

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision dated 10 August 2023, in which the ministry denied the appellant's request for a Monthly Nutritional Supplement (MNS). The ministry determined the appellant was not eligible for the Monthly Nutritional Supplement of *vitamin/mineral supplements* as the request did not meet the eligibility criteria set out in the Employment Assistance for Persons with Disabilities Regulation, subsections 67(1.1) (a),(b),(c) and (d).

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (Regulation) section 67, and Schedule C, section 7.

The full text of these sections of legislation is set out in the schedule of legislation after this decision.

Part E – Summary of Facts

A teleconference hearing was held on September 12, 2023.

Evidence before the Ministry at Reconsideration

The appellant is a Person with Disabilities in receipt of disability assistance and has applied for a monthly nutritional supplement (MNS). In support of the MNS the appellant had submitted:

- an MNS application form, completed and signed by the appellant’s doctor, a medical practitioner (MP),
- a three-page typewritten letter providing background information on fibromyalgia and chronic fatigue syndrome, and how herbal medicine and supplements can assist individuals with these debilitating illnesses.

In addition to the application materials, the ministry also received the appellant’s Request for Reconsideration, which included a one-page typewritten self-report with four pages of typewritten background information, which describe fibromyalgia, chronic fatigue syndrome and the benefits on treatment using vitamin and herbal medicines.

New Evidence Provided on Appeal

In the notice of appeal, the appellant provided a two-page type-written self report letter providing further detail on his understanding of the crucial nature of the benefits of these supplements in treating fibromyalgia and chronic fatigue syndrome. The ministry did not object to the submission of this new evidence.

At hearing the appellant recounted his challenges with being on PWD and having both Fibromyalgia and Chronic Fatigue Syndrome, including the cost of supplements he is currently purchasing. The ministry explained the findings of the reconsideration decision and the review process.

The panel finds that much of the oral testimony of the appellant and the ministry summarized evidence already before the ministry at reconsideration and is information in support of the appellant’s appeal.

However, where the testimony provided further detail, the panel finds that the testimony was reasonably required for a full and fair disclosure of all matters related to the decision

under appeal. Accordingly, the panel admits all the new information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

Summary of Relevant Evidence

The MNS application section for vitamin or mineral supplementation was the only part completed by the MP. In section 1, when asked to list and describe the appellant's *severe* medical conditions, the MP states:

- Chronic fatigue syndrome – low energy and sleep disturbance.
- Fibromyalgia – chronic pain and stiffness.

In section 2 of the MNS application, when asked to confirm the appellant is being treated for a chronic progressive deterioration of health, and, if so, to provide details on treatments, the MP only states that the appellant is on medication for management of anxiety and chronic pain.

In section 3 of the medical report in respect to symptoms, the MP reports the appellant is displaying significant muscle mass loss and reports no other symptoms.

In section 4 of the report the MP reports the appellant's height of 1.86 metres and weight to be 83 kilograms.

In section 5 of the MNS application, the MP, in specifying the vitamin or mineral supplements required writes, "vitamin D3, vitamin C, mg++(magnesium ion), multivitamins, and B-complex." In describing how these items will alleviate a specific symptom identified, the MP states that they will improve musculoskeletal pain and the immune system. And when asked how vitamin/mineral supplementation will prevent imminent danger to the appellant's life, the medical practitioner writes, "NA" (not applicable).

The application provides the appellant's perspective on the two illnesses and their effect on those who suffer. The illnesses are complex and, having no cure, how the effects can be managed with supplements. The document provides information on reduced side effects, improvement in sleep, symptom relief and emotional wellbeing. It also addresses the challenges faced by individuals on low incomes.

The appellant's reconsideration letter repeated much of the information contained in the original application, framed as it specifically affects the appellant and advising that his healthcare provider strongly recommends that he take dietary supplements. The letter

references health care studies that purport to show the benefits of using dietary supplements for symptom relief.

The three-page background information document discusses the complexity of both fibromyalgia and chronic fatigue syndrome and the benefits of treatment using vitamin and herbal medicines.

In the notice of appeal, the appellant provided a two-page type-written self report letter providing further detail on his understanding of the crucial nature of the benefits of these supplements in treating fibromyalgia and chronic fatigue syndrome. The letter provides general background statements that medical evidence supports the use of supplements as an integral part of the treatment plan for these conditions, and how supplements can assist in symptom management and nutritional deficiencies. The letter also recommends that expert opinions need to be used to also address individual considerations.

At the hearing, the appellant summarised some of the information previously provided in letter format concerning individual variations, multi-syndromes and that there is no cure for fibromyalgia or chronic fatigue syndrome. The appellant outlined the supplements he is taking, the relative costs per month, and the difficulty he has in purchasing them from his limited funds.

The appellant explained that without the medications he cannot get out of bed and yet must go to work, and then must pay rent and provide for meals. He is left with insufficient funds for the cost of the supplements he needs to take.

In answer to questions, the appellant indicated that his locale exacerbates his symptoms, his MP advising he needs a dryer climate. The appellant does not know why the MP had only indicated the symptoms he had on the application report and had not shown more symptoms.

The appellant confirmed he is currently taking supplements at his own cost and provided an example of one enzyme soft gel that costs \$46 per month plus taxes.

The ministry representative also provided oral testimony at the hearing. The ministry representative reviewed the reconsideration decision in detail and provided information on the review process.

The ministry stated that at reconsideration and at appeal, the appellant included a submission that are each general in nature and do not include any new information from

a medical practitioner, nurse practitioner or dietitian. The ministry must place significantly more weight on the information provided by the medical practitioner.

The ministry also stated that while it may also request a second opinion to determine eligibility it is not required to seek further information or evidence in support of an application.

With regards to the enzyme gel the appellant reported to be purchasing the ministry responded that this product is not a vitamin/mineral supplement that would be covered by the ministry.

The ministry, in response to questions, explained that they look at the whole medical report in order to consider the eligibility and not just one question. For example, they would not necessarily accept a diagnosis of cancer as a severe medical condition as they would consider ongoing treatments. They also do not consider any specific reasons why an appellant was accepted for the PWD designation alone.

The ministry confirmed that if the appellant was able to obtain more information from a medical practitioner, nurse practitioner or dietitian, then he may reapply for consideration for a MNS.

As stated above, the panel admits this new 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 the reasonableness of the ministry's decision that denied the appellant's request for the MNS. In particular, was the ministry's decision that the appellant was ineligible for a MNS for vitamin/mineral supplements, as he does not meet the eligibility criteria set out in the Regulation, supported by the evidence or a reasonable interpretation of the legislation in the circumstances of the appellant?

The relevant legislation is provided in Appendix A.

Appellant Position

The appellant argues that he suffers from complex illnesses, and, having no cure, how the effects can be managed with supplements. He argues that vitamin and mineral supplements provide improvement in sleep, symptom relief and enhance emotional wellbeing.

The appellant argues that medical evidence supports the use of supplements as an integral part of the treatment plan for his conditions and that expert opinions need to be used to also address individual considerations.

At the hearing, the appellant discussed the relative costs per month and the difficulty he has in purchasing the supplements he is currently taking from his limited funds.

The appellant explained that without the medications he cannot get out of bed and yet must go to work, and then must pay rent and provide for meals, leaving insufficient funds for the cost of the supplements he needs to take.

Ministry Position

The ministry argues that MNS are intended to prevent imminent danger to a person's life, who has a severe medical condition causing a chronic, progressive deterioration of health with symptoms of wasting, by providing essential, specified items to supplement regular nutritional needs.

The ministry argues that the report of low energy, sleep disturbance, chronic pain and stiffness, and some muscle wasting is not indicative of a severe medical condition or severe impairment. Nor does it describe chronic progressive deterioration of health. And some symptoms are being managed with medications.

The ministry found that as a chronic progressive deterioration of health was not established it cannot be established that the appellant is displaying a symptom as a direct result of a chronic deterioration of health.

Further that only one symptom had been reported, and in respect to this muscle mass loss, the MP reports muscle wasting with no further details provided. This is not enough information or detail to establish the appellant is displaying *significant* muscle mass loss.

The ministry also argues that the medical practitioner does not confirm or establish that failure to obtain the items requested will result in imminent danger to the appellant's life.

Panel Decision

The legislation for nutritional supplements is contained in section 67 of the Employment and Assistance for Persons with Disabilities Regulation (the Regulation). This states that the minister may provide a nutritional supplement in accordance with section 7 of Schedule C to a person with disabilities, if the minister is satisfied that based on the information contained in the form required, the requirements set out in subsection (1.1) are met.

The subsection states that the minister must receive a request completed by a medical practitioner, nurse practitioner or dietician that has confirmed all of the following:

- (a) the person is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition; and that
- (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; and that
- (c) for the purpose of alleviating a symptom the person requires one or more of the items set out in section 7 of Schedule C; and lastly that;
- (d) failure to obtain those items referred to will result in imminent danger to the person's life.

Severe Medical Condition and Chronic, Progressive Deterioration of Health

The panel notes the ministry acknowledges that a medical practitioner completed Part C of the MNS application, which states that the appellant is being treated for conditions. But the ministry was not satisfied the medical practitioner had reported or demonstrated in the application that the appellant had a severe medical condition with chronic, progressive deterioration of health.

The panel accepts that the ministry has authority and discretion to review eligibility for MNS.

The panel notes the conditions of Fibromyalgia and Chronic Fatigue Syndrome and the instructions on the ministry form to the individual completing the application. The panel further notes the completion of section 1, listing two severe medical conditions, a description of treatments and the prescription for vitamin and minerals supplements in the completed medical report. This information has been provided by a medical practitioner and describes the associated sleep disruption, low energy, chronic pain, and stiffness encountered by the appellant. The appellant's background information indicates the illnesses are complex and a range of severity may exist. The appellant has testified to his own symptoms, including the inability to get out of bed at times and the pain he endures.

The ministry argued that a severe medical condition has not been reported or demonstrated and the report of low energy, sleep disturbance, chronic pain and stiffness, with some muscle wasting is not indicative of a severe medical condition or severe impairment. But it also states it relies upon the opinion of the medical practitioner.

The panel must weigh the opinion of the ministry against the clear reporting by the medical practitioner in section 1 of the application. Based on the evidence, the panel finds the appellant suffers from a severe medical condition, and the ministry was not reasonable in determining the appellant does not suffer from a severe medical condition.

The panel notes that when asked to confirm the appellant is being treated for a chronic progressive deterioration of health and if so; to provide details on treatments, the MP is silent on any confirmation of progressive deterioration and only states that the appellant is currently on treatment for management of anxiety and chronic pain. The MP provides no clinical or diagnostic reports. The panel finds the ministry reasonable in determining that this is insufficient evidence to determine that the medical practitioner confirmed a

chronic, progressive deterioration of health, whether the condition was severe or not. The requirement of section 67(1.1) (a) has not been met.

Symptoms

The panel also notes that the MP has identified only one symptom currently displayed by the appellant because of chronic progressive deterioration of health, that of muscle wasting. No further details are provided. The ministry has argued that without more detail it is unable to substantiate this muscle wasting to be significant. At hearing the appellant did not provide further details on either the muscle wasting or any other weight loss or underweight concerns.

The panel accepts the ministry determination that without further explanation the personal measurements provided by the MP indicate a normal Body Mass Index (BMI).

In the circumstances of the appellant the panel therefore finds that the MP has confirmed the appellant to be displaying unquantified levels of only one of the legislated symptoms, and that the information is not sufficient to show this symptom to be significant as required by the legislation. The panel therefore finds the legislated requirements in section 67 (1.1) (b) have not been met.

The ministry was reasonable in its determination that there was not enough information or detail to establish the appellant was displaying *significant* muscle mass loss as a result of a chronic progressive deterioration of health and that a Medical Practitioner, Nurse Practitioner, or Dietitian has *not* confirmed the appellant is displaying at least *two* of the symptoms set out in the legislation.

Vitamin or Mineral supplementation

With regards to the need for vitamin or mineral supplementation the panel notes the MP's responses in the original MNS application:

- In specifying the vitamin or mineral supplements required: "*vitamin D3, vitamin C, mg++(magnesium ion), multivitamins, and B-complex.*"
- In describing how these items will alleviate a specific symptom: "*improve musculoskeletal pain and the immune system.*"
- In describing how vitamin/mineral supplementation will prevent imminent danger to the appellant's life: "NA",

The panel notes the testimony and amount of background and personal information on the illnesses provided by the appellant and accepts that it demonstrates several actual and

potential benefits for using vitamins and mineral supplements to treat and manage both fibromyalgia and chronic fatigue syndrome.

However, the panel notes that under the legislation, the MP must confirm the need for vitamins and mineral supplements to alleviate one of the symptoms described above, and that failure to obtain these items will result in imminent danger to the appellant's life.

In this case the MP has only identified an unquantified level of muscle wasting as a symptom and has clearly indicated that the threat of imminent danger is not applicable. The panel finds that although the appellant may benefit from vitamins and mineral supplements there is insufficient evidence to show that the items specified are required to alleviate any legislated symptom of chronic progressive deterioration of health, as described in subsection 67(1.1) (c).

The panel further finds that a medical practitioner has not confirmed that a failure to provide these items would result in imminent danger to the appellant's life, as required under section 67(1.1) (d).

The ministry was therefore reasonable in determining that the information provided does not establish that the appellant requires vitamin/mineral supplementation for the purpose of alleviating a legislated symptom; and that failure to obtain vitamin/mineral supplementation will result in *imminent danger to his life*.

Based on the total evidence the panel finds the appellant is not eligible for the vitamin/mineral supplements MNS.

Summary

The panel found the appellant has not established that a medical practitioner confirmed:

- he suffers from a chronic, progressive deterioration of health,
- he displays two or more of the legislated symptoms, or that
- his life would be in imminent danger if he did not obtain the specified items.

The appellant is therefore ineligible for a monthly nutritional supplement under section 67 of the legislation.

Conclusion

Based on all available evidence the panel finds that the ministry's reconsideration decision to be supported by the evidence and was a reasonable interpretation of the legislation in the circumstances of the appellant.

The ministry's reconsideration decision is confirmed. The appellant is not successful on appeal.

Appendix A

Employment and Assistance for Persons with Disabilities Act

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

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).

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

Don Stedeford

Signature of Chair

Date (Year/Month/Day)

2023/09/15

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2023/09/18

Print Name

Bob Fenske

Signature of Member

Date (Year/Month/Day)

2023/09/18