

Part C – Decision Under Appeal

In its reconsideration decision dated July 12, 2022, 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 that are part of a caloric supplementation to a regular diet. The ministry was not satisfied that

- (a) the appellant’s medical practitioner (MP) has confirmed that the appellant is being treated for a chronic progressive deterioration of health due a severe medical condition;
- (b) as a direct result of the chronic progressive deterioration of health, the appellant displays at least 2 of the listed symptoms;
- (c) the appellant requires caloric supplementation to a regular diet to address a symptom of a chronic progressive deterioration of health; 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 (EAPWDR) sections 66 and 67 and Schedule C sections 6 and 7

The text of the relevant sections of the legislation is set out at the end of this decision.

Part E – Summary of Facts

From the ministry file:

- The appellant is a Person with Disabilities in receipt of disability assistance.
- The appellant continues to be eligible for a gluten free diet supplement (\$40) and the MNS of vitamins and minerals (approved in 2016, \$40).

In an Application for Monthly Nutritional Supplement dated April 22, 2022 the appellant's medical practitioner (MP) indicates the following:

- The MP diagnosed "Gastrointestinal (GI) Malabsorption" due to "prior colitis with colon resection" as a severe medical condition.
- Section 2 of the form is titled: "As a direct result of the severe medical condition(s) noted above, is the applicant being treated for a chronic, progressive deterioration of health?"
 - The MP writes "chronic inability to absorb adequate protein / insulin resistance".
- Section 3 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.
 - 1. Malnutrition: The MP writes "Inadequate protein / Micronutrient absorption"
 - 2. Underweight status: "No"
 - 3. Significant weight loss: "No"
 - 4. Significant muscle mass loss: "Yes"
 - 5. Significant neurological degeneration: "Yes"
 - Moderate to severe immune suppression "Yes"
 - Significant deterioration of a vital organ (please specify): "Insulin resistance - fatty liver"
- Vitamin or Mineral Supplementation
 - Specify the vitamin or mineral supplement(s) required and expected duration of need: The MP writes
 - "Selenium 2, Vit D / Calcium / Mg [Magnesium]
 - CoEnzyme 2
 - NAC expected to be needed permanently"
 - Describe how this item will alleviate the specific symptoms identified: The MP writes
 - "Prevent hepatic / Neurologic deterioration"
 - Describe how this item or items will prevent imminent danger to the applicant's life.
 - "Prevent falls and risk for severe injury / hospitalization."
- Nutritional Items
 - Specify the additional nutritional item(s) required and expected duration of need:
 - "High protein diet
 - Micronutrients B12 CoEnzyme 2"
 - Does the applicant have a condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake?
 - "Yes - impact of colon resection".
 - 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:
 - "Adequate protein and micronutrient ... [1 word illegible]"
 - Describe how the nutritional items requested will prevent imminent danger to the applicant's life:
 - "Ensure no progressive liver and neurological deterioration".
 - Additional Comments:
 - [The MP provides no additional comments.]

In a letter provided at reconsideration the appellant writes:

- “Seniors above 40 years old start to lose their muscles and I am 57 years old so I have muscle atrophy and deterioration of muscle mass”.
- “My kidneys are not working properly. I was admitted to the hospital in 2019 and I have to drink Ural to clean them”.
- “I suffer from maldigestion and malabsorption. I go to the bathroom every 3 days and I lose all my nutrients in diarrhoea because I don’t have normal stool ... So I have to get more proteins, more vitamins and more minerals.”

In her Notice of Appeal dated July 16, 2022 the appellant writes she has more medical conditions than the ones mentioned by the MP.

In a letter dated September 12, 2022 the appellant’s MP writes:

- “[The appellant] urgently needs increased funding for protein and micronutrient replacement.
- Due to a deterioration in her health, becoming more progressive, [the appellant] urgently requires this support.
- She has malabsorption syndrome and fatty liver disease from prior gastric bypass surgery, micronutrient and protein deficiency and urgently required additional funding for adequate nutrition.”

At the hearing, the appellant’s witness stated that the appellant has been a good friend of 8 years. They go for walks together and eat healthy meals together. The witness testified that the appellant’s health is declining. She suffers from muscle atrophy and muscle pain, depression, sleeping problems, stress, and has been hospitalized due to kidney problems. The witness stated further that the appellant does not eat properly, her energy level is low, she can hardly walk and needs Ensure which, in the witness’s words, is a liquid supplement.

The appellant repeated information she had previously given and added that she needs vitamins, minerals and protein to live like a normal person and recover from her illnesses. The only protein she eats are eggs because she cannot afford to buy meat or fish. She catches colds 2-3 times a year, her wounds don’t heal properly, she suffers from stress and depression - all these are signs of her low immunity. She buys the required Vitamins and Omega 3 from her MNS supplement for vitamins/minerals and with additional financial help from her relatives, but she no longer wants to depend on the help from her family. The MP has given her medication for her stomach disturbances but this medication does not help her. She needs protein to help her with her malabsorption symptoms (her muscle and organ deterioration and her immune system deficiency).

The appellant’s advocate read out the MP’s letter and stated that once the ministry receives additional information the ministry can change its decision. The advocate argued that the ministry could have asked the MP for lab results if they wanted more detailed information.

In response to the advocate’s statement that the ministry could have contacted the MP for lab results, the ministry representative stated that sometimes the ministry contacts a client’s MP for clarification but in this case there was too little information from the MP to begin with to make a call for clarification meaningful.

Admissibility of New Evidence:

Neither party objected to any new evidence submitted at the hearing. The panel finds that the information provided by the appellant and the ministry at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances surrounding the appellant's request for a Monthly Nutritional Supplement. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that denied the appellant's request for a Monthly Nutritional Supplement (MNS) of nutritional items was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. That is, did the ministry reasonably determine that the following criteria were not met:

- (a) the appellant's medical practitioner (MP) has confirmed that the appellant is being treated for a chronic progressive deterioration of health due a severe medical condition;
- (b) as a direct result of the chronic progressive deterioration of health, the appellant displays at least 2 of the listed symptoms;
- (c) the appellant requires caloric supplementation to a regular diet to address a symptom of a chronic progressive deterioration of health; and
- (d) failure to obtain the items will result in imminent danger to the appellant's life?

Position of the Parties

The appellant argued that the evidence provided shows that all of the necessary criteria have been met. In particular, the appellant's advocate stated that the additional letter from the MP should clear up any uncertainty with respect to what the ministry stated was insufficient evidence to grant the MNS.

The ministry summarized the reconsideration decision and explained that the MP's letter provides more medical information but does not include which treatments the appellant receives. The ministry stated that it was unclear that the appellant was being treated for a severe medical condition and that while the ministry has accepted the symptom of malnutrition there is still not enough information to satisfy the ministry to accept a second symptom as insufficient details were provided by the MP. The ministry also stated that the evidence did not support a finding that failure to obtain the MNS would result in imminent danger to the appellant's life.

Panel Decision

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 dietician 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.

As the appellant has already been approved for the MNS for "vitamins and minerals" for the maximum of \$40 per month, the panel will only consider the MNS for "additional nutritional items" as set out in Schedule C section 7(a).

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

The majority of the panel (2 of 3) find that the ministry was unreasonable in determining that the information provided does not establish that the appellant is being treated for a chronic, progressive deterioration of health due to a severe medical condition while 1 panel member finds that there is sufficient evidence to support the ministry's determination. The majority of the panel bases their finding on the following evidence:

- The MP diagnoses the appellant with "Gastrointestinal (GI) Malabsorption" or "malabsorption syndrome" as a severe medical condition with "prior colitis with colon resection".
- The MP writes that the appellant experiences a "chronic inability to absorb adequate protein / insulin resistance"; "inadequate protein/micronutrient absorption"; and "fatty liver disease from prior gastric bypass surgery".
- In the September 12 letter the MP writes that "the deterioration in her health is becoming more progressive."
- The MP requests several items to alleviate the appellant's symptoms of the malabsorption syndrome.

The majority of the panel finds that the evidence, taken as a whole, is indicative of a progressive deterioration of health due to a severe medical condition. While the ministry stated that it was unclear that the appellant was being treated for a severe condition, the majority of the panel finds that the MP diagnosed the appellant with a severe medical condition and is attempting to treat the same with the improved diet sought by the MNS.

(b) 2 or more symptoms

The majority of the panel (2 of 3) find that the ministry unreasonably determined that as a direct result of the chronic progressive deterioration of health, the appellant did not display at least 2 of the listed symptoms. 1 panel member finds that there is sufficient evidence to support the ministry's determination. The panel bases their finding on the following evidence:

The MP indicates the appellant displays the following symptoms as "a direct result of the chronic, progressive deterioration of health noted above".

- Malnutrition: "Inadequate protein / Micronutrient absorption"
- Significant muscle mass loss "Yes"
- Significant neurological degeneration "Yes"
- Moderate to severe immune suppression "Yes"
- Significant deterioration of a vital organ: "Insulin resistance - fatty liver".

The ministry states that there is insufficient evidence to determine that at least 2 of the listed symptoms are displayed by the appellant. However, the majority of the panel finds this decision unreasonable given the MP has indicated that at least 5 of the 7 listed symptoms are present. While only the word "yes" has been listed for 3 of the symptoms, further detail has been provided for both the malnutrition and organ deterioration items. Further, the panel finds that elsewhere in the application form the MP notes that the appellant is at risk for further deterioration of the liver without the supplement sought.

(c) Nutritional Items as part of caloric supplementation to a regular diet

The panel finds the ministry reasonably determined that the appellant does not require caloric supplementation to a regular diet. While the MP indicates the appellant suffers chronic inability to absorb adequate protein, micronutrients, and sufficient calories to satisfy daily requirements through a regular dietary intake due to the impact of colon resection, the panel finds that it is not clear from the evidence how the recommended "high protein diet", "Micronutrient B12" and "Coenzyme 2" falls within "a caloric supplement to a regular dietary intake" as set out in Schedule C section 7(a). The panel also notes that the Micronutrient B12 and Coenzyme 2 would typically fall under the vitamin and mineral MNS, which the appellant already receives the maximum allowable amount for.

(d) Imminent danger to life

While the MP writes that the requested items will "prevent falls and risk of severe injury/hospitalization" and "progressive liver and neurological deterioration", the panel finds that the ministry reasonably determined that there is insufficient evidence that the appellant's life is in imminent danger. While the panel does not doubt that the requested items would benefit the appellant, there is a difference between "deterioration" or "preventing injury" and imminent danger to life. The panel finds that based on the available evidence, the ministry reasonably concluded that this criterion was not met.

Conclusion

The panel notes that to be eligible for the requested MNS the appellant needs to meet all of the eligibility criteria at issue. While the ministry was not reasonable in its determination regarding the eligibility criteria of section 67(1.1)(a) and (b), the panel finds the ministry was reasonable when it denied funding for a MNS because the appellant did not meet the eligibility criteria of section 67(1.1)(c) and (d). Accordingly, on the basis of the evidence, the reconsideration decision is confirmed and the appellant is not successful on appeal.

Employment and Assistance for Persons with Disabilities Regulation**Diet supplement**

66

- (2) A person is not eligible to receive a **supplement** under subsection (1) unless
- (a) the person is not receiving another nutrition-related **supplement**, and
 - (b) a medical practitioner, nurse practitioner or dietitian confirms in writing the need for the special **diet**.

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 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

Diet supplements

6 (1) The amount of a **diet supplement** that may be provided under section 66 [*diet supplements*] of this regulation is as follows:

...

(d) \$40 for each calendar month for a person who requires a high protein **diet**;

(e) \$40 for each calendar month for a person who requires a gluten-free **diet**;

...

(4) If a person has more than one of the medical conditions set out in subsection (1), the person may receive only the amount of the highest **diet supplement** for which the person is eligible.

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

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2022/10/12

Print Name

Emily Drown

Signature of Member

Date (Year/Month/Day)

2022/10/12

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

2022/10/12