

Part C – Decision Under Appeal

The Appellant is appealing a decision of the Ministry of Social Development and Poverty Reduction (the “Ministry”) dated July 26, 2023 (the “Reconsideration Decision”) on a reassessment requested by the Appellant.

The Reconsideration Decision denied the Appellant’s application for a Monthly Nutritional Supplement (“MNS”) of nutritional items and vitamin/mineral supplements. The denial was based upon the application form failing to provide the information needed to satisfy all the eligibility criteria.

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (the "Regulation"):

Section 66 [Diet Supplement]

Section 67 [Nutritional Supplement]

Schedule C

Section 6 [Diet Supplements]

Section 7 [Monthly Nutritional Supplement]

Employment and Assistance Act

Section 22 subsection (4)

Section 24

(See attached Appendix for text of the above)

Part E – Summary of Facts

The following is a summary of the facts, as found by the panel, from the evidence presented.

On April 12, 2023, the Appellant submitted an MNS application for nutritional items (the “*Application*”). The *Application* was completed by the Appellant’s medical practitioner (the “*Doctor*”) on the required form. The table below is a synopsis of the *Application* questions and responses – if any:

Q#	Description	Response
1	[Asking for a diagnosis <u>and</u> description of the applicant’s] ... SEVERE medical conditions(s)	HIV, Dyslipidemia, Non-Hodgkin’s Lymphoma
2	As a direct result of [the conditions above] is the applicant being treated for a chronic, progressive deterioration of health? If so, please provide details and any information on treatment including any relevant clinical or diagnostic reports.	Yes
3	<p>As a direct result of the chronic, progressive deterioration of health noted above, does the [Appellant] display two or more of the following symptoms? If so, please describe in detail.</p> <p>Malnutrition</p> <p>Underweight status</p> <p>Significant weight loss</p> <p>Significant muscle mass loss</p> <p>Significant neurological degeneration</p> <p>Moderate to severe immune suppression</p> <p>Significant deterioration of a vital organ (please specify)</p>	<p>Yes</p> <p>[blank]</p> <p>Yes</p> <p>[blank]</p> <p>[blank]</p> <p>[blank]</p> <p>[blank]</p>
4	[Height and weight]	6’2” 85 Kg
5	<p>VITAMIN OR MINERAL SUPPLEMENT: 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. ...</p>	

	<ul style="list-style-type: none"> • Specify the vitamin or mineral supplement(s) required and expected duration of need: • Describe how this item will alleviate the specific symptoms identified: • Describe how this item or items will prevent imminent danger to the applicant's life. 	<p>Multivitamin – Centrum [TM Brand]</p> <p>[blank]</p> <p>[blank]</p>
6	<p>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 diet intake and are required to prevent imminent danger to the applicant's life.</p> <ul style="list-style-type: none"> • Specify the additional nutritional items required and expected duration of need: • 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? If yes, please describe. • Describe how the nutritional item required will alleviate one or more of these symptoms specified in Question 3 and provide caloric supplementation to the regular diet: • Describe how the nutritional item requested will prevent imminent danger to the applicant's life: 	<p>Ensure Max Protein [illegible] 330mg. Permanent [TM Brand]</p> <p>No</p> <p>Prevent further muscle loss</p> <p>[blank]</p>

On May 8, 2023, the Ministry denied the *Application*.

On July 10, 2023, the Appellant requested a reconsideration. He also provided a July 4, 2023 letter from a social worker in support (the "*Social Worker's Letter*").

On July 26, 2023, the Ministry issued the Reconsideration Decision that denied the *Application*.

The Reconsideration Decision explained that an MNS is provided to recipients of disability assistance who have a severe medical condition causing a chronic, progressive deterioration of health with symptoms of wasting that is being treated. MNS may be

provided if it is to be part of that treatment if certain criteria are met. These are set out in the *Regulation* section 67(1.1) and its Schedule C section 7.

The Ministry accepted that the Appellant qualified as a person with disabilities (“PWD”) but stated that the *Application* did not provide the information. The *Application* is a mandated form which specifically requests the information required by the *Regulation*.

The Ministry noted that the Appellant provided the *Social Worker’s Letter* but stated that it did not consider it because it was not provided by a medical practitioner, nurse practitioner, or dietitian, as required by *Regulation* section 67(1.1).

The Ministry stated that the Doctor only responded with “Yes” to indicate that the Appellant suffered from 2 of the listed symptoms, without providing requested details. The Ministry decided that the responses to Questions 1 and 2 were insufficient to establish that the Appellant was being treated for a chronic, progressive deterioration of health due to a severe medical condition, and this did not satisfy the eligibility criteria set out in *Regulation* sections 67(1.1)(a) and (b). The Ministry provided other reasons synopsisized as follows.

Under Question 5 regarding vitamin or mineral supplements, the *Application* requested information to satisfy two criteria in *Regulation* section 67(1.1) and section 7(c) of Schedule C, specifically that they were needed to alleviate symptoms (per 67(1.1)(c)) and to prevent imminent danger to life (per 67(1.)(d)). The Doctor did not provide any detail and only stated the name of a branded vitamin product.

In respect of Question 5 and nutritional items, the same applied with the Doctor listing a branded nutritional drink, although this time specifying a volume, use duration, and symptom to be alleviated: “Prevent further muscle loss”. The *Application* required a description of how the item would alleviate the symptom listed under Question 3, but the Doctor did not identify that the Appellant was suffering from that symptom – under Question 3 or details elsewhere (per 67(1.)(c)). The Ministry noted that the Doctor also said that the Appellant was not suffering from an inability to absorb sufficient calories through regular dietary intake. The responses did not confirm a need for the supplement, nor did the Doctor provide any information to confirm that the named nutritional supplement was needed to prevent imminent danger to life (per 67(1.)(d)).

The Ministry expressed sympathy with the Appellant’s circumstances but based upon the information provided in the *Application* the Ministry was not satisfied that the eligibility criteria were met as set out in *Regulation*, subsections 67(1.1) (a), (b) (c) and (d) and Schedule C, subsection 7(a). Therefore, the Reconsideration Decision was to deny the *Application*.

As described further below, in the course of the hearing the Ministry representative was able to request and obtain a decision that, under a different section of the *Regulation*, a

“diet supplement” had been approved for the Appellant based upon the *Application*. This was conveyed to the Appellant, and he was instructed to engage with the Ministry to follow up. He was informed that the hearing would still continue, and a decision would be issued. He was also informed that under the *Regulation* (subsections 66(2)(a), and 67(1)(d)) he would be able to receive only one or the other, meaning that he would be able to receive either a diet supplement or nutritional supplement but not both. It was also noted for him that the amount paid for each differed. Finally, it was noted for him that should the decision go in his favor that it would affect the decision on the dietary supplement.

Appellant Submissions

The Appellant said that he had provided all the information necessary to receive the MNS and believed that the Ministry’s denial of the *Application* was unreasonable. He described the *Application* as a medical report that indicated he had long term HIV and muscle loss as well as weight loss. He considered that this was sufficiently clear and supportive for the Ministry to have approved the *Application*.

He stated that he had been tested and was in need of the supplements. He believed that the *Application* described this and that his Doctor agreed with that assessment.

The Appellant stated that the HIV made him vulnerable to non Hodgkin’s lymphoma and the supplements were necessary to maintain his health, and “go directly” to his longevity. He also stated that he was purchasing supplements using his disability payments, which he said “doesn't go very far”.

He expressed that he found the *Application* process and appeal process to be distressing, burdensome and over-technical. He said that he would not re-apply if unsuccessful.

Ministry Submissions

The Ministry representative reiterated the Reconsideration Decision reasons.

The representative described the lack of detail in the *Application* and the failure to establish the linkage in the *Application* beginning with the diagnosis through treatment to the alleviation of symptoms by vitamin or nutritional supplements and the risk of imminent danger to the person’s life if not received.

In the course of questions to clarify matters the Ministry representative discussed provision of diet supplements as compared to nutritional supplements, and that a diet supplement may be approved from an application for MNS (if the MNS is denied). The representative noted that the provisions of *Regulation* section 66 regarding diet supplements might be satisfied by the amount of information given in the *Application*. Specifically, these were that the applicant had HIV and that under schedule C-section 6

funding could be provided for a high protein diet, which in this case is criteria that might be satisfied by the prescribing of the branded “Max Protein” drink.

The Ministry representative advised that in the course of the hearing she had asked for a review of the *Application* in light of these observations. She advised that she received a prompt answer, which was approval of the diet supplement.

Admissibility of New Evidence

The parties made statements as part of their submissions. Under section 22(4) of the *Employment and Assistance Act* the panel admits those statements as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The purpose of the panel in appeals, such as this, is not to make a decision as if it was the Ministry, but to decide whether the decision made by the Ministry is a reasonable application of the laws and reasonably supported by the evidence previously available together with any new evidence admitted by the panel.

The panel considers that it is important to highlight that having a severe or life-threatening condition is insufficient, in and of itself, to require the Ministry to approve an application for MNS. The *Regulation* makes clear there must be a linkage of the requested MNS item(s) to the condition through each of the criteria from treatment for a severe condition through symptoms of wasting, life risk and benefits. The *Regulation* requires the Ministry to act in an evidence-based manner on information provided by a medical practitioner - such as the Doctor - nurse practitioner or dietitian. The Minister must be satisfied that each of the criteria are met. Not all the criteria were met here.

There was no dispute that the appellant had a severe medical condition however the *Application* did not state that, because of that condition, the Appellant was being treated for a chronic, progressive deterioration of health. It described the appellant as suffering from malnutrition and significant weight loss, but neither was described as chronic, progressive, or linked to the diagnosed severe medical condition. This is not a mere technicality; it is a linkage in the chain of criteria required by the *Regulation* and practicality. (Also, as a practical matter clarity is needed to authorize the proper amount that may be due under *Regulation* Schedule C section 7 because monthly payments differ between nutritional supplements and those for vitamins or minerals (respectively a maximum of \$165 and \$40 per month).)

As required by *Regulation* section 67(1.1)(c), this supplement must be for the purposes of alleviating any identified symptoms. The *Application* lacks that linkage or any description of how, why, or if a supplement would alleviate the identified symptoms. While it did say, under Question 6, that a protein drink would prevent muscle loss those responses were supposed to address symptoms identified in Question 3. However, "significant muscle mass loss" was not selected by the Doctor in Question 3. We might surmise how the protein drink and prevention of muscle loss would alleviate the symptoms identified in Question 3 (malnutrition and significant weight loss) but that would be speculation. The panel considers that it is reasonable for the Ministry to decline to speculate or enter into a medical assessment.

Even taking that description of prevention of further muscle loss as referring to alleviation of either of the two listed symptoms there was still a missing criterion. There was no description of how the supplement would prevent imminent danger to the appellant's life, as required by *Regulation* 67(1.1)(d).

In short, the Ministry accepted, and the panel recognizes, that the diagnoses listed by the Doctor are severe medical conditions. However, the *Application* form simply did not provide the information required. There was insufficient information to allow the Ministry to be satisfied that all the criteria under the *Regulation* were met and determine what was payable. As such the Ministry was reasonable in its determination that the criteria were not met and that the *Application* be denied.

Conclusion

The panel finds that the Ministry's Reconsideration Decision was:

1. reasonably supported by the evidence, and
2. a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Accordingly, the Panel confirms the Reconsideration Decision.

Appendix – Relevant Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

[Last amended March 8, 2023 by B.C. Reg. 66/2023]

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 (2) (b) [*people in 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) 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 (2) (b) [*people in special care*] of Schedule A, unless the person is in an alcohol or drug treatment centre,
- 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).
- (3) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 8.]

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;
 - (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.
- (2)A diet supplement under subsection (1) (d) may only be provided if the diet is confirmed by a medical practitioner, nurse practitioner or dietitian as being necessary for one of the following medical conditions:
- (a)cancer that requires nutritional support during
 - (i)radiation therapy,
 - (ii)chemotherapy,
 - (iii)surgical therapy, or
 - (iv)ongoing medical treatment;
 - (b)chronic inflammatory bowel disease;
 - (c)Crohn's disease;
 - (d)ulcerative colitis;
 - (e)HIV positive diagnosis;
 - (f)AIDS;
 - (g)chronic bacterial infection;
 - (h)tuberculosis;
 - (i)hyperthyroidism;
 - (j)osteoporosis;
 - (k)hepatitis B;
 - (l)hepatitis C.

(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.

Employment and Assistance Act, SBC 2002, c 40

Panels of the tribunal to conduct appeals

22 ...

(4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Decision of panel

24 (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1) , the panel must

- (a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and

(b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

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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)

2023/08/30

Print Name

Richard Franklin

Signature of Member

Date (Year/Month/Day)

2023/09/01

Print Name

Jan Broocke

Signature of Member

Date (Year

2023/09/01