsure	Reduced gas producing foods => FODMAP diet
<ul style="list-style-type: none"> <li>Does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake? <b>If yes, please describe:</b></li> </ul>	Unsure	Not to my knowledge
<ul style="list-style-type: none"> <li>Describe how the nutritional items required will alleviate one or more of the symptoms specified in Question 3 and provide caloric supplementation to the regular diet:</li> </ul>	Unsure	[No entry]
<ul style="list-style-type: none"> <li>Describe how the nutritional items requested will prevent imminent danger to the applicant's life:</li> </ul>	Unsure	[No entry]
<p><b>Additional Comments:</b></p>	No Significant Records on file – Walk-In Visit	Walk in patient. Minimal digestive evidence to [unclear] information through history

On May 2, 2022, the appellant submitted the MNS application forms.

On May 4, 2022, the ministry denied the request for a MNS on the basis that the information in the forms did not establish that any of the regulatory criteria were met – and stated all of them must be met. Specifically, the ministry was not satisfied that the information from the physicians provided medical opinion to establish:

- That the appellant was diagnosed with a severe medical condition [see *EAPWD Regulation* sub-subsection 67(1.1)(a)].
- That the appellant was being treated for a chronic, progressive deterioration of health as a result of a severe medical condition.
- That the appellant displays two or more of the listed symptoms (even without reference to the requirement that they be a direct result of a chronic progressive deterioration of health)
- Will be in imminent danger to life if the appellant does not receive MNS – under *EAPWD Regulation* Schedule C section 7 which permits either or both
  - Vitamin and Minerals.
  - Nutritional items as part of a caloric supplementation to a regular dietary intake.

On May 5, 2022, the appellant submitted a Request for Reconsideration to the ministry.

On May 18, 2022, the ministry completed its review of the Request for Reconsideration and refused the MNS on the same basis as the original refusal.

On June 1, 2022, the appellant filed a Notice of Appeal of the May 18, 2022 decision. The Reasons for Appeal were “reconsideration of the ensure program” and additional notes and statements from the appellant attesting to extreme pain from irritable bowel syndrome and need for “ensure” vitamins, minerals, and water, to stomach/digestion, kidney, colon and urinary issues, and to a nerve disorder and organ failure.

On June 21, 2022, the appellant did not attend the hearing. The start of the hearing was delayed about 20 minutes to give the appellant a chance to attend if they were running late. After confirming that the appellant was provided with notice of the hearing as required by the legislation, the hearing ultimately proceeded without the appellant in attendance.

### **Appellant Submissions**

While the appellant did not attend the hearing the panel still considered all the written materials in the record from the appellant.

### **Ministry Position**

The ministry relied upon the Reconsideration Decision as written. No additional evidence was presented.

The ministry representative reviewed the Reconsideration Decision and referred to the information in the two MNS application forms. The representative noted that the standard for assessment is that the minister is satisfied that the medical evidence from the medical professionals establishes that all of the criteria are met. (*EAPWD Regulation* subsections 67(1) and 67(1.1)). In this case, the ministry representative stated that none of the criteria were met because the information in the MNS application was substantially inadequate.

## Part F – Reasons for Panel Decision

For this appeal the panel is required to determine whether the Reconsideration Decision is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Even if the panel might have decided differently it is not to merely substitute its assessment of the evidence for that of the ministry. It may only rescind a ministry decision if the panel finds it to be unreasonable on either of those grounds.

### Chronic Progressive Deterioration of Health

The ministry determined that neither physician confirmed a diagnosis, although they wrote that the appellant self-reported having irritable bowel syndrome. Neither confirmed that the appellant's medical condition was severe or that it directly resulted in treatment for a chronic, progressive deterioration of health. The panel finds that without this missing information set out by the medical professional that the appellant had not meet all of the required criteria to establish eligibility for MNS.

In the panel's view this determination by the ministry decided the matter – to refuse the MNS application- without having to consider the remaining criteria as all criteria must be met to be eligible. However, the ministry still considered the criteria for symptoms and the type of supplements. The panel also considers the ministry's assessment of the other criteria. For each category of MNS criteria the panel finds that the ministry assessment of the evidence was reasonably supported by the evidence and based on a reasonable application of the legislation.

### Symptoms

Of the symptoms listed the two physicians provided a response in the MNS application for a different symptom. One physician stated under the listing "Significant weight loss" that "According to Patient Has lost 15lbs (fifteen) in 12/12". The ministry stated that "it is not clear that 15 pounds over one year is significant weight loss". The other physician stated "Reports IBS diagnosis" under the listing "underweight status" without describing or confirming any symptom. The ministry calculated that the appellant had a body mass index ("BMI") of 20.1 as within the regular range of 18.5 to 24.9 (calculated from the appellant's stated height of 5'2" and weight of 110lbs). The BMI calculation and stated regular range was unchallenged by the appellant.

The ministry found the information from the medical practitioners does not show that the appellant is displaying at least two of the symptoms set out in the *EAPWD Regulation*, subsection 67(1.1)(b), nor that they were a direct result of a chronic, progressive deterioration of health.

### Vitamin/Mineral Supplementation

If the preceding criteria were met, then vitamins and minerals may be provided to alleviate the symptoms if necessary to prevent imminent danger to life. This is set out in *EAPWD Regulation* Subsections 67(1.1)(c) and (d) and Section 7 of Schedule C. However, the ministry found that the MNS applications lacked detail and certainty.

- In specifying the vitamin or mineral supplements required, one physician did not specify any but wrote "As Required by Patient", and the other wrote "ongoing vitamin B12 and vitamin D 1000iu daily". The duration of need was unclear for the first and for the second was indeterminate but stated as "ongoing".

- In describing how the supplements will alleviate a specific symptom identified, one physician was “Unsure” and the other referred to a general alleviation of symptoms writing “overall health benefit”.
- In describing how vitamin/mineral supplementation will prevent imminent danger to the appellant’s life, both physicians wrote “Unsure”.

At reconsideration the ministry determined that the physicians’ responses failed to specify how the vitamin or mineral supplement requested would alleviate an accepted symptom and prevent imminent danger to life.

### Nutritional Items

Nutritional items may also be provided (once the other qualifying criteria are met) as part of caloric supplementation to a regular dietary intake in order to alleviate the symptoms if necessary to prevent imminent danger to life. This is set out in *EAPWD Regulation* in the same subsections as for vitamin and mineral supplementation - *EAPWD Regulation* Subsections 67(1.1)(c) and (d) and Section 7 of Schedule C.

Here again, the ministry found that the MNS applications lacked detail and certainty.

- In specifying the “added nutritional items required”, one physician wrote “Unsure” and the other wrote that the appellant should follow a FODMAP diet, with reduced gas producing foods.
- Neither physician confirmed that the appellant has a medical condition resulting in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. One stated “Unsure” and the other “Not to my knowledge”.
- Neither physician described how additional nutritional items will alleviate one or more of the symptoms. One physician wrote “Unsure” and the other wrote nothing in answer. The same applies to the next question (fourth bullet) which asked for a description of how the nutritional items requested will prevent imminent danger to life.
- As “Additional Comments” both physicians indicated that it was a walk-in visit, and the records were limited.

At reconsideration, the ministry determined that the information in the MNS application did not establish any of the following, for vitamin or mineral supplements or for additional nutritional items, although all must be met: [See *EAPWD Regulation*, subsections 67(1.1)(a) - (d) and Schedule C, subsection 7(a)]

- A medical/nurse practitioner or dietitian had confirmed the appellant’s need for the supplement.
- The purpose of the supplement was to alleviate one of two symptoms
- The symptoms arose as a direct result of a chronic, progressive deterioration of health due to a severe medical condition
- Failure to obtain the supplements requested will result in imminent danger to the appellant’s life.

The panel notes that the appellant made written statements about a number of medical issues not represented in the MNS applications. These included medical issues which could be severe and are apparently painful and life altering. These were not considered by the ministry in the Reconsideration Decision. While the panel sympathizes with the appellant’s expressed health

conditions, and the apparent reliance on walk-in care where records are lacking, the legislation does not allow MNS based upon self-reporting.

The panel finds that the ministry reasonably applied the legislation to its determination that it must be “satisfied ... based on the information contained [in the MNS] form” and that the information in that form must be provided by a medical practitioner, nurse practitioner or dietitian. The appellant’s written statements do not meet that standard and the panel finds that it was not unreasonable for the ministry to not consider or address them.

Looking at the MNS applications the panel finds that the ministry reasonably applied the legislation and made a determination that is reasonably supported by the evidence. It was reasonable for the ministry to not be satisfied with the information provided in the MNS applications which lacked detail and certainty to satisfy any of the criteria, each of which is fatal to the appellant’s application for MNS.

### **Conclusion**

The panel’s authority is to determine whether the decision being appealed is reasonably supported by the evidence and a reasonable application of the applicable enactments in the circumstances. The panel finds the Reconsideration Decision was reasonable on both accounts. The decision of the Ministry is confirmed.

The Appellant is unsuccessful on appeal.

### **Additional Comment**

The panel notes that the appellant's application for MNS may have been impacted by reliance on walk-in clinics and lack of continuity of care. The panel empathizes with those difficulties especially as it relates to the need to have detailed medical forms submitted for matters such as the issue on appeal.

## Schedule of Legislation

### Division 4 — Health Supplements

#### Definitions

**61.01** In this Division:

...

**"nutrition-related supplement"** means any of the following supplements:

...;

(b) a supplement under section 67 [*nutritional supplement — monthly*], other than a supplement for vitamins and minerals;

...

#### 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).

...

## **Schedule C Health Supplements**

### **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.

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**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)

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

**Part H – Signatures**

Print Name

Kent Ashby

Signature of Chair

Date (Year/Month/Day)

2022/06/23

Print Name

Kenneth Smith

Signature of Member

Date (Year/Month/Day)

2022/06/23

Print Name

Effie Simpson

Signature of Member

Date (Year/Month/Day)

2022/06/23