

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

In its reconsideration decision dated December 7, 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 because the appellant had not met all required eligibility criteria. The ministry was 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; and
- (b) as a direct result of the chronic progressive deterioration of health, the appellant displays at least 2 of the listed symptoms.

However, the ministry determined that the MP had not confirmed that

- (c) the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating a symptom referred to in paragraph (b); and that
- (d) failure to obtain the items requested would result in imminent danger to the appellant's life.

### **Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 61.01, 67 and Schedule C section 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.

In an Application for Monthly Nutritional Supplement dated October 5, 2022 the appellant's MP responded as follows:

- Nutritional Items
  - Specify the additional nutritional item(s) required and expected duration of need:
    - "Probiotic daily - indefinitely
    - Protein meal supplement - indefinitely, episodically"
  - Does the applicant have a condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake? If yes, please describe:
    - "When in the throes of addiction, he rarely eats well. Would benefit from regular protein dietary supplement."
  - 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:
    - "Will prevent malnutrition + severe muscle loss when unable to provide himself with good healthy meals."
  - Describe how the nutritional items requested will prevent imminent danger to the applicant's life:
    - "Will be important in maintaining healthy tissues so they are capable of fighting of regular infections that he is prone to."
  - Additional Comments:
    - "Probiotic helpful to reduce risk of fungal infections with increased use of antibiotics."

A Request for a Diet Supplement is dated October 5, 2022 and filled out by the appellant's MP who requests a High Protein Diet and a gluten free diet. At the hearing the appellant stated that he has been approved for this Diet supplement. The panel notes that the appellant has also already been approved for a MNS of Vitamins and Minerals.

In a letter provided at reconsideration the appellant writes:

"I have severe immune suppression with my disorder called Hyper IGE Syndrome. I am extreme (sic) prone to infection and my immunity becomes extremely low without proper

nutrition. I absolutely need probiotics because of antibiotics I take often to cure recurrent infections to maintain healthy gut bacteria. ... Due to a significant loss of muscle in my triceps during a surgery due to infection and slower healing I need glutamine to repair my muscles. So I have significant muscle mass loss. With my Hyper IGE syndrome, I also have severe scoliosis, regular staphylococcus infection, prone to MRSA and recurring eczema."

In his Notice of Appeal dated December 9, 2022, the appellant writes: "I more than deserve the Monthly Supplement Benefit."

In a letter dated January 12, 2023, the appellant writes that he needs "a high protein, high caloric diet" because without these "[his] health can deteriorate much faster than the average person", and appropriate nutrition is hard to afford. He writes that muscle mass loss takes much longer to heal or rebuild as a result of his condition. His left arm and right biceps have still not fully recovered after an injury in 2020. "Regular glutamine, high protein intake and a high caloric diet are essential for healing my muscles." The appellant also discusses the symptom of osteoporosis - that it is part of his medical condition, and that "enough protein" and certain minerals and vitamins are required. He adds 2 web addresses related to his medical condition.

In a letter dated January 15, 2023, the appellant's doctor includes the following information:

"Due to his [medical condition], he frequently requires antibiotics and hospitalization for current infections. On many occasions in the past, he has had quite severe infections requiring IV antibiotic treatment in an inpatient setting. Due to his condition, his immune system is chronically unbalanced which is worsened by poor diet. Infections and injuries take longer to heal for [the appellant] due to his condition - and regular multivitamins, probiotics and protein supplementation are especially important for him given his known food sensitivities including allergies to peanuts, beans and eggs. These supplements will prevent malnutrition and severe muscle loss and will help [the appellant] to maintain nutritional status and increase ability to fight off infections and prevent long term use of antibiotics. Protein supplementation is critically important for [the appellant's] ongoing health and wellbeing."

At the hearing, the appellant repeated information he had previously given and added that his medical condition is a rare one - he can get sick fast and often, has been hospitalized frequently, suffers from allergies and needs a diet that is high in calories and additional proteins. This condition is always present and will remain with him. He was last hospitalized in June 2022 with covid-related pneumonia. Since then, he had pneumonia, cellulitis and other less serious infections for which he had to take antibiotics.

He can eat meat and vegetable protein but is allergic to nuts and has difficulty digesting beans. He can drink protein drinks, but they are expensive. He has shooting pains in his legs but is exercising regularly on an exercise bike and with weights. He has had no alcohol in the past 7 months, has lost 55 lbs as a result and has now a healthy weight. He feels very good and is trying to live a good life.

Without a proper diet his life is in imminent danger because of the severe damage to his immune system.

In response to a question from the panel the appellant replied that he has been approved for the diet supplement he has applied for on October 5, 2022 - the same day he applied for the MNS.

The appellant added that the ministry was not clear what information was needed, and there was too little time to gather enough evidence.

The appellant's advocate emphasized the last line of the MP's letter: "Protein supplementation is critically important for [the appellant's] ongoing health and wellbeing." The advocate stated that this demonstrates the appellant's need for ongoing caloric supplementation.

The ministry explained their reconsideration decision and, in response to a question from the panel, added that their adjudicators are not medical professionals; however, when the ministry needs clarification, they will contact the appellant's medical professional.

#### Admissibility of New Evidence:

Neither party objected to any new evidence submitted on appeal and 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:

- (c) the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating a symptom referred to in paragraph (b); and that
- (d) failure to obtain the items requested would result in imminent danger to the appellant's life.

**Position of the Parties**

The appellant argues that he deserves funding for a MNS because he has many severe ongoing and permanent medical conditions. He suffers from severe immune suppression and is extremely prone to infections without proper nutrition. Therefore he needs a diet that is high in calories and additional proteins. He needs meat and protein drinks because he is allergic to most other proteins. Without a proper diet his life is in imminent danger due to the severe damage to his immune system.

The ministry was not clear what information was needed, and there was too little time to gather enough evidence. The appellant's advocate argues that the MP's evidence, especially the last sentence of their letter, is ample evidence to demonstrate the appellant's need for ongoing caloric supplementation. This sentence reads: "Protein supplementation is critically important for [the appellant's] ongoing health and wellbeing."

The ministry determined that the information provided does not confirm that the appellant requires additional nutritional items as part of caloric supplementation to a regular dietary intake and to prevent imminent danger to life because

- 1) It has not been established that the items indicated are required for caloric supplementation over and above a regular dietary intake; and
- 2) The ministry is not satisfied the information provided constitutes confirmation that failure to provide additional nutritional items will result in an imminent danger to the appellant's life. As it has not been established that he requires the items for caloric supplementation, it cannot be established the nutritional items are required to prevent imminent danger to life.

**Panel Decision**

Section 67(1.1) allows for the provision of additional nutritional items set out in section 7 of Schedule C if a medical practitioner 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.

The ministry determined that the appellant had met criteria (a) and (b) but not criteria (c) and (d).

Section 7 of Schedule C provides that a monthly nutritional supplement can be provided for additional nutritional items that are part of a caloric supplementation to a regular dietary intake.

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

While the doctor's new evidence confirms that protein supplementation is critically important for the appellant's ongoing health and wellbeing the panel finds that, based on the evidence, the ministry reasonably determined that the appellant does not require caloric supplementation to a regular diet as set out in section 67(1.1)(c).

The MP does not speak to a need for "caloric supplementation" but instead recommends a "regular protein diet supplement" or "protein supplementation" and probiotics. The panel finds that it is not clear how the recommended items fall into the category of "caloric supplement to a regular dietary intake" as set out in Schedule C section 7(a). The panel also finds that the term "caloric supplement" is not interchangeable with the term "protein supplement" or "diet supplement". These terms are separately defined under "nutrition-related supplements" in section 61.01 and separately set out in the Employment and Assistance for Persons with Disabilities Regulation. The panel finds there is insufficient evidence that the appellant needs caloric supplementation to a regular diet. Based on this analysis the panel finds the ministry reasonably concluded that criterion (c) was not met. The panel notes that the appellant had simultaneously provided the ministry with 2

separate applications - one application for a MNS for nutritional items as part of a caloric supplement to a regular diet, and another one for a diet supplement [high protein and/or gluten-free]; the application for a diet supplement as well as the application for a MNS for Vitamins and Minerals have been approved.

**(d) Imminent danger to life**

The panel finds that the ministry reasonably determined that the appellant does not meet section 67(1.1)(d) as there is insufficient evidence that failure to obtain the requested items will result in imminent danger to his life.

As there is insufficient evidence that the appellant requires the items for caloric supplementation to a regular diet the panel finds the ministry was reasonable when it could not establish that the nutritional items are required to prevent imminent danger to life as set out in section 76(1.1)(d). While the panel does not doubt that the requested items would benefit the appellant, there is a difference between critical importance for ongoing health and wellbeing, and imminent danger to life. The panel finds that based on the available evidence, the ministry reasonably concluded that criterion (d) was not met.

While the appellant argues that there was too little time to gather enough evidence the panel notes that an adjournment was granted to allow the appellant the required time to provide a doctor's letter which he had wished to include as evidence but was not able to procure any earlier.

**Conclusion**

The panel finds the ministry was reasonable when it denied funding for a MNS because the appellant does not meet the eligibility criteria for a MNS set out in section 67(1.1)(c) and (d). Accordingly, based on the evidence, the reconsideration decision is confirmed, and the appellant is not successful on appeal.

## Employment and Assistance for Persons with Disabilities Regulation

**61.01** In this Division:

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

- (a) a supplement under section 66 [*diet supplement*];
- (b) a supplement under section 67 [*nutritional supplement — monthly*], other than a supplement for vitamins and minerals;
- (c) a supplement under section 67.001 [*nutritional supplement — short-term*];
- (d) a supplement under section 67.01 [*tube feed nutritional supplement*];
- (e) a supplement under section 2 (3) of Schedule C that is related to nutrition;

### [Diet supplement

**66** (1) Subject to subsection (2), the minister may pay for a diet supplement in accordance with section 6 [*diet supplements*] of Schedule C that is provided to or for a family unit in receipt of disability assistance or hardship assistance, if the supplement is provided to or for a person in the family unit who

- (a) is described in section 6 (1) of Schedule C, and
- (b) is not described in section 8 (1) [*people receiving special care*] of Schedule A.

(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:

- (a)\$10 for each calendar month for a person who requires a restricted sodium diet;
- (b)\$35 for each calendar month for a person who has diabetes;
- (c)\$30 for each calendar month for a person who requires kidney dialysis if the person is not eligible under the kidney dialysis service provided by the Ministry of Health Services;
- (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;

(f)\$40 for each calendar month for a person who has dysphagia;

(g)\$50 for each calendar month for a person who has cystic fibrosis;

(h)\$40 for each calendar month for which a person requires a ketogenic diet;

(i)\$40 for each calendar month for which a person requires a low phenylalanine diet.

...

(3)A person who is eligible for a supplement under subsection (1) (d) or (f) is also eligible for a \$30 payment towards the purchase of a blender.

(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)     and 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)

2023/01/17

Print Name

Wes Nelson

Signature of Member

Date (Year/Month/Day)

2023/01/22

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

2023/01/21