

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated November 20, 2017, which denied the appellant’s request for a Monthly Nutritional Supplement (MNS) on the basis that the appellant did not meet the criteria set out in section 67(1.1) c and d of the *Employment and Assistance for Persons With Disabilities Regulation* (“EAPWDR”) and Schedule C, section 7(a).

In particular, the ministry determined that the information provided did not demonstrate that the appellant’s medical practitioner had described how the specified items would alleviate a specific symptom set out in EAPWDR section 67(1.1)(b), as is required by EAPWDR section 67(1.1)(c), or that the failure to obtain the specified items would result in imminent danger to the appellant’s life as required by EAPWDR section 67(1.1)(d). In addition, the ministry determined that there was insufficient evidence to establish that the requested MNS were required as part of a caloric supplementation to a regular dietary intake as required by EAPWDR Schedule C section 7(a).

**PART D – RELEVANT LEGISLATION**

EAPWDR, section 67 and Schedule C section 7

## PART E – SUMMARY OF FACTS

The information before the ministry at the time of reconsideration included the following:

- Letter from the appellant's physician (the "Physician") dated June 13, 2017 (the "Letter") indicating that the appellant has multiple medical illnesses with a long standing mood disorder including depression, anxiety and post traumatic stress disorder, previous drug addiction (but is doing fine at the current time), history of B12 deficiency, osteoporosis, osteoarthritis of the lower spine with associated scoliosis of the lower back. The Physician indicates that the appellant has been followed at the chronic pain clinic for injections of her lower back
- Application for Monthly Nutritional Supplement dated August 11, 2017 in which the appellant's physician (the "Physician") indicates that the appellant has been diagnosed with osteoporosis and vitamin B12 deficiency and that she has severe bone deterioration and needs vitamin B12 and vitamin D supplementation. The Physician recommends that the appellant needs a diet high in calcium and vitamin D, and that she needs "*green leafy vegetables, beans, fish, dried fruit, [illegible], yogurt, milk, etc.*" (the "MNS Application"). For vitamin or mineral supplements required, the Physician indicates that the appellant requires vitamin B12 monthly shots, vitamin B12 1000 mg daily, vitamin D 1000 units, vitamin C 500 mg daily, and multivitamins to treat her illness. The Physician indicates that without these items the appellant's bones will deteriorate and she will suffer fractures and that if her vitamin B12 deficiency is not treated the appellant will have anemia/permanent neurological problems. For nutritional items, the Physician indicates that the appellant has vitamin B12 deficiency and does not absorb B12 properly
- Medical laboratory form, undated requesting a hematology profile and other tests of ESR, protein electrophoresis and CPK. The form indicates that the appellant reports "pain all over" and has diffuse myalgia not yet determined
- The appellant's Request for Reconsideration form dated October 24, 2017 in which she states that she is getting tested for cancer
- Letter from a specialist (the "Hematologist") dated November 1, 2017 indicating that the appellant was referred for assessment due to findings of iron deficiency and abnormal serum free light chain assay. The letter indicates that the appellant reported feeling generally unwell for quite some time with diffuse aching with no features suggestive of inflammatory arthritis. The appellant reported that she has been a bit anorexic but there has not been any weight loss. The Hematologist indicates that the appellant has a history of anxiety, depression and chronic back pain, that she has osteopenia and takes supplements of calcium and vitamin D. The letter also indicates that she has a previous history of peptic ulcer and tends to get vomiting when under stress and has recently been experiencing what may be pharyngeal dysphagia. The Hematologist indicates that her recent blood work indicates borderline anemia and mild iron depletion and he suggested that the appellant consider using ferrous gluconate once daily. The Hematologist indicates that the appellant has done reasonably well despite not having had significant iron replacement. He states that she has had appropriate investigation and does not require other investigation or intervention at this point other than monitoring her CBC and ferritin, perhaps every six months
- Note from the Physician dated November 10, 2017 (the "Note") indicating that the appellant has significant anxiety, stress and depression and that she suffers from iron deficiency and vitamin B12 deficiency. The Physician indicates that the appellant needs increased iron supplements and a diet rich in iron and vitamin B12

- The appellant's revised Request for Reconsideration dated November 20, 2017 ("RFR") indicates that the appellant is getting tested for cancer, requires blood tests every six months, had an ultrasound that indicated a fatty spot on her liver for which she is waiting for a further scan and to see a specialist. The RFR indicates that the appellant is having problems breathing and asthma has been ruled out, she has a chronic sinus infection and her stress level is "way over the top". The appellant states that with her income she cannot afford the vitamins and food that the Physician has recommended

#### **Additional information provided**

The appellant's Notice of Appeal dated November 30, 2017 indicates that she is still awaiting further information from 3 specialists. She also states that she believes that the Physician misunderstood some of the questions and that he did not answer them properly. With the appellant's Notice of Appeal were the following:

- Handwritten letter from the appellant dated November 29, 2017 with a list of upcoming medical appointments
- Letter from a respiratory and allergy clinic dated November 24, 2017 indicating that the appellant attended for a consult with a Respirologist on December 5, 2017
- Referral/Notification dated November 27, 2017 indicating that the appellant was referred on an urgent basis for follow up for her right hand
- Appointment Notice indicating an appointment at a hospital on December 19, 2017 for a CT: abd/Liver/Triphasic/C+

Prior to the hearing the appellant provided a submission dated January 9, 2018 with various documents as follows ("Submission 1"):

- Diagnostic Imaging Report Abdominal Ultrasound dated October 24, 2017 (the "Ultrasound") indicating that the appellant has a "2.4 centimeter geographic/wedge-shaped hepatic hyperechoic lesion along the falciform ligament extending to the periphery of the liver margin could relate to focal fat deposition"
- Diagnostic Imaging Report November 10, 2017 X-ray sinuses due to chronic sinus pain and chronic cough
- Diagnostic Imaging Report CT Abdomen/Liver dated December 19, 2017 (the "CT"), which indicates that a comparison was being made with the Ultrasound report. The findings indicate that the appellant had a normal gallbladder, there were no concerning lesions on the appellant's liver, and no evidence of bile duct dilation. The report indicates that the Ultrasound finding could relate to focal fatty infiltration which has resolved
- Document with signs of stress and mental signs
- HealthLink BC documents: Nutrition Check for Vitamin B12; Eating Guidelines for Osteoporosis, Eating Guidelines for Reactive Hypoglycaemia, Lifestyle Steps for Healthy Weight Loss; Healthy Eating Guidelines with Non-Alcoholic Fatty Liver Disease

The appellant also provided a further submission dated January 16, 2018 that included the results of a genital swab indicating that the appellant had Herpes Simplex Virus Type 2. On the laboratory test results the appellant wrote that she has not been in a relationship for over 10 years and that prior to that her sexual desire was low and that she was totally surprised by this diagnosis. The appellant stated that a doctor told her that this virus can remain dormant in one's system and be active and her immune system is low, usually caused by stress. The appellant also states that prior to this infection she had a staff infection, another one caused by a low immune system.

At the hearing, the appellant stated that she has provided a lot of documents that demonstrate she suffers from numerous medical conditions. The appellant states that the Physician will not provide the information required in question 3 of the MNS Application to identify two or more symptoms that she experiences as a result of her chronic, progressive deterioration of health. She also stated that the Physician told her that in his opinion, the second page of the MNS Application is just a repeat of the first page so he did not need to fill it out. The appellant states that the Physician "*gave me the finger*", told her that her immune system is not suppressed and told her to see another doctor if she was not happy with his care. The appellant reports that the Physician said to her "*you just won't give up*" and that she pushes for further tests and investigations that in his view are not necessary.

The appellant stated that she is concerned about her body because she has ongoing infections and chronic sinus infections, but the Physician says nothing to explain the cause of the infections. The appellant stated that she has fatty liver disease and the Physician did not even tell her to go on a special diet or eat certain foods to help combat that, as is suggested in the HealthLink BC documents. The appellant stated that the Physician told her that the HealthLink "*doesn't know what they're talking about*" but the registered nurse that the appellant spoke to told her that fatty liver could become severe if the proper diet is not followed.

The appellant advised that the Physician gave her a prescription for iron and that the ministry is covering the cost of her iron supplements and vitamin B12 but not the calcium or mult-vitamin supplements. She also stated that after her other monthly expenses, she does not have enough money to purchase the fresh food that she requires for her diet.

The appellant stated that she has osteoporosis and suffered a fracture in both fingers in her right hand from a fall on her bedroom floor, that she has a fatty liver (even though the Physician only says it's a small amount), she is very stressed, is overweight and that it is full time work going to all of her medical appointments. The appellant stated that she has pain in her legs and cannot walk properly, and that sometimes she has to crawl to the bathroom. She states that it is hard to write and that her hand is not healing properly.

The appellant stated that the Physician told her that she does not have asthma but the respirologist told her she has asthma in relation to chemical irritants. and that there are different tests for the immune system. The appellant stated that she has an upcoming appointment at the hospital for an asthma test. The appellant also stated that she has been referred to an otolaryngologist for assessment of her chronic sinus infections, but has not seen him yet.

The appellant stated that she has low back pain (scoliosis) and was receiving injections from the pain clinic for that condition but she stopped going because the injections hurt.

At the hearing the ministry presented a written submission setting out its position (the "Ministry Submission").

### **Admissibility of New Information**

The ministry did not object to the information in the appellant's Notice of Appeal, her oral testimony, Submission 1, or Submission 2. The panel has admitted the information in the Notice of Appeal, Submission 1 and the appellant's oral testimony into evidence, pursuant to section 22(4) of the *Employment and Assistance Act*, as they are in support of the information before the ministry at the time of reconsideration regarding the appellant's medical condition. The panel has not admitted Submission 2 into evidence as it contains a new diagnosis that was not before the ministry at the time of reconsideration.

The panel has accepted the Ministry Submission as argument.

## **PART F – REASONS FOR PANEL DECISION**

The issue on this appeal is whether the ministry's decision to deny the appellant funding for a MNS on the basis that the appellant did not meet the criteria set out in section 67(1.1) c and d and Schedule C, section 7(a) of the EAPWDR was reasonable. In particular, was the reconsideration decision in which the ministry determined that the information provided did not demonstrate that the appellant's medical practitioner had described how the specified items would alleviate a specific symptom set out in EAPWDR section 67(1.1)(b), that the failure to obtain the specified items would result in imminent danger to the appellant's life and that there was insufficient evidence to establish that the requested MNS were required as part of a caloric supplementation to a regular dietary intake was reasonable.

The relevant legislation is as follows:

### **EAPWDR - 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 person with disabilities in a family unit who receives disability assistance under

(a) section 2 [monthly support allowance], 4 [monthly shelter allowance], 6 [people receiving room and board] or 9 [people in emergency shelters and transition houses] of Schedule A, or

(b) section 8 [people receiving special care] of Schedule A, if the special care facility is 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 a supplement under section 2 (3) [general health supplement] of Schedule C,

(e) the person is not receiving a supplement under subsection (3) or section 66 [diet supplements],

(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 or nurse practitioner, in which the practitioner has confirmed all of the following:

(a) the person with disabilities to whom the request relates is being treated by the 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.

(B.C. Reg. 68/2010)

(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 or nurse practitioner other than the practitioner referred to in subsection (1) (c). (B.C. Reg. 68/2010)

#### **EAPWDR Schedule C, Health Supplement - MNS**

**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.C. Reg. 68/2010)

(b) Repealed (B.C. Reg. 68/2010)

(c) for vitamins and minerals, up to \$40 each month. (B.C. Reg. 68/2010)

#### **Chronic Progressive Deterioration of Health**

The appellant's position is that she has osteoporosis, vitamin B12 deficiency, chronic pain, chronic sinus infections, asthma, fatty liver and she requires calcium and multi-vitamins as well as a diet that has more fruits, vegetables and fish. The appellant acknowledges that the Physician has not indicated that she displays two or more of the symptoms required in EAPWDR section 67 (1.1) (b) but argues that the totality of the medical information provided should be sufficient to establish that she needs the MNS.

The ministry's position, as set out in the reconsideration decision and the Ministry Submission, is that the information provided is not sufficient to meet all of the legislative criteria. The ministry's position is that the information from the Physician establishes that the appellant has osteoporosis and vitamin B12 deficiency and that she is being treated for a chronic, progressive deterioration of health due to a severe medical condition as required by EAPWDR section 67(1.1)(a). However, the ministry's position is that as the Physician does not confirm that the appellant displays two or more of the symptoms set out in EAPWDR section 67(1.1)(b) as a direct result of the chronic, progressive deterioration of health, she has not met all of the legislative criteria.

The reconsideration decision indicates that although the Physician indicated that the appellant did not display any of the symptoms listed in EAPWDR section 67(1.1)(b) being malnutrition, significant weight loss, significant muscle mass loss, significant neurological degeneration, moderate to severe immune suppression or significant deterioration of a vital organ, the ministry found that the appellant was displaying the symptom of malnutrition, as the Physician had confirmed that the appellant had a vitamin B12 deficiency. However, as only one symptom is identified, and the legislation requires that two or more symptoms be displayed, the legislative requirements have not been met.

The reconsideration decision indicates that the ministry reviewed the additional information provided with the appellant's RFR and that while the additional documentation speak to an iron and vitamin B12 deficiencies, these are indicative of the symptom of malnutrition and not any of the other symptoms.

The reconsideration decision notes that although the Physician indicates that if the appellant's vitamin B12 deficiency is not treated, it will "*severely [word omitted] anemia/permanent neurological damage*". However, the ministry notes that the Physician does not confirm that the appellant is currently displaying the symptom of significant neurological degeneration.

Panel Decision:

EAPWDR section 67(1.1)(b) requires that 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. In the MNS Application, for question 3, where asked if the appellant displays two or more of those symptoms, the Physician wrote "No".

The ministry accepted that the appellant displays malnutrition due to her iron deficiency and vitamin B12 deficiency despite the fact that the Physician did not indicate that symptom. However, as none of the other documentation provided indicates that the appellant displays at least one of the other required symptoms, the panel finds that the ministry reasonably determined that the legislative criteria of EAPWDR section 67(1.1)(b) was not met.

Although the Hematologist noted that the appellant reported that she has been a bit anorexic, he indicates that there has been no weight loss. The Physician indicates that the appellant is 5'3" and weighs 150 pounds and the appellant herself stated that she is overweight and needs to lose weight, so there is no evidence that the appellant's status is underweight or that she has lost significant weight. None of the medical documentation provided indicates that the appellant currently has significant muscle mass loss.

While the MNS Application indicates that if the appellant's vitamin B12 deficiency is not treated it will "*severely [word omitted] anemia/permanent neurological damage*". However, the panel finds that the ministry reasonably determined that the Physician does not confirm that the appellant is currently displaying the symptom of significant neurological degeneration.

The appellant argues that she has fatty liver, a serious condition which requires treatment by proper diet or it can lead to a significant deterioration of a vital organ, and the panel notes that the Ultrasound indicated the presence of a small lesion on her liver. However, the subsequent CT indicates that the appellant had a normal gallbladder, there were no concerning lesions on the appellant's liver, and no evidence of bile duct dilation. The CT indicates that the Ultrasound finding could relate to focal fatty infiltration which has resolved. As the CT indicates that the Ultrasound finding could relate to focal fatty infiltration which has resolved, and as there is no other medical documentation indicating that the appellant is displaying the symptom of significant deterioration of a vital organ, the panel finds that the ministry reasonably determined that the appellant is not currently displaying the symptom of significant deterioration of a vital organ.

While the appellant reports significant stress, pain and chronic infections, the other medical documentation does not confirm that she currently displays moderate to severe immune suppression. Although the appellant indicates that the Respiriologist told her that there are other tests to determine how well her immune system is

functioning and although the appellant is going for some further testing, the panel finds that the ministry reasonably determined that the appellant was not currently displaying the symptom of moderate to severe immune suppression.

Based on the above the panel finds that the ministry reasonably determined that the legislative criteria required in EAPWDR section 67(1.1)(b) were not met.

#### Vitamin Mineral Supplementation

The appellant's position is that she requires calcium and multi-vitamin supplements as well as a proper diet with more fruits, vegetables, fish and calcium, as indicated by the Physician in the MNS Application and as set out in the HealthLink BC documents.

The ministry's position is that although the Physician recommends vitamins B12, D, C and a multivitamin in order to treat the appellant's illness of osteoporosis and vitamin B12 deficiency, the vitamin and mineral supplement cannot be approved as two or more symptoms were not established as required by EAPWDR section 67(1.1)(b).

The reconsideration decision indicates that the information from the Physician does not confirm that failure to obtain vitamin/mineral supplementation will result in imminent danger to the appellant's life. The reconsideration decision notes that the Physician indicates that failure to treat her B12 deficiency may lead to anemia and permanent neurological damage, but the Physician does not confirm that the appellant is currently displaying the symptom of significant neurological degeneration. The ministry also notes that although the Hematologist indicates that the appellant has "*evidence of borderline anemia and mild iron depletion*", this information does not support a finding that failure to provide the vitamin/minerals requested will result in an imminent danger to life.

The ministry's position is that EAPWDR section 67(1.1) requires that sections (b), (c) and (d) must all be met, and as the appellant has not those requirements, she is not eligible for the MNS of vitamin/mineral supplementation.

#### Panel Decision

For the reasons noted above the panel found that the ministry reasonably determined that the legislative requirements of EAPWDR section 67(1.1)(b) were not met as the information did not confirm that the appellant displayed two or more of the symptoms set out in the legislation.

EAPWDR section 67(1.1)(c) requires that the person needs the vitamin/mineral supplementation for the purposes of alleviating a symptom set out in EAPWDR section 67(1.1)(b). In the MNS Application, the Physician indicates that the vitamin B12, vitamin D, vitamin C and multivitamins, are required to alleviate the specific symptoms identified as they are needed to treat her illness. However, as the Physician did not indicate that the appellant was displaying any symptoms set out in EAPWDR section 67(1.1)(b), and as the additional medical documentation does not confirm that the recommended vitamin/mineral supplementation will alleviate the specific symptoms set out in EAPWDR section 67(1.1)(b), the panel finds that the ministry reasonably determined that EAPWDR section 67(1.1)(c) was not met.

In the MNS Application, the Physician indicates that failure to treat the appellant's vitamin B12 deficiency may lead to anemia and permanent neurological damage, but the Physician does not confirm that the appellant is currently displaying the symptom of significant neurological degeneration. The Hematologist indicates that the appellant reports feeling "*generally unwell*", has "*evidence of borderline anemia and mild iron depletion*" and



recommends an iron supplement; however the panel finds that the ministry reasonably determined that this information does not support a finding that failure to provide the vitamin/minerals requested will result in an imminent danger to life as required by EAPWDR section 67(1.1)(d).

The panel notes that in the Letter, the Physician indicates that the appellant has a long standing mood disorder including depression, anxiety and Post Traumatic Stress Disorder, for which she has been followed by numerous specialists. The Physician also indicates that the appellant has a history of vitamin B12 deficiency, osteoporosis, osteoarthritis the lower spine with associated scoliosis of the lower back. However, the Physician does not provide any further information indicating that the failure to obtain the recommended items will result in imminent danger to the appellant's life.

The panel notes that the Diagnostic Imaging Reports contain inconsistent information in that the Ultrasound found a small fatty deposit on the appellant's liver whereas the CT was normal. While the appellant indicates that she is concerned about her body due to the finding of a fatty liver and her chronic infections, this information and documentation does not indicate that failure to obtain the recommended items will result in imminent danger to the appellant's life.

Based on the above, the panel finds that the ministry was reasonable in determining that the criteria for a request for vitamins/minerals was not met.

#### Nutritional Items

The appellant's position is that the MNS Application confirms that she requires a diet high in calcium/vitamin D, green leafy vegetables, beans, fish, dried fruit, yogurt and milk. The appellant's position is that she does not have the income to purchase the required diet. The appellant argues that she requires these items to make her body stronger and address her various medical conditions including chronic pain, chronic infections, osteoporosis and a fatty liver.

The ministry's position is that the information provided does not establish that 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 EAPWDR section 67(1.1)(b) and that failure to obtain the requested items would result in imminent danger to the appellant's life. The reconsideration decision notes that the Physician specifies that the appellant requires a *"diet high in calcium/vitamin D and that she requires green leafy vegetables, beans, fish, dried fruit [illegible], yogurt, milk, etc."* and that he indicates that the appellant has vitamin B12 deficiency and does not absorb vitamin B12 properly. However the reconsideration decision indicates that the Physician does not provide any further information in response to question 6 of the MNS Application and there is no further narrative to indicate that nutritional supplementation is requested.

The reconsideration decision also indicates that the Physician does not describe how the nutritional items required will alleviate one or more of the symptoms specified in EAPWDR section 67(1.1)(b) and provide caloric supplementation to the regular diet. In particular, the ministry notes that the Physician does not indicate that the appellant displays symptoms of underweight status, significant weight loss, or significant muscle mass loss, which would indicate a need for caloric supplementation. The reconsideration decision notes that the MNS Application indicates the height and weight recorded (5'3" and 150 lbs) indicates that the appellant's BMI is 26.6, which is overweight.

The ministry's position is that the Physician's specifications of a diet high in calcium/vitamin D, green leafy vegetables, beans, fish, dried fruit, yogurt and milk is a recommendation that these items be included in the

appellant's regular dietary intake and does not establish that the appellant requires caloric supplementation to a regular dietary intake.

The reconsideration decision also indicates that the Physician does not describe how the nutritional items requested will prevent imminent danger to life.

Panel Decision:

In the MNS Application, the physician specifies that the appellant requires a *"diet high in calcium/vitamin D and that she requires green leafy vegetables, beans, fish, dried fruit [illegible], yogurt, milk, etc."* The Physician does not specify the additional nutritional items required and expected duration of need in response to question 6 on the MNS Application. The Physician indicates that the appellant has vitamin B12 deficiency and does not absorb vitamin B12 properly but does not provide any other information to indicate that 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 Physician does not describe how the nutritional items will alleviate one or more of the symptoms required in EAPWDR section 67(1.1)(b) and he does not provide any information to describe how the nutritional items requested will prevent imminent danger to the appellant's life.

As the physician has not provided any information indicating the specified nutritional items or the recommended diet are required as part of a caloric supplementation to a regular dietary intake, has not identified how the recommended diet will alleviate one or more of the symptoms specified in EAPWDR section 67(1.1)(b) and has not provided any information to explain how the nutritional items will prevent imminent danger to the appellant's life, as required by EAPWDR section 67(1.1) (d), the panel finds that the ministry was reasonable in determining that the information provided did not meet the legislative criteria for the MNS of nutritional items.

The panel notes that the Physician does not indicate that the appellant displays symptoms of underweight status, significant weight loss, or significant muscle mass loss, which would indicate a need for caloric supplementation. The information in the MNS Application indicates that the appellant is 5'3" and 150 lbs, and the appellant's evidence is that she is overweight. Although the Hematologist indicates that the appellant has a history of peptic ulcer and tends to get vomiting when under stress, he indicates that she has not had any weight loss and he does not provide any information to indicate that the appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake or that the nutritional items are required to prevent imminent danger to the appellant's life.

While the information provided in the HealthLink documents provides valuable information regarding proper dietary intake and recommendations to treat medical conditions such as fatty liver and osteoporosis, there is no additional information to establish that the appellant requires caloric supplementation to a regular dietary intake. While the panel appreciates that the appellant is very concerned about taking proper care of her body, the CT indicates that her liver is normal which contradicts her position that she has a fatty liver and there is no further information indicating that the appellant has or is experiencing medical issues as a result of a fatty liver.

Based on the above the panel finds that the ministry reasonably determined that the appellant did not meet the legislative criteria required of EAPWDR section 67(1.1)(b)(c) and (d) as required to qualify for the MNS of nutritional items.

## **Conclusion**

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision finding the appellant ineligible for MNS as the legislative criteria of EAPWDR section 67(1.1)(b)(c), and(d) and Schedule C, section 7(a) were not met was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.