

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

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 22, 2023, which determined the appellant was not eligible for a monthly nutritional supplement of vitamin/mineral supplementation and nutritional items.

Specifically, the ministry determined the appellant did not meet the following criteria:

- is being treated for a chronic, progressive deterioration of health
- displays two or more symptoms
- requires vitamins/minerals or nutritional items (as part of caloric supplementation) to alleviate the symptoms
- failure to obtain the items will result in imminent danger to the appellant's life

### **Part D – Relevant Legislation**

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

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

**Part E – Summary of Facts**

**Summary of Relevant Evidence**

Ministry records show the appellant is a person with disabilities in receipt of disability assistance.

**Application for Monthly Nutritional Supplement (application) (May 18, 2023)**

The appellant’s doctor signed the application and provided the information and responses to the questions (in italics), below.

*1. Diagnosis*

- bipolar disorder, irritable bowel syndrome, dyspepsia, food allergies and diabetes

*2. As a direct result of the severe medical conditions(s) noted above, is the applicant being treated for a chronic, progressive deterioration of health? If so, please provide details and any information on treatments including any relevant clinical or diagnostic reports.*

- irritable bowel syndrome

*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?*

Two copies of the response were provided in the ministry record

First copy

- malnutrition – no
- underweight status – no
- significant weight loss – no
- significant neurological degeneration – no
- moderate to severe immune suppression – no
- significant deterioration of a vital organ – no further information

Second copy contains the same information as the first copy but with the following amendments (the applicant wrote his own points in a different colour ink):

- malnutrition – circled
- significant neurological degeneration – circled
- moderate to severe immune suppression – circled
- significant deterioration of a vital organ – circled, digestive system stomach intestines

4. *Height - 5 ft 6 in, weight - 170 lbs*

5. *Vitamin or Mineral Supplementation*

*Specify the vitamin or mineral supplement(s) required and expected duration of need.*

- vitamins, minerals required

*Describe how this item will alleviate the specific symptoms identified.*

- will improve well-being, immune system and energy

*Describe how this item or items will prevent imminent danger to the applicant's life.*

- no response

6. *Nutritional Items*

*Specify the additional nutritional items required and expected duration of need.*

- protein, fruit and vegetables

*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?*

- irritable bowel syndrome, diarrhea

*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.*

- improve digestion and absorption, prevent diarrhea

*Describe how the nutritional items requested will prevent imminent danger to the applicant's life.*

- no response

### **Ministry Monthly Nutritional Supplement Decision Summary (May 31, 2023)**

Following is the first question on the form.

"Is the Minister satisfied that the applicant is displaying two or more symptoms as a direct result of a chronic, progressive deterioration of health?"

"no"

The following was added.

Significant muscle mass loss was checked and circled.

Significant deterioration of a vital organ was checked and circled.

### **Request for Reconsideration (June 16, 2023)**

The appellant states due to the doctor's refusal to fill out the forms, he needs more time to see a registered dietician/nutritionist. He states he has many health problems that are chronic and deteriorating. The appellant adds that he is unable to find another doctor or dietician.

### **Screenshots with information on Irritable Bowel Syndrome and Inflammatory Bowel Disease (August 22, 2023)**

### **Information regarding Basal Ganglia (no date)**

### **Information received after the Reconsideration Decision**

#### Appellant

#### **Notice of Appeal (September 19, 2023)**

The appellant states he needs time to see a new doctor for further investigation.

At the hearing the appellant stated that he is obtaining more information from a new doctor as the information provided to the ministry from his previous doctor was based on false information. The appellant confirmed that he made the amendments to the application and ministry decision summary form, regarding symptoms.

He added that he spends hundreds of dollars each month on supplements including, probiotics, baby formula, magnesium and turmeric. He also states he needs help digesting food and a special diet. The appellant also stated he has arthritic fibromyalgia, is low on iron and believes he has basal ganglia.

#### Ministry

At the hearing, the ministry relied on its record. The ministry also added that it must have evidence of a chronic, progressive deterioration of health and treatment, and that the doctor did not provide any information on treatment. At this point, in the decision-making process, if the ministry does not have the required information, the request cannot be approved.

The ministry also stated it looks for specific vitamins/minerals recommended by a medical professional, and the doctor did not provide this information either. Although the doctor stated vitamins/minerals will improve well-being, and the appellant's immune system and energy, the information does not speak to specific symptoms. As well, the information must demonstrate that nutritional items are medically essential to prevent imminent danger to the person's life and the doctor did not provide sufficient evidence in this regard either.

The panel determined the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

## **Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine that the appellant was not eligible for a monthly nutritional supplement because he did not meet all the following criteria?

- is being treated for a chronic, progressive deterioration of health
- displays two or more symptoms
- requires vitamins/minerals or nutritional items to alleviate the symptoms
- failure to obtain the items will result in imminent danger to the appellant's life

### **Appellant Position**

At the hearing the appellant argued the information provided to the ministry, from his previous doctor, was based on false information and he would be obtaining additional information from his new doctor.

He added that he spends hundreds of dollars each month on supplements including, probiotics, baby formula, magnesium and turmeric. As well, he requires a special diet as he needs help digesting food.

### **Ministry Position**

The ministry argues that although at reconsideration, the appellant provided some new information, he did not include any new information from a general practitioner, nurse practitioner or dietitian.

### Severe Medical Condition with Chronic Progressive Deterioration of Health

The ministry is satisfied that a medical practitioner confirmed a severe medical condition. However, when asked to describe if the appellant is being treated for a chronic, progressive deterioration of health because of a severe medical condition, the doctor only reports irritable bowel syndrome and symptoms, and does not provide any further details.

### Symptoms

In addition, the doctor does not report that the appellant is displaying any of the wasting symptoms listed in question 3 of the application. Although the ministry acknowledges the appellant's new information, as these symptoms were not confirmed by his medical practitioner, they cannot be considered.

### Vitamin/Mineral Supplementation

The ministry also argues that although in the application, the medical practitioner reports that the appellant require multivitamins and minerals for improved general well-being and for his immune system and energy, they do not describe how the items will alleviate a listed symptom or prevent imminent danger to life. The ministry notes that despite indicating a benefit to the appellant's immune system, the doctor did not indicate that the appellant has moderate to severe immune suppression.

### Nutritional Items

The ministry also argues the information provided in the application does not confirm that the appellant requires additional nutritional items as part of caloric supplementation to a regular dietary intake for the purpose of alleviating a symptom (listed in question 3 of the application) and to prevent imminent danger to life.

### **Analysis**

Section 67(1.1) of the Regulation states that in order for a person with disabilities to receive a nutritional supplement, the minister must receive a request completed by a medical practitioner, nurse practitioner or dietitian, in which all of the following are confirmed.

- treated for chronic, progressive deterioration of health
- displays two or more symptoms
- requires supplement to alleviate a symptom
- supplement prevents imminent danger to the person's life

### Section 67(1.1)(a) – treated for chronic, progressive deterioration of health

Subsection (a) requires that the person with disabilities is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition.

The panel acknowledges the appellant has a severe medical condition. However, in response to the question that asks if the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, (and information on treatments), the doctor's response is, "irritable bowel syndrome".

The panel finds this response provides insufficient information to conclude that the appellant is undergoing treatment for a chronic, progressive deterioration of health and finds the ministry reasonably determined that the criteria for section 67(1.1)(a) was not met.

Section 67(1.1)(b) – displays two or more symptoms

Subsection (b) states as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms: malnutrition, underweight status, significant weight loss, significant muscle mass loss, significant neurological degeneration, significant deterioration of a vital organ or moderate to severe immune suppression.

At the hearing, the appellant stated that he amended the application to include four symptoms. The panel acknowledges that the appellant is attempting to provide clarity on the severity of his medical situation. However, the legislation requires that these symptoms are confirmed by a medical practitioner or dietitian.

As well, although the doctor stated that monthly nutritional supplements will help the appellant's immune system, the doctor must have indicated that the appellant has moderate to severe immune suppression.

The panel finds as the doctor has not identified any symptoms, it cannot be concluded that two or more of these symptoms are displayed and finds the ministry reasonably determined that the criteria for section 67(1.1)(b) was not met.

Section 67(1.1)(c) – requires supplement to alleviate a symptom

Section 67(1.1)(c) states, for the purpose of alleviating a symptom the person requires one or more of the items set out in section 7 of Schedule C. Schedule C lists these items as, additional nutritional items that are part of a caloric supplementation to a regular dietary intake, and vitamins and minerals.

*nutritional supplements*

In the application, when asked to specify the additional nutritional items required, the doctor states protein, fruit and vegetables. When asked if the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the doctor states, irritable bowel syndrome and diarrhea. When asked to 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, the doctor stated they would improve digestion and absorption and prevent diarrhea.

At the hearing, the appellant stated he is taking nutritional supplements such as probiotics and baby formula to help with absorption. Although the panel recognizes that the



appellant is taking these supplements, the legislation requires that a medical professional or dietician confirm this requirement.

As well, the panel finds that although the doctor indicated nutritional supplements would improve digestion and absorption and prevent diarrhea, as the doctor did not indicate that the appellant had any of the listed symptoms and did not list any specific nutritional supplements, it cannot be concluded that the appellant requires the nutritional supplements to alleviate a listed symptom..

*vitamins/minerals*

Although at the hearing, the appellant stated he takes vitamins including magnesium and turmeric, the panel notes the legislation requires that the requirement for vitamins/minerals must be endorsed by a medical practitioner or dietician.

As well, the panel finds that although the doctor indicated the appellant requires vitamins and minerals for well-being, for his immune system and energy, as the doctor did not indicate the appellant had any listed symptoms, it cannot be concluded that the appellant requires the vitamins/minerals to alleviate a listed symptom.

Therefore, the panel finds the ministry reasonably determined that the criteria for section 67(1.1)(c) was not met.

Section 66(1.1) (d) - prevent imminent danger to life

Section (d) states that failure to obtain the items will result in imminent danger to the person's life.

*nutritional supplements*

The panel notes in the application when the doctor was asked to describe how the nutritional items requested will prevent imminent danger to the applicant's life, the doctor did not provide a response.

*vitamins/minerals*

The panel notes in the application when the doctor was asked to describe how the vitamins/minerals requested will prevent imminent danger to the applicant's life, the doctor did not provide a response.

Therefore, the panel finds the ministry reasonably determined that the criteria for section 67(1.1)(d) was not met.

**Conclusion**

In conclusion, the panel finds the ministry's reconsideration decision that determined the appellant was not eligible for a monthly nutritional supplement for vitamin/mineral supplements and nutritional items was reasonably supported by the evidence.

The panel confirms the ministry decision. The appellant is not successful on appeal.

## Schedule of 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... 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

...

(1.1) In order for a person with disabilities to receive a nutritional supplement under this section, the minister must receive a request... 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.

### 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;...
- (c) for vitamins and minerals, up to \$40 each month.

APPEAL NUMBER 2023-0284

**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

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2023/12/03

Print Name

Peter Mennie

Signature of Member

Date (Year/Month/Day)

2023/12/03

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

2023/12/03