

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated June 4, 2019 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 oral consent of the appellant, a ministry observer attended but did not participate in the hearing.

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

- 1) Letter dated March 21, 2019 in which an optometrist wrote:
 - The appellant suffers from Lupus and this has led to the manifestation of Sjogren's Syndrome, which is an autoimmune issue that typically causes extremely dry eyes and dry mouth.
 - The appellant is currently using over-the-counter artificial tears to little success and the ocular dryness is causing a great deal of discomfort and pain and is having an impact on her quality of life. There is currently no treatment.
 - There are two trial medications available that are not covered by Pharmacare and are expensive.
- 2) Application for MNS dated April 8, 2019 signed by the appellant's medical practitioner (MP) and stating in part that:
 - The appellant's severe medical conditions are Sjogren's Syndrome and Lupus;
 - 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: "Yes. Refractory dry eyes, treated with little success with excessive artificial tear use, needs meds which are expensive and unaffordable. Recurrent excruciating pain of uterus, bladder. Needs high protein diet to support body tension."
 - 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 possible malnutrition and the symptoms of significant muscle mass loss, moderate to severe immune suppression and wrote: "Sjogren's Syndrome affects multiple body organs, mucosa," and the symptom of significant deterioration of a vital organ and wrote: "mucosa of GI system. Needs high protein diet to support body function. Excruciating bladder and uterus pain, needs suppressive treatment;"
 - The appellant's height and weight are not recorded;
 - In response to a request to specify the additional nutritional items required, the MP left this section incomplete;
 - 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: "Sjogren's Syndrome affects mucosa of body including gastrointestinal system & Lupus";
 - 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: "High protein diet. Vitamins and minerals help to support body function, as the primary disease has no cure therapy;"
 - Asked to describe how the nutritional items will prevent imminent danger to the appellant's life, the MP wrote: "The primary diseases have no definite treatment, supportive approach is essential to improve quality of life;" and

- For additional comments, the MP wrote that the appellant “suffers from diseases such as Sjogren’s Syndrome, Lupus, which cause damage to multiple organs, tissues of body. The symptoms are refractory to treat and impact patient’s life quality and function. The disease itself has no definite treatment and not curable. Supportive approaches such as high protein diet, supplement of omega oils, vitamins and minerals are important for ongoing treatment. It is definitely reasonable and important to give patient monthly nutritional supplement”; and,
- 3) Letter dated May 13, 2019 in which a gynecologist wrote that she is following up with the appellant on an ‘as needed’ basis as her Lupus flares affect her gynecologic organs.
 - 4) Letter dated May 14, 2019 in which a dentist wrote:
 - Systemic lupus erythematosus (SLE) can present with xerostomia (dry mouth) and dry mouth can cause many severe dental problems.
 - The appellant has recently been diagnosed with SLE and is also suffering from dry mouth, which is why the appellant has been prescribed a medicate lozenge to stimulate salivary production.
 - 5) Letter from the appellant dated May 24, 2019 in which she wrote:
 - She will go days without eating and only drinking her protein drinks and taking her vitamins.
 - Her physical condition is poor. She has chronic fatigue and she is slow to recover from a cold, the flu, pneumonia, rheumatoid arthritis, lung issues, GERD [gastroesophageal reflux disease], GI tract, bladder, eye, mouth, skin problems.
 - Protein, vitamins, minerals are nutrients that her body needs daily in order to work.
 - Her skin has also been affected (neck, face, shoulders, arms), her eyes (tear ducts), mouth (saliva),
 - Her gynecological organs and tissues are so bad it is hard to urinate.
 - Her GI tract- heartburn, GERD, IBS [Irritable Bowel Syndrome], hernia all cause a lot of vomiting, diarrhea, and problems eating.
 - Her malnutrition is also very poor. She has lack of appetite, tired, always sick, sleeps lots in the day, poor diet, feeling weak, have muscle loss due to losing weight faster than normal, lack of exercise, feeling exhausted with small tasks.
 - Lupus is a serious, chronic disease and is life-threatening.
 - She was in hospital for over 2 weeks as her lungs were affected and she got chronic double pneumonia, both lungs, from her Lupus.
 - She listed high protein supplement, Omega 3 Fish Oil, Calcium, Vitamin D, multivitamin, Ensure, protein powder, and Boost.
 - She listed doctors she sees regarding her Lupus as a gynecologist, rheumatologists, gastroenterologist, pulmonologist, optometrist, and dentist.
 - 6) Amended Application for MNS dated May 24, 2019 with the changes initialed by the appellant’s MP, with the additional information provided as follows:
 - The appellant’s severe medical conditions also include skin rash and “lung involvement from Lupus”;
 - 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 added notes to the symptom of possible malnutrition that “lack of appetite, poor diet, gets diarrhea from routine foods, difficulty swallowing, cannot tolerate routine food.” The MP added the symptom of significant weight loss with a note that the

appellant "lost 23 pounds within 1 month from primary diseases, Sjogren's Syndrome." For the symptom of significant muscle mass loss, the MP noted "muscle weakness, muscle atrophy, mobility and activity restricted."

- The appellant's height and weight were added;
 - The MP did not specify the additional nutritional items required.
- 7) Request for Reconsideration dated May 24, 2019 to which the appellant attached her letter and the Amended Application.

Additional information

In the Notice of Appeal dated June 12, 2019, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote:

- Her total weight loss in one month has been 23 pounds from the diseases, not "2-3 pounds" as stated in the reconsideration decision.
- Diseases prevent her from eating solids for long periods at a time and this is breaking her body down and causes organ damage.
- This is where the caloric diet gives her strength and energy, source of nutrition, when she cannot consume solids as her doctor stated.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Letter dated June 23, 2019 in which the appellant wrote:
 - She also gets blood work done every 3 months.
 - She has jaundice as her liver enzymes levels are increased and other issues that need to be checked regularly with her liver. The doctor explained that this is a sign of Lupus activity.
 - She sees a doctor every 3 months regarding her lungs.
- 2) Appointment reminder for an MRI of the C-Spine on July 17, 2019;
- 3) Appointment reminder for Pulmonary Function test on July 18, 2019;
- 4) Appointment reminder for CT of the chest on August 26, 2019;
- 5) Appointment reminder for an ultrasound of the renal pelvis on August 30, 2019.

At the hearing, the appellant stated:

- She had a brain aneurysm in 1999 and had the same doctor for over 30 years. When her doctor retired, she was told that she was given a high priority to get a new doctor and was referred to the urgent primary care center.
- When she had the MNS Application filled out, it was the first time seeing the doctor. The doctor could not speak English well and did not read her file. The doctor saw four different patients at the same time and seemed to be in a hurry.
- When she had the amended Application completed, she asked the doctor to elaborate and requested that she read her medical history and take time to add more detail.
- She sees a pulmonologist for her lungs and spent 21 days in the hospital with pneumonia. She has been hospitalized 3 times since Christmas.
- She lost 23 pounds within one month, not "2-3" pounds as stated by the ministry in the reconsideration decision. A person could lose 2 to 3 pounds in one night. She lost this weight over the month of April, when she was hospitalized for pneumonia. When she went into the hospital, only the bottom left of one lung was affected but she was put on a

breathing machine and then both lungs were involved. She was put on a number of antibiotics but it looked like they would not be able to cure it and then something finally worked. She first saw the pulmonologist in the hospital, again in June and she has another appointment in September 2019.

- On the amended Application, the doctor added that one of her diagnoses is “lung involvement from Lupus,” but she also wrote in the symptom section “Lupus, probably involvement of lung,” which shows mistakes made by the doctor.
- The ministry wrote that she only has two symptoms but she actually has 5 out of the 7 listed. There is nothing mentioned about her GI system problems. She has not had a bowel movement in the last 8 months because there is only liquid. The significant deterioration of a vital organ relates to her lungs. She also has sites of jaundice because her liver is also affected.
- She spends her money on prescriptions that are not covered by the ministry. She takes an eye lubricant, a compound for her dry mouth, and a cream for the RA in her neck. She can only hold her head up for 3 to 4 hours at a time.
- She has been given an appointment for a pulmonary function test and this is her third test on her lungs. Her diseases are “eating her up fast.”
- Doctors charge to have letters written and she cannot afford to pay since she needs her prescriptions to get through the day. She needs help because of what she pays monthly for all the prescriptions. She also has to get her teeth cleaned every 4 months and the ministry only pays for one cleaning per year. She takes medication that affects the retina in her eye and she has to have this checked two times per year.
- She does not have a life since her family is in another province. If she eats solids, they just go right through her or she chokes. She can only get through the day with protein shakes, which she was given in the hospital. The bottles of Ensure are very expensive, so she ends up not eating.

The ministry relied on its reconsideration decision as summarized at the hearing. The ministry also clarified at the hearing that:

- The ministry is not disputing that the appellant is not well. The ministry acknowledges that the appellant has many health challenges and is seeing a number of physicians.
- It is possible that the doctor noted that the appellant lost “23” pounds in one month. If the ministry made an error with interpreting the notation made by the doctor regarding the weight lost in one month and the accurate number is “23” pounds, this is still not a “significant” weight loss without information indicating that the weight loss continued.
- If the appellant is not successful on the appeal, she is entitled to apply again for the MNS by having a new MNS Application form completed.

Admissibility of New Information

The ministry did not object to the admissibility of the additional documents submitted by the appellant, which provided information regarding testing relating to her diagnosed health conditions and her need for nutritional items. As the information relates to conditions referred to in the Application and supporting materials which were before the ministry at reconsideration, the panel admitted the appointment reminders and the appellant’s letter 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*.

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 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.

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 Sjogren's Syndrome (including dry eyes, dry mouth, autoimmune injury to mucosa), Lupus (multiple organ damage including joint pain, skin rash) and "lung involvement from Lupus," 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 "lost 23 pounds within 1 month from primary diseases, Sjogren's Syndrome," the ministry interpreted the MP's notation as "2 to 3 pounds" and wrote in the reconsideration decision that weight loss of 2 to 3 pounds over one month resulting in a BMI [Body Mass Index] in the obesity range, and without any indication that the weight loss has continued, is not considered "significant" weight loss, as required in Section 67(1.1)(b) of the EAPWDR.

In her Request for Reconsideration, the appellant wrote that she has lack of appetite, she is tired, always sick, sleeps lots in the day, has a poor diet, feels weak, has muscle loss due to losing weight faster than normal, and feels exhausted with small tasks. At the hearing, the appellant stated that she lost 23 pounds within one month, not "2-3" pounds as stated by the ministry in the reconsideration decision and commented that a person could lose 2 to 3 pounds in one night. The appellant stated that she lost 23 pounds over the month of April, when she was hospitalized for pneumonia. At the hearing, the ministry stated that it is possible that the doctor noted that the appellant lost "23" pounds in one month. The ministry stated, however, that if the ministry made an error with interpreting the notation made by the doctor regarding the weight lost in one month and the accurate number is "23" pounds, this is still not a "significant" weight loss without information indicating that the weight loss continued.

The panel finds as fact that the MP confirmed in the MNS Application that the appellant lost 23

pounds in one month, as clarified by the appellant at the hearing, and the ministry was unreasonable to conclude that the loss of 23 pounds over the period of one month does not support the MP's report that the symptom of significant weight loss applies to the appellant. Although the ministry also wrote that the appellant's BMI is in the obesity range and therefore does not support the symptom of significant weight loss, the panel finds that the BMI is relevant to the symptom of "underweight status" and this was not a symptom identified by the MP in the MNS application.

Although the MP also indicated that the symptom of significant deterioration of a vital organ applied to the appellant and noted "mucosa of GI system, needs high protein diet to support body function" and "excruciating bladder and uterus pain, needs suppressive treatment" as well as "Lupus, probably involvement of lung," the ministry wrote in the reconsideration decision that the bladder, uterus and mucosa are not considered "vital organs" and the MP's indication that there is "probably" involvement of the lungs with no elaboration is not sufficient to establish this symptom applies. At the hearing, the appellant argued that the doctor added that one of the diagnoses is "lung involvement from Lupus," and the notation in the symptom section of the Application that there is "probably involvement of lung," shows an inconsistency and that mistakes were made by the doctor.

In her letter submitted at reconsideration, the appellant wrote that she was in hospital for over 2 weeks as her lungs were affected and she got chronic double pneumonia in both lungs from her Lupus. At the hearing, the appellant clarified that she currently sees a pulmonologist for her lungs and spent 21 days in the hospital in April 2019 with pneumonia. The appellant stated that she was put on a number of antibiotics but it looked like they would not be able to treat the pneumonia until it was finally resolved. The appellant referred to the appointment reminder form and stated that she has an appointment for a pulmonary function test and this is her third test on her lungs. Although the ministry identified lungs as a vital organ and the appellant stated that her lungs are deteriorating due to her Lupus, the panel finds that the ministry reasonably concluded that it is not satisfied that the MP confirmed a "significant" deterioration of a vital organ given the MP's use of the word "probably" when referring to the appellant's lungs and no further information provided on the appeal from the MP or the appellant's pulmonologist indicating the extent of the deterioration to the appellant's lungs.

In the reconsideration decision, 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 listed, namely: malnutrition, significant muscle mass loss and moderate to severe immune suppression, satisfying the criteria in Section 67(1.1)(b) of the EAPWDR.

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 left this section incomplete in both the original MNS Application dated April 8, 2019, and when given an opportunity to provide further detail in the Application as amended on May 24, 2019. In her May 24, 2019 letter, the appellant wrote that she requires high protein supplement, including Ensure, protein powder, and Boost. At the hearing, the appellant stated that if she eats solids, they just go right through her or she chokes and she can only get through the day with protein shakes, which she was given in the hospital. The appellant stated that the bottles of Ensure are very expensive, so she ends up not eating at all. In the reconsideration decision, the ministry reasonably considered that there were no additional nutritional items confirmed by the MP as required by the appellant to provide caloric supplementation, and there was no further information from the MP provided on the appeal.

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: "High protein diet" and "vitamins and minerals help to support body function, as the primary disease has no cure therapy." While the ministry wrote in the reconsideration decision that the MP did not provide sufficient evidence to demonstrate that the appellant is displaying two or more symptoms which would indicate a need for caloric supplementation, the panel finds that the ministry was unreasonable in its determination regarding the symptom of significant weight loss, as previously discussed, and the ministry was satisfied that the MP confirmed the symptom of significant muscle mass loss. However, the MP did not confirm the need for specific nutritional items, as previously discussed, and the ministry reasonably determined that a need for a high protein diet and vitamin/mineral supplementation is not indicative of a need for caloric supplementation. 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: "the primary diseases have no definite treatment, supportive approach is essential to improve quality of life." The ministry found that the information from the MP was not sufficient to confirm 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. In the additional comments to the MNS application, the MP wrote that the appellant "suffers from diseases such as Sjogren's Syndrome, Lupus, which cause damage to multiple organs, tissues of body" and "the symptoms are refractory to treat and impact patient's life quality and function." The MP also wrote that "the disease itself has no definite treatment and not curable" and "supportive approaches such as high protein diet, supplement of omega oils, vitamins and minerals are important for ongoing treatment" and "it is definitely reasonable and important to give patient monthly nutritional supplement."

In her May 24, 2019 letter, the appellant wrote that Lupus is a serious, chronic disease and is life-threatening. At the hearing, the appellant stated that her Lupus has affected her lungs and she was hospitalized with pneumonia in both lungs and, for a time, it seemed that the antibiotics might not be effective to treat the pneumonia, which eventually resolved. The appellant stated that she saw her pulmonologist in June and will see him again in September, but there was no information from the specialist provided on the appeal to indicate that failure to obtain nutritional items will result in imminent danger to her life. In the MNS Application, the MP emphasized the appellant's need for a high protein diet and supplement of vitamins and minerals to "improve quality of life" and, as noted above, the ministry approved the appellant's request for the 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.

APPEAL NUMBER

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)

2019-07-04

PRINT NAME

Mel Donhauser

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-07-04

PRINT NAME

David Kendrick

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-07-04