

#### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated May 3, 2018 which denied the appellant's request for a Monthly Nutritional Supplement (MNS) for additional nutritional items. The ministry held that the requirements of Section 67(1.1) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) and Section 7 of Schedule C were not met as there is not sufficient information to establish that:

- the practitioner has confirmed that the appellant requires additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life.

#### **PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67(1.1) and Schedule C, Section 7

## PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Hematology Report dated June 5, 2017 indicating that the appellant's ferritin level is diagnostic of iron deficiency;
- 2) Letter dated July 6, 2017 in which a rheumatologist wrote:
  - The appellant was evaluated for inflammatory polyarthritis.
  - The appellant reports some dyspnea on exertion.
  - The appellant has anemia which was thought to be iron deficient and she underwent iron replacement in 2016 but is no longer taking it.
  - The appellant's past medical history includes hypertension and presumed RA.
  - The appellant is taking a number of medications that relate to anxiety and depression, Gastritis, and RA.
  - On physical exam, the appellant's weight is recorded.
  - The impression included the importance of Calcium and Vitamin D and that the appellant should be up-to-date with her vaccinations;
- 3) Application for MNS dated December 22, 2017 signed by the appellant's medical practitioner (MP) and stating in part that:
  - The appellant's severe medical conditions are Rheumatoid Arthritis (RA), Iron Deficient Anemia (IDA), and Osteoporosis;
  - In response to the question whether, as a direct result of the severe medical condition, the appellant is being treated for a chronic, progressive deterioration of health, the MP wrote: "See consultant report- RA; See lab- IDA."
  - In response to the question whether as a direct result of the chronic progressive deterioration in health, does the appellant display two or more symptoms, the MP indicated the symptoms of significant weight loss and wrote: "decreased nutrition- Gastritis," and the symptom of significant muscle mass loss and wrote: "decreased iron- decreases muscle mass," and the symptom of moderate to severe immune suppression and wrote: "RA- decreases immunity;"
  - The appellant's height and weight are recorded, indicating a loss of 43 lbs. in the 5 months since the rheumatologist's letter of July 6, 2017;
  - In response to a request to specify the additional nutritional items required, the MP wrote: "none";
  - In response to the question whether 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 MP wrote: "RA needs addition supplementation for bone health and will not be able to adequately absorb enough Calcium/ Vitamin D3 1,000 IU and Folic Acid 5 mg OD, severe IDA- needs iron supplementation";
  - Asked to describe how the nutritional items required will alleviate one or more of the symptoms described and provide caloric supplementation to the regular diet, the MP wrote: "Caloric intake supplementation will prevent Osteoporosis, and with

injections of Methotrexate- Calcium required because side effects increases without that vitamin. Iron will decrease palpitations and shortness of breath from anemia;"

- Asked to describe how the nutritional items will prevent imminent danger to the appellant's life, the MP wrote: "Iron- if low can cause palpitations/ breathing/ increases anxiety and hospital admissions (has already required 2 blood transfusions for low Hemoglobin, in October 6, 2016), now rising with oral but still at risk for more blood transfusions if stops tablets;" and
  - For additional comments, the MP wrote that in summary RA requires: 1) Vitamin D3, 2) Calcium, (both Vitamin D and Calcium for Osteoporosis prevention according to the rheumatologist consult, 3) Folic Acid to prevent the side effects of Methotrexate injections, and 4) Iron to prevent blood transfusions and fix anemia; and,
- 4) Request for Reconsideration dated February 2, 2018 in which the appellant wrote that in consideration of the doctor's report and her health condition, she is not satisfied with the decision.

### ***Additional information***

In the Notice of Appeal, the appellant expressed her disagreement and dissatisfaction with the ministry's reconsideration decision.

Prior to the hearing, the appellant provided her submission in an email dated May 17, 2018, in which she wrote:

- She has arthritis, low Haemoglobin, infection in her blood, high blood pressure, depression, and a lack of protein and calcium and other required vitamins.
- She cannot afford these vitamins and she needs money for her supplements and other high protein diet.

### ***Admissibility of New Information***

The ministry did not raise an objection to the admissibility of the additional documents submitted by the appellant, which provided information regarding the appellant's health conditions and her need for nutritional items. As the information relates to conditions touched upon in the rheumatologist's letter dated July 6, 2017, which was before the ministry at reconsideration, the panel has admitted this document as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4) of the *Employment and Assistance Act*. The panel placed little weight on the appellant's reference to the conditions of high blood pressure and depression as these were not identified as medical conditions or elaborated upon by the MP in the application for a MNS.

The ministry relied on its reconsideration decision as the ministry's submission on the appeal.

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

The issue on the appeal is whether the ministry decision, which denied the appellant's request for a Monthly Nutritional Supplement for additional nutritional items because the requirements of Section 67(1.1) of the EAPWDR and Section 7 of Schedule C were not met, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 67(1.1) of the EAPWDR sets out the eligibility requirements which are at issue on this appeal for providing the additional nutritional supplement, as follows:

### **Nutritional supplement**

- 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 or nurse practitioner, in which the practitioner has confirmed all of the following:
- (a) the person with disabilities to whom the request relates is 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.

Section 7 of Schedule C of the EAPWDR provides as follows:

### **Monthly nutritional supplement**

- 7 The amount of a nutritional supplement that may be provided under section 67 [nutritional supplement] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):
- (a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;

(b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]

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

### *Vitamins and Minerals*

The ministry found that the appellant's request for the MNS of vitamins/minerals meets the eligibility criteria set out in Section 67(1.1) of the EAPWDR and it was approved.

### *Additional Nutritional Items- Section 67(1.1)(a) & (b)*

The ministry acknowledged that a MP confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically RA, IDA and Osteoporosis, pursuant to Section 67(1.1)(a) of the EAPWDR.

Section 67(1.1)(b) of the EAPWDR requires that a medical or nurse practitioner confirm that as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the symptoms listed. While the MP indicated that the symptom of significant weight loss is applicable and noted "decreased nutrition- Gastritis," the ministry wrote in the reconsideration decision that no information is provided to explain the amount of weight the appellant has lost and the period of time over which the weight loss has occurred. However, the ministry unreasonably failed to consider that the appellant's height and weight are recorded in the MNS application and that this information indicates a loss of 43 lbs. in the 5 months since the rheumatologist recorded the appellant's weight in the letter of July 6, 2017. Although the ministry also wrote that the appellant's Body Mass Index (BMI) is slightly above normal and does not support the symptom of 'underweight status,' this was not a symptom identified by the MP in the MNS application. While the ministry did not describe the evidence upon which it relied, the ministry acknowledged that there is sufficient information from the MP in the MNS application to establish that the appellant displays two or more of the symptoms, namely: significant muscle mass loss and moderate to severe immune suppression.

### *Caloric Supplementation- Section 67(1.1)(c) and Section 7 of Schedule C of the EAPWDR*

Section 7(a) of Schedule C and Section 67(1.1)(c) of the EAPWDR stipulate that a medical or nurse practitioner must confirm that, for the purpose of alleviating a symptom referred to in sub-section (b), the appellant requires the additional nutritional items that are part of a caloric supplementation to a regular dietary intake as specified in the request. In response to the request to specify the additional nutritional items required by the appellant, the MP wrote in the MNS application: "none." In the reconsideration decision, the ministry reasonably considered that there were no additional nutritional items itemized that provide caloric supplementation, such as one of the high calorie liquid supplements. When asked in the MNS application whether 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 MP wrote: "RA needs

addition supplementation for bone health and will not be able to adequately absorb enough Calcium/ Vitamin D3 1,000 IU and Folic Acid 5 mg OD, severe IDA- needs iron supplementation." The panel finds that the ministry reasonably considered that, in the absence of further information from the MP, the comments in the MNS application demonstrate that the appellant needs to consume additional vitamins and minerals to address the symptoms of her chronic, progressive deterioration of her health, rather than a need for additional nutritional items, i.e. a need to consume caloric supplementation to her regular dietary intake.

Asked to describe how the nutritional items required will alleviate one or more of the symptoms described and provide caloric supplementation to the regular diet, the MP wrote: "Caloric intake supplementation will prevent Osteoporosis, and with injections of Methotrexate- Calcium required because side effects increases without that vitamin" and that "Iron will decrease palpitations and shortness of breath from anemia." Although the MP indicated that caloric supplementation will prevent Osteoporosis, the MP does not specify which nutritional items are required, nor does he relate the caloric supplementation to the alleviation of any of the symptoms the MP identified, specifically: significant muscle mass loss, moderate to severe immune suppression, or significant weight loss. While the available information indicated that the appellant has lost over 40 lbs. in 5 months, as previously discussed, Section 67(1.1)(c) of the EAPWDR requires that the ministry be *satisfied* that the practitioner has confirmed the appellant requires the nutritional items for the purpose of alleviating a symptom. The panel finds that the ministry reasonably relied on the response provided by the MP and did not attempt to draw inferences or connections in the reconsideration decision between Osteoporosis and weight loss.

The MP also described how vitamins and minerals, namely Calcium and Iron, will decrease the side effects of medications and the symptoms of anemia, respectively, and did not identify required additional nutritional items. Section 7 of Schedule C provides for specified additional nutritional items that are "*part of a caloric supplementation to a regular dietary intake*" that is required to alleviate a symptom, and the panel finds that the ministry reasonably required the MP to confirm a need for a supplementation of calories beyond a regular, balanced diet. The panel finds that the ministry reasonably concluded that there is not sufficient information from the MP to confirm that specified additional nutritional items are required by the appellant as part of a caloric supplementation to a regular dietary intake to alleviate a related symptom, as set out in Section 67(1.1)(c) of the EAPWDR.

*Imminent Danger to Life- Section 67(1.1)(d) of the EAPWDR*

Section 67(1.1)(d) requires that a medical or nurse practitioner confirm that failure to obtain the nutritional items that are part of a caloric supplementation to a regular dietary intake will result in imminent danger to the person's life. In the MNS application, the MP responded to the question how the nutritional items will prevent imminent danger to the appellant's life, by writing: "Iron- if low can cause palpitations/ breathing/ increases anxiety and hospital admissions (has already

required 2 blood transfusions for low Hemoglobin, in October 6, 2016), now rising with oral but still at risk for more blood transfusions if stops tablets.” The ministry found that the information from the MP fell short of confirmation that failure to provide nutritional items specifically for caloric supplementation will result in an imminent danger to the appellant’s life, particularly as the MP did not identify the additional nutritional items required and again referred to a needed mineral supplement of Iron. In the additional comments to the MNS application, the MP emphasized the appellant’s need for vitamin/mineral supplementation by writing that RA requires Vitamin D3, Calcium, Folic Acid, and Iron. As noted above, the ministry approved the appellant’s request for a MNS for vitamins and minerals.

As the ministry reasonably determined that there was insufficient information to show that the MP had confirmed that specified nutritional items are required by the appellant as part of a caloric supplementation to a regular dietary intake, the panel finds that the ministry also reasonably concluded that the MP has not confirmed that failure to obtain nutritional items that are specifically part of a caloric supplementation to a regular dietary intake, will result in imminent danger to the appellant’s life, as required by as required by Section 67(1.1)(d) of the EAPWDR.

#### *Conclusion*

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a MNS for additional nutritional items on the basis that all of the requirements of Section 67(1.1) of the EAPWDR and Section 7 of Schedule C were not met, was reasonably supported by the evidence and the panel confirms the ministry's decision. Therefore, the appellant’s appeal is unsuccessful.

**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)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018-06-07

PRINT NAME

Simon Clews

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-06-07

PRINT NAME

Margarita Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-06-08