

**Part C - Decision Under Appeal**

In its reconsideration decision dated June 27, 2023, 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.

**Part D - Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation sections 67(1)

Employment and Assistance for Persons with Disabilities Regulation Schedule C section 7

Please see the attached copy of the legislation in Appendix A.

**Part E – Summary of Facts**

From the ministry file:

The appellant is a Person with Disabilities in receipt of disability assistance.

The appellant applied for Monthly Nutritional Supplements (MNS) of nutritional items and vitamin/mineral supplements on April 25, 2023. On June 6, 2023, the ministry approved MNS of vitamin/mineral supplements. The application for MNS of nutritional items was denied.

In its reconsideration decision of June 27, 2023, the ministry stated that a MNS is provided to recipients eligible for the Persons with Disabilities (PWD) designation who are in receipt of disability assistance and who have a severe medical condition causing a chronic, progressive deterioration of health with symptoms of wasting. This supplement is intended to prevent imminent danger to the person's life by providing essential, specified items to supplement regular nutritional needs.

In its reconsideration decision, the ministry noted that the EAPWD Regulation, section 67(1) sets out that the minister may provide a nutritional supplement in accordance with Section 7 [monthly nutritional supplement] of Schedule C [...] to a person with disabilities [...] 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

#### Chronic Progressive Deterioration of Health

The Regulation, section 67(1.1) (a) states that:

- a. the person with disabilities to whom the request relates is being treated by the medical practitioner or nurse practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;

In the appellant's original MNS application of April 18, 2023, the appellant's MP provided this diagnosis:

- Rheumatoid Arthritis ("flexion contracture, erosions of joints")
- Scleroderma ("sclerodactyly, puffy fingers with shiny skin")

- Hereditary Hemorrhagic Telangiectasia (“ulcers of skin”)
- COPD (“chronic cough”)

Question 2 of the MNS application asks the MP if the applicant is being treated for a chronic, progressive deterioration of health as a direct result of the severe medical conditions noted. The appellant’s MP wrote: “Yes, seeing rheumatologist, respirologist.”

The ministry, in its reconsideration decision noted that “Upon review, the ministry determines the information provided with your application establishes that your request meets the eligibility criterion set out in the *EAPWD Regulation, subsection 67(1.1)(a)*.”

### Symptoms

The Regulation, section 67(1.1) (b) states 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

In Question 3 of the appellant’s MNS application, the MP is asked if the applicant displays two or more of the symptoms as set out in the legislation (above.) The MNS application form also states: “If so, please describe in detail.”

The appellant’s MP indicated with check marks that the appellant has three of the symptoms as set out in the legislation, namely malnutrition, significant muscle mass loss, and significant neurological degeneration. The appellant’s MP noted in Question 3 that the appellant is “a vulnerable patient with a history of a traumatic brain injury.” The appellant’s MP did not provide a detailed description for the appellant’s muscle mass loss, the amount of muscle mass lost, or the time period over which the muscle mass occurred, nor did the MP provide a description of the appellant’s physical appearance or wasting. Without this

information, the ministry advised that they could not be satisfied that the muscle mass loss has been significant, as set out in the legislation.

The Ministry concluded that it is satisfied that “the symptoms of *malnutrition* and *significant neurological degeneration* are supported by the evidence provided. For the reasons cited above, however, the ministry is not satisfied the symptom of *significant muscle mass loss* is supported by the evidence provided.”

Upon review, the ministry determined that a medical practitioner, nurse practitioner, or dietician has confirmed you are displaying at least *two* of the symptoms set out in the *EAPWD Regulation, subsection 67(1.1)(b)* and your request meets the eligibility criterion set out in this section.

#### Nutritional Items and Imminent Danger to the Person’s Life

The Regulation, sections 67(1.1) (c) and (d) state that:

(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.

Question 6 of the appellant’s MNS application addresses nutritional items. The appellant’s MP noted that the appellant currently was being assessed for nutritional items and left the remaining questions in this section blank, including how the nutritional supplements provided will prevent imminent threat to the applicant’s life. The MP noted the following at the end of Question 6: “Patient is vulnerable ... would benefit from optimized nutritional support to prevent hospitalizations and economic burden.”

The appellant’s application also included a medical assessment written by the appellant’s rheumatologist, dated March 11, 2023. The rheumatologist described the appellant’s medical conditions, their assessment, and current/future treatments. The rheumatologist addressed vitamin/mineral deficiency (e.g., iron), joint pain, swelling, and provided an assessment of the appellant’s medical condition but did not address caloric deficiency.

The ministry explained that they are obligated to make an evidence-based decision relying on the information provided by a medical practitioner, nurse practitioner, or dietician in the MNS application. It does not mean, however, that the ministry must accept their confirmation that an applicant is displaying a symptom without supporting information.

The ministry stated in its reconsideration decision: “[The MP] does not provide enough evidence to demonstrate that you are displaying a symptom set out in the *EAPWD Regulation, subsection 67(1.1)(b)* which would indicate a need for caloric supplementation, such as *underweight status, significant weight loss, or significant muscle mass loss*. The Ministry also noted that there may be some contradictory information in the MNS, for example, the appellant’s height and weight create a BMI calculation of 26.6 which falls just inside the overweight category.

Accordingly, the ministry concluded that “[it] is not satisfied the information provided in your MNS application and request for reconsideration confirms that you require additional nutritional items as part of *caloric supplementation* to a regular dietary intake and to prevent *imminent danger to life*.”

#### New Evidence

In her June 30, 2023 Notice of Appeal, the appellant states: “My health is really bad. I need the supplements for my bad and failing eyesight that needs immediate surgery but cannot afford it. The other nutritional supplements [sic] I have stomach problems too.”

In a July 25, 2023 letter to the Tribunal, the appellant offered more information about her health conditions including that, “Over the last 3 years, I have been in and out of hospital several times in the emergency care with lung infections including pneumonia and was in a coma for 10 days and nearly died twice on two separate occasions ... I strongly believe that the nutritional supplement [sic] that I have been taking has help [sic] my health. The omega 3 is for my dry eye syndrome. Metamucil fiber gummies to relieve stomach problems. Centrum multivitamins to support immune syndrome. Fiber Well that supports gastro health. Bell curry for eye health. Iron for iron deficiency. Holy basil for stress. [word is indecipherable] aid for digestion and enzyme to ease stomach bloating. All these supplements mentioned along with several vitamins not mentioned are for improving health and I am positive if I don’t take them I would be much worse, possibly dead. I am under a great deal of stress ... I hope you understand that my medical well-being is affecting every part of my life and I need all the help I can get.”

On September 3, 2023, the appellant emailed a recent letter from her MP to the Tribunal office, and included nine photographs of her fingers, “to show the panel exactly what my massive bone loss looks like. Some of them are bent and some are bent in half, and I can’t straighten them - major painful [sic] every day.”

The appellant's MP noted in the recent letter that "I would like to add my detailed description to Question 3 of the MNS Application. I put a clear check mark after Malnutrition, Significant muscle mass loss, and significant neurological degeneration ... [the appellant] has had progressive deterioration of malnutrition and muscle mass since 2005 ... it is estimated at 50% muscle mass loss. She appears to have significant muscle wasting of her biceps, forearms, hands, thighs and calves. She also has poor abdominal core muscle strength."

"[The appellant's] malnutrition is from her rheumatologic overlap syndrome of Rheumatoid Arthritis and limited Cutaneous Systemic Sclerosis/Scleroderma, that prevents gastric and intestinal absorption of vitamins and minerals, **and calories** [emphasis added.] She has also had gastric ulcers. She gets many cold sores and ulcerations on her lips and fingertips. She has had significant muscle mass loss because of the two overlapping syndromes mentioned above that do not allow proper absorption of minerals, vitamins, **and calories** [emphasis added]. Her lip ulcerations and jaw tightness, as well as Raynaud's phenomenon, make it difficult for her to eat without pain, and **her appetite is decreased. This leads to further decreased caloric intake and muscle wasting** [emphasis added.] Her Rheumatoid Arthritis and osteoarthritis causes [sic] severe pain and inhibits her from attempting muscle-building exercises, leading to further muscle mass loss. Lastly, [the appellant] has significant neurological degeneration from the illnesses mentioned above combining with her traumatic brain injury suffered in 1989, which was 34 years ago. She has been getting progressively worse ... I am hoping this [letter] will satisfy the Ministry's requirement for evidence as [the appellant] would benefit from assistance."

At the hearing, the appellant asked the panel to review her July 25, 2023 and September 3, 2023 submissions. The appellant added that she has an autoimmune disease and sores that do not heal. She has glaucoma and is going blind as she waits for surgery. The appellant also explained that it is difficult for her to remember and explain her medical situation clearly because of her traumatic brain injury.

At the hearing, the ministry representative relied on the ministry's reconsideration decision and explained that the appellant's request for MNS for nutritional supplements with caloric intake was denied because, while her MP's initial assessment noted that the appellant has significant muscle mass loss, they did not provide a detailed explanation for this symptom. As a result, the ministry did not have the information needed to fully adjudicate the appellant's application.

The panel asked the ministry representative if an estimated 50% of muscle mass loss, as noted in the MP's recent letter, would meet the ministry's threshold of "significant muscle mass loss" as one of two factors required under Regulation 67(1.1)(b) that determines eligibility for approval of a MNS for nutritional supplements with caloric intake. The ministry representative responded that 50% muscle mass loss is significant muscle mass loss.

The panel also asked the ministry representative if 50% muscle mass loss could create an imminent threat to the appellant's life. The ministry representative agreed that the appellant's 50% of muscle mass loss and her absorption problems contribute to her malnutrition symptom. This situation could create an imminent threat to her life.

The panel asked the appellant and the ministry representative what the specific nature of caloric supplementation would be. The appellant and ministry agreed that caloric supplementation would consist of adding a product such as Boost or Ensure to provide the appellant with significantly more caloric intake daily.

#### Admissibility of New Evidence

Neither party objected to any new evidence submitted on appeal and at the hearing. The panel finds that the new 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 MNS for nutritional items. 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 MNS for caloric nutritional supplementation 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 appellant failed to meet the following criteria:

- (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 Appellant

The appellant argued that she needs funding for a MNS for nutritional supplementation because she has severe ongoing medical conditions including that her body cannot properly absorb nutrition. In her July 25, 2023 submission, the appellant wrote about her need for vitamin and/or mineral nutritional supplementation. The appellant explained that without nutritional supplementation, her life is in imminent danger because her body is breaking down.

The appellant also submitted recent correspondence from her MP that provided the missing detailed explanation of the appellant's significant muscle mass loss, including the medical conditions that have caused and continue to worsen the appellant's muscle mass loss. The MP's correspondence outlines how the appellant's myriad health issues make it difficult for her to absorb vitamins, minerals, **and calories** [*emphasis added*].

### Position of the Ministry

The ministry argued that the information provided in the appellant's MNS application by her MP was missing necessary information about the appellant's symptom of significant muscle mass loss. Without information from the MP about the symptom of significant muscle mass loss, it could not be established that nutritional supplementation is needed and that nutritional supplementation would prevent imminent danger to the appellant's life.



## Panel Decision

As noted above, 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:

- 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;
- 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
- failure to obtain the items will result in imminent danger to the person's life.

In the MNS application, the appellant's MP noted that the appellant suffers from malnutrition, significant muscle mass loss and significant neurological degeneration. However, the MP left several fields blank in this section of the application.

The Ministry explained in its reconsideration decision that it required evidence, such as proof of significant muscle mass loss, to demonstrate that the appellant faces an imminent threat to her life.

The recent letter from the appellant's MP provides extensive detail substantiating the appellant's significant muscle mass loss and links to the appellant's symptoms.

Although the appellant's July 25 letter suggests that her goal in obtaining the MNS is to secure funding for vitamin, mineral and related remedies which she sees as necessary to address a variety of health issues, the panel must rely on the evidence provided by her MP because of the legislative requirement for evidentiary documentation from a MP, NP, or dietician.

The panel finds that the MP's recent letter containing a detailed explanation of the appellant's symptoms and their repeated clarification that the appellant has vitamin, mineral and **caloric** [*emphasis added*] absorption issues provide the missing evidence regarding the appellant's specific need for caloric nutritional supplementation.

The panel further concludes that the MP's report of the appellant's 50% muscle mass loss, her difficulties in absorbing vitamins, minerals, and calories, and the need for the appellant to receive optimized nutritional support "to prevent hospitalization", sufficiently explains that the appellant would face imminent danger to her life without caloric nutritional supplementation.

### **Conclusion**

In light of the additional evidence provided in the recent letter from the appellant's MP and reviewed at the hearing, the panel finds the ministry was not reasonable when it denied funding for a MNS for nutritional supplements because the appellant does meet the eligibility criteria for a MNS as set out in section 67(1.1)(c) and (d). Accordingly, based on the evidence, the reconsideration decision is rescinded, and the appellant is successful on appeal. As the nutritional items needed as part of caloric supplementation are not identified by the MP, the decision as to the amount of the MNS is referred back to the ministry.

## Appendix A

### Employment and Assistance for Persons with Disabilities Regulation

#### Definitions

**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;

#### 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

### 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

**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

Melissa McLean

Signature of Chair

Date (Year/Month/Day)

2023/10/03

Print Name

Ken Smith

Signature of Member

Date (Year/Month/Day)

2023/09/29

Print Name

Corrie Campbell

Signature of Member

Date (Year/Month/Day)

2023/09/29