

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated September 7, 2023, which denied the appellant the Monthly Nutritional Supplement (MNS) for vitamins/minerals and nutritional items.

Specifically, the ministry determined the appellant did not meet the eligibility criteria set out in the Employment and Assistance for Persons With Disabilities Regulation, Regulation subsections 67(1.1) (a), (b), (c) and (d).

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation section 67(1) and (1.1)

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

Part E – Summary of Facts**Summary of key dates:**

- June 15, 2023- the appellant's MNS application was received by the ministry.
- July 24, 2023- the MNS application was denied.
- July 27, 2023- the appellant requested a reconsideration.
- August 17, 2023- the appellant submitted a signed request for reconsideration.
- September 7, 2023- the ministry reviewed the appellant's request for reconsideration, the appellant's request for MNS was denied.

Evidence before the ministry at the time of reconsideration:

- Request for Reconsideration dated August 17, 2023, the appellant did not complete Section 3, Reason for Request for Reconsideration.
- **Documents submitted included:**
 - Application For Monthly Nutritional Supplement dated September 14, 2023, completed by the appellant's doctor, (responses noted in “”).
 - Question 1- List and describe the applicant's severe medical condition. “Irritable Bowel Syndrome. Daily abdominal pain, alternating diarrhea/constipation”.
 - Question 2 – As a direct result of the severe medical condition noted in part 1, details on treatments included “dietary change, supplements recommended by Gastroenterologist. If symptoms are not controlled, their anxiety significantly worsens.”
 - Question 3 – AS a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms? “There was no response from the appellant's doctor”.
 - Question 4 – Applicant's height “153.5 cm”, Weight “75kg”.
 - Question 5 – Vitamin or mineral supplementation
 - Specify the vitamin or mineral supplement(s) required and expected duration of need: “No response from the appellant's doctor”.
 - Describe how this item will alleviate the specific symptoms identified: “No response from the appellant's doctor”.
 - Describe how this item or items will prevent imminent danger to the applicant's life. “No response from the appellant's doctor”.

- Question 6 – 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 dietary intake and are required to prevent imminent danger to the applicant’s life.
 - Specify the additional nutritional items required and expected duration of need: “No response from the appellant’s doctor”.
 - 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? “No response from the appellant’s doctor”.
 - 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: “No response from the appellant’s doctor”.
 - Describe how the nutritional items requested will prevent imminent danger to the applicant’s life: “No response from the appellant’s doctor”.
 - Additional Comments: - appellant “will benefit from FODMAPs diet, probiotics, high fiber diet for constipation as recommended by gastroenterologist”.
- A doctor’s note dated August 16, 2023, which states the appellant:
 - Suffers from abdominal pain/cramps and diarrhea and has recently been diagnosed with irritable bowel syndrome (IBS).
 - Has been advised to have a low FODMAPs diet.
 - Will benefit from probiotics, peppermint oil capsules to further alleviate their symptoms.
 - Patients with irritable bowel syndrome also end up being deficient in folic acid and B12 and a few other minerals and the appellant would benefit from getting supplementation.
 - Will benefit from a high-fiber diet and supplementing with fiber capsules.
 - Supplements can help reduce abdominal pain, cramps and diarrhea.
 - Is not able to afford these items and having some help from the ministry to get supplements will be helpful.

- Colonoscopy Procedure Report dated May 18, 2023, which recommends:
 - Treatment for IBS is individualized which includes different dietary changes (low FODMAPs, avoidance of dairy/gluten, probiotics and OTC treatments (peppermint oil capsules), stress reduction (daily exercise, yoga, meditation).
- A letter from the appellant's advocate dated August 17, 2023, which states:
 - The appellant needs the MNS due to their physical condition.

- **Additional Information**

- Appellant submission dated September 26, 2023, which included a note from the appellant's doctor. Specifically, the doctor gave additional information which included:
 - A low FODMAPs diet has been recommended, these items are poorly absorbed and can cause abdominal pain, bloating and diarrhea.
 - The recommended probiotics are beneficial bacteria that can help restore a healthy balance of gut bacteria. This will help with symptoms such as bloating, gas, and diarrhea.
 - The appellant suffers from severe chronic anxiety, panic attacks and PTSD despite being on multiple medications. The physical symptoms of IBS affect their mental and emotional well-being including anxiety. Constant worrying about these symptoms can contribute further to their anxiety.
 - IBS can disrupt daily activities including coming to see doctors.
 - Without some assistance in getting these supplements, IBS symptoms will continue, the appellant is emotionally vulnerable and at high risk for decompensating in terms of mental health.
 - Covering payments for supplements will help not just with abdominal symptoms but also with mental health.

At the hearing the appellant's advocate stated:

- The appellant's medical condition is severe and chronic. This opinion is supported in the doctor's second letter.
- The appellant's health is deteriorating and due to the IBS, the appellant needs the supplements.
- The doctor was very busy and possibly did not complete the form fully.

At the hearing the ministry stated:

- Although the appellant can apply for a MNS, they do not meet the required criteria.
 - The Appellant's IBS cannot be identified as severe and chronic by the ministry as the doctor does not offer enough information to allow the ministry to draw that conclusion.
 - The doctor does not offer any evidence how the appellant should be treated for chronic deterioration and if their health is becoming worse.
 - None of the seven symptoms (of which two are required for eligibility), were identified by the doctor.
 - The doctor does not identify any specific vitamins the appellant is deficient in or that a caloric supplement is required by the appellant to address a symptom or to avoid imminent danger to the appellant's life.
 - The doctor's statements in his two letters are set in general terms of IBS patients, not specifically in terms of the appellant's medical condition.
 - As the doctor may be very busy, the appellant may seek an appointment with a dietician to complete the MNS form in more detail in terms of their current health.

Admissibility of new information

Section 22(4) of the Employment and Assistance Act (EAA) says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

In this case the appellant had submitted a written submission which included a second letter from the appellant's doctor. The ministry did not object to the evidence being admitted. The panel admits the new information under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. As the information from the doctor supported the appellant's appeal, the panel accepted the evidence provided.

Part F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant was ineligible for a MNS was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. That is, was the ministry reasonable when determining that the requirements of section 67(1.1) (a)(b)(c) and (d) of the Regulation, were not met.

Appellant's Position

The appellant and their advocate believe the second doctor's note dated September 26, 2023, clarified that the requirements of the MNS Application were met and therefore the appellant should be granted the request for a monthly nutritional supplement.

Ministry Position

The ministry's position is that the application for MNS and the two letters from the appellant's doctor do not supply the information to meet the legislative requirements to grant the appellant's request for MNS. The ministry notes that IBS is not necessarily considered a severe medical condition as well it has not been confirmed the appellant is experiencing an ongoing worsening of their health. Additionally, the ministry notes, the appellant's doctor does not indicate or describe the display of any other symptoms as listed in the MNS application, or that the vitamin/mineral supplementation or caloric supplementation will alleviate symptoms set out in sub section 67(1.1) (b) due to a progressive deterioration of health or will prevent imminent danger to life.

Panel Decision

For a person with disabilities to receive a nutritional supplement, 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 Section 67 (1.1) (a-d) of the Regulation. The appellant had her medical doctor complete a MNS Application which was submitted to the ministry.

Section 67 (1.1) (a) requires that the ministry is satisfied the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition. Although it is accepted the appellant suffers from IBS, the ministry is not satisfied that the condition is severe or that they are experiencing a chronic progressive deterioration of health. Although the doctor mentions the appellant suffers from severe chronic anxiety, panic attacks and PTSD, the evidence supplied by the doctor in the MNS application and following two letters does not specifically describe a severe health condition or an ongoing worsening of health of the appellant. The panel finds that the ministry was reasonable when it was not satisfied the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition.

Section 67 (1.1) (b) requires that as a direct result of the chronic, progressive deterioration of health, the appellant displays two or more of the following symptoms:

- Malnutrition
- Underweight status
- Significant weight loss
- Significant neurological degeneration
- Significant deterioration of a vital organ
- Moderate to severe immune suppression

The appellant's doctor notes symptoms such as bloating, abdominal pain, cramps and diarrhea but does not mention any symptoms described in section 67 (1.1) (b). As the appellant does not display two or more of the symptoms described in section 67 (1.1) (b), the panel therefore finds that the ministry was reasonable in determining the appellant was not eligible for a MNS as no required symptoms were displayed.

Section 67 (1.1) (c) states that 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. As no evidence was given to identify any vitamin/mineral supplementation or nutritional items for the purpose of alleviating a symptom referred to in paragraph (b), and no listed symptoms were identified, the panel finds the ministry was reasonable in determining the appellant was not eligible for a MNS.

Section 67 (1.1) (d) requires that failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life. As no evidence was given by the appellant's doctor that failure to obtain vitamins/minerals or nutritional items will result in imminent danger to the appellant's life the panel finds the ministry was reasonable in determining the appellant was not eligible for a MNS.

Conclusion

The panel finds the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's reconsideration decision. The appellant is not successful in their appeal.

Relevant Legislation

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 the 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 referred to in subsection (1.1).

Employment and Assistance for Persons with Disabilities Regulation 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 \$180 each month;
- (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
- (c) for vitamins and minerals, up to \$45 each month.

APPEAL NUMBER 2023-0274

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

Charles Schellinck

Signature of Chair

Date (Year/Month/Day)

2023/10/05

Print Name

Carla Tibbo

Signature of Member

Date (Year/Month/Day)

2023/10/05

Print Name

Bob Fenske

Signature of Member

Date (Year/Month/Day)

2023/10/05