

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“Ministry”) decision of February 13, 2024 that the Appellant is not eligible for a Monthly Nutritional Supplement (“MNS”) for nutritional items.

The Ministry determined the Appellant has not demonstrated that she is displaying a symptom set out the Employment and Assistance for Persons with Disabilities Regulation section 67 (1.1) (b) such as underweight status, significant weight loss, or significant muscle mass loss that would indicate a need for caloric supplementation to a regular dietary intake to prevent imminent danger to life.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“Regulation”) sections 1, 61.01, 67, 70.5 and Schedule C section 7 and Schedule A section 8.

Applicable legislation is found in Appendix A.

Part E – Summary of Facts

The Appellant's appeal hearing was held on March 8, 2024 via teleconference. The Appellant and a Ministry representative participated in the appeal hearing; there were no witnesses or advocates in attendance.

From the Ministry files

The Appellant is a Person with Disabilities in receipt of disability assistance and is not residing in a special-care facility.

The Appellant originally made application to the Ministry for a MNS for vitamins and supplements, and a MNS for nutritional items. The Appellant does not have resources available for the requested items. The Ministry declined both of these requests and the Appellant requested that this decision be reconsidered.

In its Reconsideration Decision, the Ministry approved the Appellant's request for a MNS for vitamins and supplements and declined the Appellant's request for a MNS for nutritional items.

The Appellant currently is in receipt of a low-sodium diet supplement. If approved for a MNS for nutritional items, it would replace the low-sodium diet supplement because they are both nutrition-related supplements.

A medical practitioner confirmed in a report filed with the Appellant's original application for a MNS that the Appellant is being treated for a severe medical condition causing a chronic, progressive deterioration of health, as required in section 67 (1.1) (a) of the Regulation. The medical practitioner provided this diagnosis in their report:

- Severe anxiety with GI symptoms, nausea, and vomiting.
- Severe depression with diarrhea.
- Currently being treated with antidepressants (venlafaxine and amitriptyline).

A medical practitioner confirmed in the same report that the Appellant is displaying symptoms of wasting as required in section 67 (1.1) (b) of the Regulation. In particular, the following issues were noted by the medical practitioner:

- Significant neurological degeneration is confirmed, given the severity of anxiety and depression with memory and concentration issues.
- The symptom of malnutrition is confirmed, given the report of poor absorption due to diarrhea, vomiting, decreased appetite, severe depression, and lack of concentration.

- The symptom of significant muscle mass loss has not been confirmed. The description of generalized muscle weakness is not sufficient to demonstrate the Appellant is experiencing significant muscle mass loss.
- The medical practitioner reports loss of appetite directly causing weight loss; however, they do not report nor confirm that the Appellant is displaying the symptom of significant weight loss.
- The Appellant's height and weight reported indicates that she is within the overweight range. The Appellant is 151.4 cm tall and weighs 59.85 kg. The normal range is 42 – 57 kg.

Vitamin/Mineral Supplementation

In its original decision, the Ministry denied the Appellant's request for a MNS for vitamin and mineral supplementation. To receive a MNS for vitamin/mineral supplementation, the medical practitioner must also confirm the need for vitamin/mineral supplementation is required to alleviate one of the established symptoms and that failure to obtain the items reported will lead to imminent danger to life.

The Ministry determined the application has met the requirements of this section as follows:

- The medical practitioner reported a need for ongoing vitamin/mineral supplementation in the form of multivitamins, mineral supplements, calcium, and vitamin D.
- They reported the items will stimulate the Appellant's appetite, enhance bone strength, prevent fragility fractures, prevent global malnutrition, and improve her quality of life.
- The Ministry is satisfied the application demonstrated that vitamin/mineral supplementation is required for the Appellant to alleviate the symptom of malnutrition and that failure to obtain the items requested will lead to imminent danger to life.

In its Reconsideration Decision, the Ministry determined that the Appellant has met all the requirements for a MNS for vitamin/mineral supplementation.

Nutritional Items

In the original decision, the Ministry wrote that the Appellant has not met all of the requirements identified for a MNS for nutritional items in the Regulation, subsections 67 (1.1) (c) and (d), and Schedule C section 7(a.)

The Ministry must be satisfied that due to the chronic, progressive deterioration of health, the Appellant requires nutritional items for caloric supplementation to a regular dietary intake to alleviate at least one of the confirmed symptoms and to prevent imminent danger to life.

In the Appellant's initial application, her medical practitioner reported:

- The Appellant requires daily caloric supplementation in the form of fresh produce, fish and poultry.
- 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, they wrote that the Appellant has severe depression and anxiety that decreases her appetite and indirectly causes weight loss.
- When asked how daily caloric supplementation in the form of fresh produce, fish and poultry will alleviate one or more of the symptoms, the medical practitioner reported it would provide strength and vitality and also impact memory and concentration positively.
- When asked how the items will prevent imminent danger to life, the medical practitioner indicated the Appellant currently does not have the capacity to procure basic daily caloric supplementation which may directly/indirectly impact her already deteriorating mental health, and imminent danger will be prevented if the Appellant has one less thing to worry about and they can enable ongoing CBT work for her.

The Ministry determined the information provided does not meet the requirements of this section of the Regulation.

The application does not demonstrate that additional nutritional items are required as part of caloric supplementation to a regular dietary intake to prevent imminent danger to life. The Ministry found:

- The medical practitioner confirmed a need for nutritional items to alleviate the confirmed symptoms. However, the medical practitioner does not demonstrate you are displaying a symptom set out in 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 symptom of significant muscle mass loss was not confirmed; therefore, it cannot be established that the nutritional items are required to alleviate this symptom.
- The Appellant is currently in the overweight range and is not reported to be displaying significant weight loss; therefore, a need for caloric supplementation has not been established.

- The medical practitioner reported that the Appellant has a decreased appetite that indirectly causes weight loss. This indicates that the Appellant may not be eating a regular dietary intake to absorb sufficient calories to satisfy daily requirements. This does not establish a need for the items for caloric supplementation to regular dietary intake.
- The nutritional items noted indicate a need for a healthy diet to improve overall health; however, the items listed are not considered to be high calorie items.
- As it has not been established that the nutritional items are required for caloric supplementation to a regular dietary intake, it cannot be established that these items are required to prevent imminent danger to life.

The Ministry stated in its Reconsideration Decision that because the Appellant does not meet the requirements of this section, the Ministry is unable to approve the Appellant's request for a MNS for nutritional items.

Additional Information Submitted after Reconsideration

Notice of Appeal

In her Notice of Appeal, the Appellant wrote the following in the Reasons for Appeal section: "My doctor filled out forms after having [an] appointment with me. I am requesting [an] appeal on this matter. This is a supplement that will benefit my health. The Ministry holds little regard to a person they have not met or little understanding given to the crisis situation of myself."

At the Hearing

During the hearing, the Appellant explained that she fractured her neck, then her home burned down, and she was homeless in cold weather and unable to cook for herself for approximately four months. The Appellant said that she lost 60 pounds in one month between March and April 2023, and estimates that she has lost a further 25 pounds since then.

The Appellant also explained that she needs to have regular access to healthy protein such as fish and poultry, and fresh produce to help rebuild her strength, in hopes that she can return to the workforce someday. Healthy food items such as fish, poultry and fresh produce are not affordable on her disability allowance, and it is very difficult to find these types of food items regularly at a food bank.

A panel member asked the Appellant to clarify the wording in her Notice of Appeal document in terms of whether she saw a second doctor who also completed paperwork

about her medical condition. The Appellant clarified that she was referring to the original report from her doctor and that a second medical report had not been submitted.

During the hearing, the Ministry representative relied on the Ministry's Reconsideration Decision and explained that a MNS may be provided to or for a family unit in receipt of disability assistance, for a person in the family unit eligible for the Persons with Disabilities designation, who has a severe medical condition causing a chronic, progressive deterioration of health with symptoms of wasting. The nutritional supplement is intended to prevent imminent danger to the person's life by providing essential, specified caloric items to supplement regular nutritional needs.

The Ministry stated that in the Appellant's original application for a MNS, the Appellant's medical practitioner identified three symptoms that the Appellant has as a direct result of the chronic, progressive deterioration of her health:

- Malnutrition. On this line, the medical practitioner wrote, "poor absorption due to diarrhea."
- Significant muscle mass loss. On this line, the medical practitioner wrote, "generalized muscle weakness."
- Significant neurological degeneration. On this line, the medical practitioner wrote, "memory and concentration issues."

The Ministry representative noted that the Ministry had accepted the medical practitioner's assessment of the Appellant being malnourished and having significant neurological degeneration; however, the Ministry did not accept the medical practitioner's assessment that the Appellant has experienced significant muscle mass loss because "generalized muscle weakness" is a vague term that is not sufficient to demonstrate that the Appellant is experiencing significant muscle mass loss.

A panel member asked the Ministry representative what type of wording they would be seeking to support a diagnosis of significant muscle mass loss. The Ministry representative explained that medical practitioners can measure and compare a patient's muscle mass over time, and the wording to describe significant muscle mass loss needs to be evidence-based.

Admissibility of New Evidence

The panel admits the Appellant's statement under the Reasons for Appeal section of her Notice of Appeal application and her testimony during the hearing, along with the Ministry's testimony during the hearing as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, and the panel has

weighed that evidence in making its decision as provided under 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The panel is required to determine if the Ministry's Reconsideration Decision was a) supported by the evidence, or b) a reasonable application of the applicable enactment.

The Appellant's Position

The Appellant's position is that the lack of a proper diet does not help improve her physical health as she suffers from the effects of diarrhea, and it does not help her mental health because she worries about lack of proper nutrition. The Appellant estimates that she has lost 85 pounds over the past year and suffers from low energy while trying to recover from a neck fracture and the negative effects of being homeless and cold for four months. Fresh produce and protein such as poultry and fish are not affordable because she is on a disability allowance and her health would benefit from having access to these food items.

The Ministry's Position

The Ministry's position is that a MNS may be provided to or for a family unit in receipt of disability assistance, for a person in the family unit eligible for the Persons with Disabilities designation, who has a severe medical condition causing a chronic, progressive deterioration of health with symptoms of wasting.

The nutritional supplement is intended to prevent imminent danger to the person's life by providing essential, specified items to supplement regular nutritional needs.

The Regulation sets out the eligibility criteria for the MNS that may be provided in accordance with Schedule C section 7, and must be confirmed by a medical practitioner, nurse practitioner, or dietitian. Section 7 outlines the additional eligibility criteria for MNS for nutritional items and the limits the Ministry may provide for a MNS for vitamin/mineral supplementation and nutritional items.

The Ministry asserts that, while the report from the Appellant's medical practitioner explains that she has a severe medical condition causing a chronic, progressive deterioration of health, the Ministry does not agree that the Appellant is experiencing symptoms of significant wasting. The report from the Appellant's medical practitioner indicates that the Appellant is not underweight, it does not address significant weight loss, and the description provided by the medical practitioner does not demonstrate that the Appellant has experienced significant muscle mass loss.

Panel's Decision

The panel is required to determine if the Ministry's Reconsideration Decision was supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the Appellant. The panel does not have any discretion to make a decision that would contradict the applicable legislation.

Under the Regulation, Section 67 (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 dietician, in which the practitioner has confirmed *all* [emphasis added] the requirements of the legislation are met. These requirements are set out and addressed in turn below:

Regulation, Section 67 (1.1) (a) - Chronic, Progressive Deterioration of Health

(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;

The Ministry accepted in its original decision that the Appellant is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition. As this criterion was not at issue, the panel makes no findings in this regard.

Regulation, Section 67 (1.1) (b) - Minimum of Two Symptoms as a Direct Result of the Chronic, Progressive Deterioration of Health

(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;

The Ministry, in its Reconsideration Decision, accepted the medical practitioner's diagnosis that the Appellant displays two of the listed symptoms, malnutrition and significant

neurological degeneration. The Ministry did not accept the medical practitioner's diagnosis that the Appellant also has experienced significant muscle mass loss.

The Ministry also stated that the medical practitioner reports that the Appellant's loss of appetite has directly caused weight loss, but the Ministry notes that the medical practitioner did not report that the Appellant is displaying the symptom of significant weight loss. The Ministry also noted that the Appellant's height of 151.4 cm and weight of 59.85 places her in the overweight range on the BMI scale. (The normal range is 42 – 57 kg.)

The panel agrees with the Ministry's determination that the Appellant does not display underweight status or significant weight loss because the report from her medical practitioner shows that she is in an overweight range based on the BMI index.

Regulation, Section 67 (1.1) (c) - Item(s) Required to Alleviate A Symptom Referred to in Paragraph (b)

- (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;

The Appellant's medical practitioner reported that the Appellant is suffering from the symptom of malnutrition. In its Reconsideration Decision, the Ministry accepted this diagnosis and has given authorization for the Appellant to receive a MNS for vitamins and supplements.

The Appellant's medical practitioner recommended that she receive a MNS for nutritional items, specifically for fresh produce, poultry and fish. 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 medical practitioner wrote that the Appellant has severe depression and anxiety that decreases her appetite and indirectly causes weight loss. When asked how these nutritional items will alleviate one or more of the Appellant's symptoms, the medical practitioner reported that these items would provide strength and vitality and also impact memory and concentration positively.

Regulation, Section 67 (1.1) (d) Failure to Obtain the Items Referred to in Paragraph (c) will Result in Imminent Danger to the Person's Life

- (d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

When asked how the food items will prevent imminent danger to life, the medical practitioner wrote that the Appellant does not have the capacity to procure basic caloric supplementation which may directly/indirectly impact her already deteriorating mental health, and imminent danger would be prevented if the Appellant has one less thing to worry about.

The Ministry also did not accept the medical practitioner's observation that the Appellant has experienced significant muscle mass loss because the medical practitioner's description of this symptom referred only to the Appellant having "generalized muscle weakness."

The panel agrees with the Ministry's assertion that "generalized muscle weakness" is a vague term that does not specifically demonstrate the Appellant has experienced significant muscle mass.

It also has not been demonstrated by the Appellant's medical practitioner that she is displaying significant muscle mass loss. Accordingly, it has not been demonstrated that the Appellant requires caloric supplementation to prevent imminent danger to her life.

Conclusion

The panel confirms the Ministry's Reconsideration Decision. The Appellant's request for a MNS for nutritional items is denied because it has not been proven that she exhibits the symptoms set out in the Regulation, subsection 67 (1.1) (b), that would indicate the need for caloric supplementation to avoid imminent danger to her life.

The Appellant is not successful in her appeal.

Appendix A Applicable Legislation

Part 1 — Interpretation Definitions

1 (1) In this regulation:

"special care facility" means a facility that is a licensed community care facility under the [Community Care and Assisted Living Act](#) or a specialized adult residential care setting approved by the minister under subsection (3);

Division 4 — Health Supplements 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 (1) [*people receiving special care*] of Schedule A, unless the person is in an alcohol or drug treatment centre as described in section 8 (2) of Schedule A,

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).

(3) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 8.]

Definitions

70.5 In this Division:

“person in special care” means a person who

- (a) receives accommodation and care in a special care facility or a private hospital, other than a special care facility operated by a service provider as defined in section 1 of the *Community Living Authority Act*, or
- (b) is admitted to a hospital because the person requires extended care;

“specified person” means

- (a) a removed child, (b) a detained person, or
- (c) a person in special care.

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.

Schedule A – Section 8

People in special care or otherwise living away

8 (1) In this section, **“person in special care”** and **“specified person”** have the same meanings as in section 70.5 [definitions – housing stability supplement] of this regulation.
(2) For a family unit that includes one or more specified persons, the amount referred to in section

24 (a) [amount of disability assistance] of this regulation is the sum of

- (a) the amount that would be calculated under this Schedule if the specified persons were not part of the family unit, and
- (b) for each specified person who is a person in special care,
 - (i) the actual cost, if any, to the person of the accommodation and care at the rate approved by the minister for the type of the facility, and (ii) a comforts allowance in the following amount:
 - (A) if the person is a person with disabilities, \$222;
 - (B) if the person is not a person with disabilities, \$115.

(3) For certainty, this section applies in relation to a family unit that includes only one or more persons in special care and, in that case, the amount referred to in subsection(2) (a) is to be considered to be zero.

APPEAL NUMBER 2024-0066

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

Melissa McLean

Signature of Chair

Date (Year/Month/Day)

2024/03/15

Print Name

Richard Franklin

Signature of Member

Date (Year/Month/Day)

2024/03/15

Print Name

John Pickford

Signature of Member

Date (Year/Month/Day)

2024/03/15