

Part C – Decision Under Appeal

The decision under appeal is the December 18, 2023, Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (“the Ministry”). It held that the Appellant did not meet the criteria to receive Monthly Nutritional Supplements (“MNS”) for nutritional items and vitamin/mineral supplements found in Employment and Assistance for Persons with Disabilities Regulation, subsections 67(1.1) (a), (b), (c) and (d) and Schedule C, subsection 7 (a).

The Ministry was satisfied that:

- The Appellant is being treated by a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition.

The Ministry was not satisfied that:

- as a direct result of the chronic, progressive deterioration of health, the Appellant displayed two or more of the symptoms listed in section 67(1.1)(b);
- the Appellant needed the additional nutritional items, vitamins, and minerals for the purpose of alleviating at least one of those symptoms; and
- failure to obtain the items would result in imminent danger to the Appellant's health.

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“the Regulation”), sections 61.01, 66 and 67, and Schedule C, sections 6 and 7.

Relevant sections of the legislation can be found in the Appendix

Part E – Summary of Facts

The first stage of the hearing took place by videoconference on March 12, 2023. The Appellant was accompanied by a support person. Late in the hearing, it came to light that the Ministry Representative did not have the Appellant's supplementary evidence. The Panel called a brief adjournment to contact the Tribunal to see if it had confirmation that the Ministry had received the Appellant's supplementary evidence. The Tribunal did not have this confirmation. The Representative noted she would be able to provide comment on the material if she had opportunity to review it (3700+ pages). The Panel took another brief adjournment to discuss how to proceed. The Panel asked the Appellant whether she objected to another adjournment to allow the Ministry Representative to review the material. The Appellant indicated she did not wish to create another delay. The Panel took another brief adjournment and decided it was necessary for both parties to have access to the evidence and appropriate time to review it and respond. The Panel also wanted to allow the Appellant to resubmit letters which she said she had supplied to the Ministry and which she said were overlooked. The Panel advised those present and set a new hearing date of March 26, 2024. This also took place by video conference.

Background

On November 9, 2023, the Appellant submitted an application for MNS of nutritional items and vitamin/mineral supplements. This application was completed with the support of the Appellant's medical practitioner, Dr. P.

On November 21, 2023, the Ministry denied this request.

On November 28, 2023, the Ministry received a Request for Reconsideration with a self report and an additional MNS application completed by Dr. M. At reconsideration the Appellant stated:

This is unfair for a Ministry worker to deny someone who has extensive medical issues to not be able to get better. By doing this they are knowingly creating barriers of support and allowing me to decline my health by preventing my funding for nutritional dietary and vitamin supplements I so desperately need for recovery and survival. Both my doctor and I have more than proved that I need these supplements to survive. I cannot get better if I do not get approval for this important diet request. I am in pain and suffering because of this. Due to my extensive immune compromise diseases, it makes it difficult to go to the hospital as I'm likely to catch something that will make me sicker so I need to avoid hospitals as much as possible. Last hospital stay I caught pneumonia and COVID-

19 and was extremely ill for three months and just got better in early November 2023. I am too sick to keep advocating for myself and this is forcing me to take all my energy to do so by constantly making doctors' appointments to fill in these forms to get denied each time that I apply. I am doing everything in my power to get better but I feel like I am hitting every brick wall for this reason I contacted the minister's office. I am grateful for all your help that you give to me and I would appreciate your approval for this MNS. Submitted all forms that the Ministry has asked for from Doctors and I am denied for the Monthly supplement for the months of September, October, November and December, 2023. I keep getting denied as the Ministry worker does not believe that my medical situation and illnesses meet the threshold of needing the Supplements. As shown and proven by my complex medical illnesses that are followed by a doctor and confirmed by blood work, I do have a great need for this nutritional supplement to recover and survive. Both my doctors and myself have more than demonstrated that there is an urgent need for this supplement to be granted if not the lack of issuance could cause imminent danger to my life, recovery and well being. I have submitted a second HR 2847 (Nov 27, 2023) as well as the HR 3635 Form (October 7, 2023) and the Primary HR 2847 (November 6, 2023).

The Appellant goes on to note that she copied her local Member of the Legislative Assembly as well as the Minister's Office and Deputy Minister's Office. She requests that reconsideration be granted and that the MNS be retroactive to September 2023.

Medical evidence before the Ministry at reconsideration is as follows.

Chronic Progressive Deterioration of Health (Regulation s. 67(1.1)(a))

The Appellant's diagnoses include:

- Iron deficiency Anemia;
- Unprovoked thrombosis; and
- Lupus, Sjogren's Syndrome.

As part of the Appellant's original application Dr. P provided the following comment: "[the Appellant] is currently being followed by hematology, rheumatology and OBGYN for her complex, severe, chronic health concerns. She has received 33 blood/pRBC transfusions and is currently on IV iron. She requires lifelong anticoagulation and is on TXA and followed by OBGYN for management of uterine fibroid". As part of the reconsideration application Dr. M provided the following comment: "[the Appellant] is currently followed

by Rheum/OBGYN/Hematology for her complex and severe health concerns. As a result, she has had a significant decrease in functional ability.”

Two or more Symptoms (Regulation s. 67(1.1))

In her initial application regarding symptoms, the Appellant’s doctor, Dr. P, provided the following information:

- Malnutrition: Iron deficiency.
- Significant neurological degeneration: Significant fatigue in the context of anemia.
- Significant deterioration of a vital organ: Difficulty with mobility resulting from pain due to DVT (Deep Vein Thrombosis), dyspnea related to PE (Pulmonary Embolism).
- The Appellant is 5’3” and weights 225 pounds.

At reconsideration, the Appellant supplied a second application from Dr. M who stated the Appellant has the following symptoms:

- Malnutrition: “Iron deficiency with severe anemia. Severely deconditioned. Decreased mobility.”
- Significant weight loss: “30 pounds lost in past few months.”
- Significant muscle mass loss: “Likely lost muscle mass is lost 30 lbs weight.”
- Significant deterioration of a vital organ: “Decreased mobility due to DVT pain and shortness of breath from anemia and PE.”

Need for Vitamins or Minerals Supplementation

When asked to specify the vitamin or mineral supplement needed and duration:

- Dr. P stated:
 - Vitamin B 12 – 6+months
 - Vitamin D – lifelong
 - Vitamin C – lifelong
 - Zinc – 1+ year
- Dr. M stated:
 - Folic acid - 5 mg daily
 - Vitamin D - 1000 IV daily

- Vitamin E
- Vitamin B12 – 1000 mcg OD
- Zinc 15 mg
- Vitamin C - 500 mg – 1 g PO OD
- Magnesium - 200 mg OD

When asked to describe how these items will alleviate the specific symptoms identified:

- Dr. P stated:
 - Vitamin C to improve iron absorption, Vitamin D to support bone health. Vitamin B 12 and Zinc recommended by Hematology.
- Dr. M stated:
 - Patient has severe anemia, requires nutritional support to help bone marrow response to iron replenishment. Followed by Hematology.

When asked to describe how this item or items will prevent imminent danger to the Appellant's life:

- Dr. P stated:
 - Severe chronic anemia with menorrhagia on anti coagulation lifelong for unprovoked DVT, PE, superficial thrombosis.
- Dr. M stated:
 - Severe anemia, requires bone marrow support.

Nutritional Items

When asked to specify additional nutritional items required and expected duration of need:

- Dr. P stated:
 - On high protein, gluten free diet for diabetes/weight management, Concern that weight could be contributing to menorrhagia/risk for thrombosis.
- Dr. M stated:
 - On high protein/gluten free diet for weight management.

When asked does the applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake:

- Dr. P stated: Ongoing investigations re: iron absorption in the context of significant losses.
- Dr. M stated: Issues with nutrient absorption as has severe anemia and difficulty keeping up with nutritional demands.

When asked to describe how the nutritional items required will alleviate one or more of the symptoms specified under the Regulation and provide caloric supplementation to the regular diet:

- Dr. P stated: Reducing blood sugar, supporting healthy weight management.
- Dr. M stated: Decrease blood sugar, healthy weight management.

When asked to describe how the nutritional items requested will prevent imminent danger to the applicant's life:

- Dr. P stated: As described above, difficulty absorbing iron, importance of maintaining glycemic control and [to] support weight management to reduce thrombosis risk.
- Dr. M stated: Severe anemia/multiple hospital visits/decreased mobility and significant functional decline. Needs nutritional support to recover.

Appellant Submission

As part of her appeal application, the Appellant states as follows:

I was asked to submit medical information on my multiple medical conditions since Sept 23. I was told that I meet one of the criteria but the doctor did not fill in the rest of the information and I was requested to get a second form filled in by the doctor needed to substantiate the other criteria and was denied again.

To support her appeal application, the Appellant submitted information in the form of seven packages of information. The first six were submitted as part of the Appellant's original appeal and totalled over 3,700 pages in length. The Appellant provided a further submission between the adjournment and the second phase of the hearing that totalled 20 pages in length. The additional evidence is summarized below.

Supplementary Evidence, Appellant (254 pages)

This evidence includes:

- Laboratory records from 2010 to 2024 (in some cases duplicates)
- Summary of laboratory result variances from March 10, 2022 to December 22, 2023
- Internet content regarding some of the health concerns of the Appellant (as identified in the MNS application) including diabetes, obesity and DVT.
- Internet content regarding health concerns of the Appellant but not identified in the MNS application.
- A transcript discussing a care plan – no date, no addressee.
- December 21, 2023, letter provided by Dr V, as follows:

To whom it may concern:

[Appellant]] has significant iron deficiency previously requiring blood transfusions, secondary to significant menstrual bleeding made worse by blood thinners that she requires for her history of repeated blood clots. She requires ongoing iron support and supplementation, and with that her hemoglobin is finally near normal. With this, she has not required any transfusions and has not required hospitalizations as previously she was unable to take her blood thinner due to anemia which led to further blood clots.

This letter is to endorse any financial support she may be eligible for in order to further her ongoing care.

- January 11, 2024 - Email correspondence with the Employment and Assistance Appeal Tribunal appeal coordinator in which the Appellant comments that the Ministry attempted to persuade her to withdraw her complaint, citing an exchange with the Ministry dated December 18, 2023.
- January 11, 2024 - Email correspondence between Appellant and the appeal coordinator regarding collection of records.

Supplementary Evidence, Hospital A Medical Records, 2090 pages.

This evidence includes hospital medical records from 1989 to present. Issues of excessive bleeding go back to this time as do instances of abdominal pain. Included are laboratory

results, medical imaging results, cardiac results, reports from consulting physicians, non-medical health professionals progress reports, as follows:

- 2023 – Records from July indicate the Appellant was hospitalized for anemia and pulmonary embolism. Records indicate care provided, low hemoglobin, vomiting, transfusions for anemia, care for wounds.
- 2022 - Appellant treated for burns.
- 2021 - Appellant attended for diabetes self-care, excessive vaginal bleeding, Bell's Palsy.
- 2020 – Appellant treated for DVT including being hospitalized from May 15 – 20 and June 22 – July 15 (prescribed Vitamins E and C and iron). Appellant hospitalized for syncope, April 16.
- 1989 to 2019 – Appellant attended at hospital for various traumas, medical issues, abdominal pain, dysfunctional vaginal bleeding, leg infection, mammogram, infertility care and maternal care.

Amongst the records is a July 5, 2023 report by Internal Medicine Specialist Dr L. This report summarizes the Appellant's medical history at that point. Key points include:

- Left-sided DVT, originally diagnosed in 2020. Appellant unable to tolerate anticoagulation due to menorrhagia.
- Significant menorrhagia secondary to uterine fibroid.
- Chronic anemia secondary to menorrhagia. Hemoglobin ranged from 50 – 200 in the past couple of years. Required intermittent transfusions for anemia.
- Hypothyroidism.
- History of paroxysmal supraventricular tachycardia which is normally converted with vagal maneuvers.
- Previous history of diet-controlled diabetes.
- Dyslipidemia with an LDL of 3.6 (2022).
- Query Sjogren syndrome. (not currently on any therapy for this.)

Also included is a June 24, 2020 Nutrition Assessment by a registered dietician. The dietician states that, at this time the Appellant is mild/moderately malnourished, with some progressive nutritional loss, malnutrition related to inadequate oral intake secondary to impaired access to food as evidenced by signs of fat loss, patient reported difficulties obtaining groceries/food and estimated weight loss of 6% over 5 weeks.

Supplementary Evidence, Hospital B Medical Records, 446 pages.

This evidence contains medical records from 1987 to 2023. For 2023, there is information regarding attendance at the hospital in August 2023 for shortness of breath and pneumonia. In June and July 2023, the Appellant attended the hospital for low hemoglobin, dizziness, and nausea. Other issues include DVT and anemia. Records include various blood tests and laboratory results related to these issues including cardiac investigations and medical imaging. Also included are tests such as mammograms. For 2022, records are related to a stay in the hospital from May 20 to May 25, 2022 to address abdominal pain as well as various outpatient tests, attendance at emergency for traumas, infections, and palpitations. Additionally, there were records from 2016 and 1987 related to attendance at the Emergency Room and laboratory tests.

Supplementary Evidence, Hospital C Medical Records, 42 pages.

This evidence contains records from 2002 – 2015, regarding attendance at hospitals for traumas, musculoskeletal issues, laboratory results, cardiac investigations, dysrhythmia/palpitations and Emergency Health Services records related to the above.

Supplementary Evidence, Hospital D Medical Records, 773 pages

This evidence contains records from 1976 to 2024. Early records from 1976 to 2015 relate to attendance at hospital emergency for trauma, excessive bleeding, hospital stays, outpatient services, testing, and a variety of medical reports. More recent records, from October 2023 to February 2024 contain information consistent with that found in the Appellant's MNS application. Examples include records relating to medical imaging, blood tests, reports of severe iron deficiency, examination for DVT, transfusions, pathology and laboratory medicine profile.

Supplementary Evidence, Health Authority A, 99 pages.

This submission contains records from August 2022 to the present. The records relate to the Appellant accessing the doctor service, which provides medical consultation and consultation with other professionals over the phone. Records relate to:

- Medical consultation regarding
 - Sore throat, hematologic concerns, uterine fibroids, autoimmune issues, hypothyroidism, sexual assault, abdominal pain, cramps,

diarrhea, trauma, excessive bleeding, blood sugars and vitamin D supplementation.

- Application for MNS, including the need for doctor letters related to the MNS application.
- Application for wheelchair.
- Consultation regarding hospital stays.
- Need for laboratory requisitions.
- Need for prescriptions.

Post-Adjournment Supplementary Evidence, 20 pages

Following the adjournment of the March 12, 2024 hearing, the Appellant provided the following written update on her health:

- Her blood level is dropping again as she has discontinued taking vitamins needed for production of bone marrow as well as blood cells. Other blood tests will show her kidneys and organs are shutting down. It is only a matter of time until she goes into renal failure. There may be no way to repair the damage. The two-week delay could potentially end her life.
- She holds the Ministry responsible because they were aware of this and they did not seem to care.
- She is upset as she feels no one cared and her life didn't mean anything to anyone. She believes she was just a protocol at the Ministry.
- She believes she had provided the Ministry with information both at their office and at the Tribunal. This shows a pattern where the Ministry says it did not have her information despite being given the information.
- The delay is causing anxiety, pain and fear, as she is afraid that she will be hospitalized again and potentially catch something.
- She has been honest. She feels she has been 100 per cent truthful.
- The doctor has provided advice that she has neurological issues which the Ministry overlooked. Her doctor has written confirming she has neurological issues.
- On March 13, 2024 she had another SVT attack. She was waiting to see if she would be admitted to the hospital.

As part of the Appellant's Post Adjournment Supplementary Evidence, Dr M provided a Medical Certificate dated March 12, 2024, addressed "To Whom it May Concern". The doctor noted the Appellant has the following complex medical diagnoses:

1. Factor V Leiden Heterozygosity, on indefinite anticoagulation;
2. Chronic Left Leg DVT (non occlusive thrombus extending from left common femoral into popliteal);
3. PE (Acute, 2023);
4. Hypothyroidism;
5. Menorrhagia secondary to fibroids (failed IUD, intolerant of leuprolide);
6. Chronic anemia 2' menorrhagia, previously required PRBC/Iron transfusions;
7. Hx of paroxysmal SVT, converts with vagal maneuvers;
8. Dyslipidemia;
9. ?Sjogren's vs Lupus, positive for anti-SSA antibodies;
10. PTSD from Sexual Assault;
11. Cholecystectomy;
12. Vitamin D deficiency; and
13. Leg cramps/ NYD.

As part of the Medical Certificate, Dr M recommends the Appellant should receive supplementation for:

Iron for severe iron deficiency anemia;
Folic acid for bone marrow support in formation of new hemoglobin /RBCs;
B12 for bone marrow support;
Magnesium for leg cramps; and
Vitamin D for deficiency.

As part of the Medical Certificate, Dr. M provided the following comments:

Her neurological status is impacted by her hypothyroidism which can go on to cause peripheral neuropathy symptoms – including falls for her. She has had reduced oral intake due to her illnesses. She has symptoms of fatigue, lethargy, falls, peripheral numbness. Due to the severity of her anemia, she is unable to support her nutritional needs through ordinary diet.

She is currently being treated with blood thinners for her clotting disorder which increase her bleeding from the large fibroid.

Included in the Post Adjournment Supplementary Submission is a letter to an Emergency Physician from Dr. M to be used should the Appellant need to attend at Emergency. The Appellant's medical issues as set out in the Medical Certificate are echoed. Dr. M also sets out the Appellant's current medications.

Included in the Appellant's Post Adjournment Supplementary Submission is an additional Medical Certificate from Dr L dated December 12, 2023. Dr L sets out the Appellant's conditions as follows:

1. Pulmonary embolism;
2. Deep vein thrombosis;
3. Bell's palsy;
4. Anemia secondary to abnormal uterine bleeding (fibroid);
5. Factor V Leiden which increases (Appellant's) risk of blood clots;
6. Hypothyroidism;
7. Intermittent recurrent supraventricular tachycardia;
8. GERD; and
9. Autoimmune condition, possible Sjogren syndrome.

Also included were March 13, 2024 laboratory results sent to Dr. M and laboratory requisitions ordered by Dr. M undated as well as duplicates of the MNS applications completed by Dr. M and Dr. P.

Appellant Oral Submission presented at the March 12, 2024 hearing:

At the hearing the Appellant reviewed her medical issues and conditions, the approaches she has taken to alleviate her situation, and the impact the supplements would have on her. She also summarized her issues with the process and the way she has been dealt with by the health system and the Ministry.

Regarding her medical conditions she notes:

- She has a hereditary disorder related to Factor V Leiden.
- When vaccinated with Astrozenica this led to additional blood clots.
- She has Lupus which poses the following challenges: most people can go outside, she can't, she gets rashes, including on her cheeks. She can't risk exposure to sun. She has to wear long sleeves. She is not able to leave her apartment because she gets dehydrated.
- She has dietary needs for diabetes and for lupus. Due to diabetes, she is in bed a lot because she is sick.
- She has tachycardia.
- She has had 35 blood transfusions.

- She is severely anemic; dehydration is a constant issue and coconut water hydrates faster.
- She has a large tumour and complex issues.
- She is on blood thinners.
- She has acid reflux and GERD.
- She does not have a normal immune system.
- Currently her eyes are orange due to an attack on her liver.
- Currently her thyroid is 74. The doctor is concerned about this and said she could be comatose.
- Her blood sugar can be 22 (high) and from not eating 3 (low).
- On Nov 20, 2022, her Hemoglobin was critical – in the 40 – 50s range. It should be greater than 100. She likened this to driving a car with no oil.
- She is fighting as her pulmonary embolism broke off.
- Blood tests show she is severely Vitamin D deficient. Additional Vitamin D brought up her mood.

Regarding her experience of the health care system, she notes:

- Her experience with the hospital is it's a constant fight.
- When in hospital she was not treated with respect for her indigenous experience.
- She felt it inappropriate to ask her if she drinks or smokes. She suggests these questions are posed to her due to being indigenous.
- It's very frustrating to get better then slide back.
- There is no added support. She needs a walker and scooter.

Regarding her personal efforts to alleviate or improve her medical conditions she notes:

- She has been made aware of pros and cons of natural medicine.
- She is trying to prevent other health issues and need for other medicine.
- She takes calcium, vitamin D and E, folic acid, iron supplements and IV therapy for infusion.
- Lately she hasn't taken her vitamins and minerals on a daily basis (as she can't afford them) and now her body is sliding back.
- Magnesium supplements for day and night help with sleeping.
- She tries to follow the high protein diet that is needed for diabetes to maintain protein balance.
- Vegan foods are way too expensive.

- Food banks don't have special allocation for things. She notes Chunky soup has high sodium. She can't have this.
- Her nutritional needs must be met lifelong to try to prevent stroke and TIA.

Regarding her experience of the process to secure the MNS benefit she notes:

- She has been made to feel like she is asking a lot from the Ministry.
- She needs a little extra help.
- She looked at her denial letter and reference to BMI (body mass index). BMI is totally different (and does not mean she is not wasting). She is losing muscle. The Ministry decision gives a false impression.
- She says she was called fat by a Ministry worker. This is untrue. She has a tumor the size of a basketball that affects her appearance. She would need five doctors to remove the tumour through surgery. She would like the worker to apologize.
- She does not want to say all Ministry workers upset her or are horrible, however, it is not appropriate for them to make a judgement on this huge tumour. It is feeding off of her blood supply causing her to need blood transfusions.
- She has given all the forms to the Ministry, but believes they were not filled in properly. She says this is a huge error. A doctor at Health Authority A supports all of the medical conditions.
- She notes she is also seeking a scooter on another file.
- Someone at the Ministry suggested since she is indigenous she should try to get help from her band office. She stated she not a member of a band so she is at the mercy of the Ministry.

Regarding the implications for her with respect to being approved for the MNS supplement she notes:

- Since September she has had to go into debt just to get vitamins.
- She has no more lines of credit or jewelry. She tried to sell beading but this did not work out.
- If awarded she will be able to get things she honestly needs.
- \$225 may seem like a lot (this is the Appellant's understanding of the MNS amount that may be available to her). This is nothing, it does not go far. Groceries are through the roof.
- If granted \$225 - this would decrease all the things (which she is dealing with). She could get stable so she could consolidate her health for surgery.

- She considered getting a job and she would do this but she becomes short of breath and tired. This limits her life.

Regarding being sexually assaulted the Appellant notes:

- Last year she was violently sexually assaulted.
- There are no supports.
- She says she could never leave the house. It is overwhelming to have OCD and PTSD to deal with. She noted she had started getting better and was off disability (however, this set her back).

In response to a question from the Panel, the Appellant noted she did not have anything she wanted to draw to the Panel's attention regarding her 3700+ page submission. She had sent everything to the Ministry that had been requested of her doctor, although she was not able to specify which doctor letters she meant.

Evidence of the Appellant presented at the March 26, 2023 hearing.

At the March 26 hearing, the Appellant said she had a TIA/stroke the week of March 14, 2024. She said she can't fight anymore. She went outside and someone made her sick. She noted she was supposed to be in the hospital but said she couldn't go because she had the hearing today.

The Appellant noted she is still going through investigations. She must rely on the mercy of the government. She is losing body mass the longer she has to wait. She is doing everything the doctor tells her to try to get better. She notes she was turned down for a crisis grant for food.

Because she has Factor V Leiden, it is hereditary. She can't retain iron, if bone marrow is not producing it there is a definite link to lack of caloric intake.

Ministry Submission

The Ministry did not supply any additional evidence. Over the course of the two hearings the Representative provided the following commentary regarding the Reconsideration Decision.

Per the original decision, the Ministry determined that the Appellant was being treated for chronic progressive deterioration of health on account of a severe medical condition.

Regarding the criteria of two or more symptoms stemming from the above, the Ministry only accepted one criterion. The Representative noted malnutrition is not defined in the legislation. The Ministry needs the opinion of a medical practitioner saying how this is linked to the chronic progressive deterioration of health. The Ministry looks at issues such as weight loss and muscle loss. In this case not enough information is provided to establish the Appellant is malnourished and that this is linked to her health conditions.

Regarding the need for nutritional supplementation to address one of the symptoms, the Representative noted that the doctors are investigating the Appellant's ability to take in sufficient calories through regular dietary intake. Additional medical information is needed to determine how the Appellant's gluten supplement relates to this.

In the Representative's view, no additional information was provided in the Appellant's supplementary submissions that would make it possible for the Ministry to assess the Appellant as having two symptoms. The Representative noted that information provided by health professionals other than those listed in the legislation (specifically, medical practitioner, nurse practitioner and dietician) cannot be considered for determining eligibility for the MNS.

When asked, the Representative advised the Panel that the Appellant is now receiving a diet supplement under Regulation s. 66 [Diet Supplement]. The amounts available for dietary supplements are set out in Schedule C section 6(1) of the Regulation. When asked, the Representative said that should the Appellant be approved for the MNS under section 67 of the Regulation, the diet supplement will end. The Representative confirmed that MNS for vitamins and minerals is not considered a nutrition-related supplement. (See definition of nutrition-related supplement as set out in Division 4, s. 61.01 of the Regulation.)

When asked, the Representative agreed there was no definition of malnutrition per se. The Representative pointed to the definition of malnutrition from the World Health Organization (WHO) indicating a deficiency or excess of energy or nutrients. The Representative emphasized the doctor does not link the pieces in the

application, that is, how does the loss of blood link to intake of nutrients (meaning malnourishment).

The Panel sought to clarify the gap between the reasoning set out in the Reconsideration Decision (there is no evidence of overall malnutrition) and the rationale provided by the Representative (there is insufficient link between the Appellant's blood loss and malnutrition). The Representative noted that the Reconsideration Decision did not perhaps have the best wording.

The Panel asked the Representative what would be accepted as evidence of being malnourished. The Representative noted that the Ministry looks for what is causing the malnourishment. For example, more typical situations where an applicant meets the definition of malnourished requiring caloric supplementation are those with cancer whose bodies are at a point where nutrients can't be absorbed.

Admissibility of New Evidence

The Panel is authorized to consider evidence in addition to the information the Ministry had at the time of the Reconsideration Decision if it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The Ministry raised no objections to the Appellant's additional submissions. In this case, the Panel must consider whether the documents have relevance to the question of what symptoms the Appellant had/has when applying for the MNS and whether the Appellant meets those criteria necessary to be eligible for the supplement.

The Panel admits the following documents as reasonably required for a full and fair disclosure of matters related to the decision under appeal.

- All medical and health care records related to medical conditions for which the Appellant seeks the MNS as a remedy.

The Panel finds that except for the documents noted above as admissible under Section 22(4) of the Act, the rest of the information supplied is not admissible.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's Reconsideration Decision to deny the Appellant an MNS was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the Appellant.

Appellant Position

The Appellant holds that she requires the MNS to allow her to purchase vitamins and minerals as well as caloric supplements to restore her health and to avoid any future health issues. As she does not have funding for nutritional supplements, she is going without and this is causing her significant health issues, such as her blood iron levels dropping, and the impact on her vital organs which is causing her to be jaundiced. She has been one hundred per cent honest. She shouldn't have to choose between meeting her expenses and things she needs for her health. The Ministry's practice of following protocols rather than considering the impact on her as an individual is putting her life at risk. She feels the Ministry sees people as disposable.

Her doctor supports her request for these supplements.

Ministry Position

The Ministry maintains that the Appellant does not meet the criteria for an MNS under section 67 of the Regulation.

The Ministry was satisfied that the Appellant was being treated by a medical practitioner for a chronic, progressive deterioration of health due to a severe medical condition (Regulation S67(1.1)(a)).

The Regulation requires that, in the opinion of a medical practitioner, nurse practitioner or dietician, the applicant displays at least two symptoms set out in the Regulation that are a direct result of the chronic, progressive deterioration of health (Regulation S. 67(1.1)(b)). The Ministry states it must make an evidence-based decision relying on the information provided by a doctor in an application. It does not mean the Ministry must accept a doctor's confirmation that an applicant is displaying a symptom without supporting information. The Ministry was satisfied that the Appellant has the symptom of a deterioration of a vital organ (lungs) due to dyspnea related to pulmonary edema. The Ministry did not accept any other symptoms identified by the Appellant's doctors.

With regard to the other symptoms which were put forward by the Appellant's doctors the Ministry made the following findings:

- Malnutrition: the Ministry noted that although the Appellant requires iron supplementation, this does not support that the Appellant experiences overall malnutrition or is malnourished. No other micronutrient deficiencies or signs/symptoms of malnutrition are identified.
- Significant weight loss: the Ministry stated no information is provided to confirm the Appellant's weight loss is tied to her chronic progressive deterioration of health, nor that it is significant. No specific timeline of weight loss was provided apart from a few months.
- Significant muscle mass loss: the Ministry noted no confirmation of this loss was provided; the doctor only presumed that it is likely some muscle mass loss is due to weight loss. It is not clear that this loss is significant.
- Significant neurological degeneration: the Ministry noted no significant neurological degeneration was reported. While the Appellant experiences fatigue this is not linked to the neurological system or chronic progressive deterioration of health.

The legislation requires that vitamins and minerals may only be provided to alleviate symptoms set out in Regulation S. 67(1.1)(b) and s. 7(c) of Schedule C and to prevent imminent danger to life. The Ministry did not accept that a medical practitioner had confirmed the Appellant was displaying two of the symptoms set out in the Regulation, therefore, the Appellant did not meet the requirements for provision of vitamin/mineral supplements.

Regarding caloric supplementation, Regulation s. 67(1.1)(a) and S. 7(a) of Schedule C, the Ministry says that the Appellant's doctor does not provide information to establish that she is displaying the symptoms of underweight status, significant weight loss, or significant muscle mass loss, which would indicate a need for caloric supplementation. Although practitioners confirm the Appellant requires a specific diet, there is insufficient information to establish that the Appellant requires caloric supplementation to a regular dietary intake.

While reporting the Appellant requires nutritional support to recover from serious medical conditions, it is not clear that the Appellant requires caloric supplementation in addition to a regular dietary intake to prevent imminent danger to her life.

Panel Reasons

The Panel must consider whether the Ministry was reasonable in determining that the Appellant did not meet the legislated criteria to receive the MNS either for vitamins and minerals or for additional nutritional items that are part of a caloric supplementation to a regular dietary intake. To provide this supplement, the minister must receive a request from the Appellant's medical practitioner confirming the criteria set out in Regulation s.67 and Schedule C s.7. In this case, the Appellant has submitted extensive medical and health care evidence spanning many years. In reaching its decision it should be noted that the Panel gives greater weight to information supplied by the Appellant's medical practitioners in the applications for the MNS and that are directly in support of the Appellant's application. That is, the evidence supplied in the Appellant's two applications, supporting doctors' letters, Medical Certificates, recent hospital stays and correspondence between physicians because they supply current information about the Appellant's conditions.

Chronic, progressive deterioration of health due to a severe medical condition.

Per above, in the original decision the Ministry determined that the Appellant met the criteria of having a chronic progressive deterioration of health due to a severe medical condition. Specifically, the Ministry was satisfied that the Appellant has a deterioration of a vital organ (lungs) due to dyspnea related to pulmonary edema. The Panel finds that the Ministry was reasonable in its determination that the Appellant meets this criterion.

The Panel finds that the Appellant also suffers from several other significant health challenges. The Panel notes in particular, that the Appellant's diagnoses of Factor V Leiden, combined with severe chronic menorrhagia leading to chronic blood loss and anemia requiring repeated blood transfusions and hospitalizations, were overlooked by the Ministry as confirming a chronic, progressive deterioration of health due to a severe medical condition. Considering the medical evidence as a whole, the Panel finds the Ministry was not reasonable in limiting its determination to the consequences of the pulmonary edema.

Two or more symptoms stemming from this condition.

The Ministry accepted as a symptom that there was a significant deterioration of a vital organ, the lungs, and shortness of breath due to pulmonary embolism, but did not accept that the Appellant displayed any other symptom listed in section 67(1.1)(b) of the Regulation. As the requirement to meet this criterion is two or more symptoms, the Panel

reviewed the reasonableness of the Ministry's determinations regarding each of the other symptoms put forward by the Appellant's doctors. The review of the symptoms is based on the Panel's finding that the Appellant's medical condition due to Factor V Leiden and severe menorrhagia is a chronic progressive deterioration of health due to a severe medical condition.

Malnutrition

Regarding malnutrition, the Reconsideration Decision held that no evidence of "overall malnutrition" was established. The Ministry acknowledged that the Appellant requires iron supplementation but argued that iron deficiency "does not support that you experience overall malnutrition or are malnourished." Secondly, the Ministry said that no other micronutrient deficiencies are indicated. The Panel notes that there is no definition of "malnutrition" supplied in the legislation. Further, under the legislation the symptom is "malnutrition", not "overall malnutrition". The definition from the WHO states *Malnutrition refers to deficiencies, excesses or imbalances in a person's intake of energy and/or nutrients*. The evidence provided by the Appellant's doctors in her application and in the Medical Certificates confirms a significant deficiency of iron due to blood loss as a result of her Factor V Leiden condition and menorrhagia. The Panel finds that the Appellant's condition meets the World Health Organization definition of malnutrition.

At the hearing, the Representative put forward an alternative explanation of why the symptom of malnutrition was rejected, arguing the doctors did not tie the anemia to a severe medical condition and a chronic deterioration of health. The Panel notes that this argument is not found in the Reconsideration Decision. The Panel also finds the evidence shows that the Appellant is unable to produce or absorb sufficient iron to offset that lost through the menorrhagia. The evidence also shows a deficiency in several other vitamins and minerals, such as Vitamins D, B12, zinc, and magnesium. Had the Ministry found that the Factor V Leiden and menorrhagia were severe medical conditions causing a chronic, progressive deterioration of health, as the Panel has found, it would have been able to establish this link.

The Panel notes the Appellant's iron deficiency is egregious, affecting many other aspects of her health. The Panel finds that the Ministry was not reasonable in its determination that the Appellant does not display the symptom of malnutrition.

Significant weight loss

The Ministry found that no information was provided to confirm the Appellant's weight loss was tied to her chronic progressive deterioration of health, nor that it is significant. The Panel notes that between the Appellant's first application and second application she is said to have lost 30 lbs in the last few months. Although the Panel notes this is a significant amount of weight, the Panel finds that the Ministry is not unreasonable in assessing this as not being evidence of significant weight loss given the time frame and given that weight management is a goal of the Appellant's health care regime.

Significant muscle mass loss

Although the Appellant's doctor indicated that the 30 lb weight loss likely included some muscle mass loss, the Ministry did not accept this symptom as they said this was only a presumption by the doctor and it was unclear that the loss was significant. Evidence provided by the Appellant's doctors states that she is severely deconditioned, weak, lethargic and prone to falls which is consistent with her chronic health challenges and, although consistent with loss of muscle mass, is not sufficient by itself for the Panel to determine the Ministry was unreasonable in their finding. The Panel finds that the Ministry's determination regarding significant muscle mass loss is reasonable.

Significant neurological degeneration

The Ministry held that no significant neurological degeneration was reported, and that although the Appellant experiences fatigue, this is not linked to the neurological system. The Panel notes this was a symptom reported in the application completed by Dr. P, but not in the application completed by Dr. M. The Panel notes that in the evidence submitted March 13, 2024, Dr. M states that the Appellant's neurological status *is affected by her hypothyroidism which can go on to cause peripheral neuropathy symptoms, including falls for her. She has had reduced oral intake due to her illnesses. She has symptoms of fatigue, lethargy, falls peripheral numbness. Due to the severity of her anemia, she is unable to support her nutritional needs through her ordinary diet.* The Panel notes there is not sufficient description of neuropathy to conclude that there is "significant neurological degeneration". Although the doctor states that hypothyroidism "can go on to cause peripheral neuropathy symptoms" the doctor does not state that has happened already; "falls, peripheral numbness" is not a clear or detailed enough description of the condition,

or frequency of the symptom or the falls, to be able to make a determination of significance. The Panel therefore finds the Ministry's determination regarding significant neurological degeneration to be reasonable.

As the Ministry found that the Appellant displayed only one of the symptoms listed in section 67(1.1)(b) of the Regulation, it did not proceed to decide on the remaining criteria needed to approve either a vitamin and mineral supplement or a nutritional (caloric) supplement. As the Panel has found that two symptoms should have been accepted, specifically malnutrition and significant deterioration of a vital organ, it must consider the merits of the Appellant's case regarding the remaining criteria.

Requires vitamins/minerals to alleviate one or more of the symptoms

Regarding requirements for vitamins and minerals, the Panel notes that the Appellant's doctors call for the Appellant to take several vitamins and minerals as set out under Appellant's application. The Appellant's doctors note they are needed to improve iron absorption and to help bone marrow response to iron replenishment. Considering the doctor's confirmation about the need for these supplements, the Panel accepts that the Appellant requires the prescribed vitamins and minerals to alleviate her symptoms (Regulation S 67(1.1)).

Requires nutritional items to alleviate one or more of the symptoms

At reconsideration the Ministry did not accept the need for caloric supplementation, although the Ministry accepted that doctors' confirmation that a specific diet is required. The Panel notes that in the Medical Certificate dated March 12, 2024, Dr M states "due to the severity of her anemia she is unable to support her nutritional needs through her ordinary diet." However, the doctor has not said that the Appellant needs additional calories to supplement her ordinary diet. Therefore, the Panel finds that the Ministry's determination that a medical practitioner has not confirmed that the Appellant needs additional nutritional items as part of a caloric supplementation to a regular dietary intake is reasonable.

Failure to obtain the items will result in imminent danger to the Appellant's life.

As the Ministry did not find the Appellant met the criteria for the vitamin and mineral supplement, it did not consider whether failure to provide this would result in imminent danger to the Appellant's life. On the contrary, the Panel finds that the Appellant did display at least two symptoms and met the criteria for needing vitamin and mineral

supplements. The Panel notes the comments provided by the Appellant's doctors indicating the vitamins and minerals are necessary to support severe chronic anemia and menorrhagia, which are aggravated by her need for anticoagulation medicine and that severe anemia requires bone marrow support. Given the severe nature of the Appellant's anemia and ongoing health challenges which have frequently resulted in hospital stays, the Panel finds the Appellant meets this criterion.

Conclusion

Regarding whether the Ministry's Reconsideration Decision to deny the Appellant an MNS was reasonably supported by the evidence or was a reasonable application of the applicable provision in the circumstances of the Appellant, the Panel makes the following findings:

- The Ministry was unreasonable in determining that, as a direct result of a chronic, progressive deterioration of health, the Appellant did not display two or more of the symptoms listed in section 67(1.1)(b);
- The Ministry was unreasonable in determining that the Appellant did not meet the eligibility requirements for a vitamin and mineral supplement;
- The Ministry was reasonable in determining the Appellant did not meet the eligibility requirements for additional nutritional items that are part of a caloric supplementation to a regular dietary intake; and
- The Ministry was unreasonable in determining that there was insufficient evidence that failure to obtain the items would result in imminent danger to the Appellant's health.

Accordingly, the Reconsideration Decision is confirmed regarding the MNS caloric supplement and rescinded for the MNS vitamin and mineral supplement. The Appellant is partly successful in the appeal.

Employment and Assistance for Persons with Disabilities Act

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

[Last amended January 1, 2024 by B.C. Reg. 161/2023]

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;

Diet supplement

66 (1) Subject to subsection (2), the minister may pay for a diet supplement in accordance with section 6 [*diet supplements*] of Schedule C that is provided to or for a family unit in receipt of disability assistance or hardship assistance, if the supplement is provided to or for a person in the family unit who

- (a) is described in section 6 (1) of Schedule C, and
- (b) is not described in section 8 (2) (b) [*people in special care*] of Schedule A.

(2) A person is not eligible to receive a supplement under subsection (1) unless

- (a) the person is not receiving another nutrition-related supplement, and

(b) a medical practitioner, nurse practitioner or dietitian confirms in writing the need for the special diet.

[en. B.C. Reg. 145/2015, Sch. 2, s. 6; am. B.C. Regs. 123/2019, App. 2, s. 2; 270/2019, App. 2, s. 16; 21/2023, App. 2, s. 6.]

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 (2) (b) [*people in special care*] of Schedule A, unless the person is in 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 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 a medical practitioner or nurse practitioner for a

chronic, progressive deterioration of health on account of a severe medical condition;

(b) as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms:

- (i) malnutrition;
- (ii) underweight status;
- (iii) significant weight loss;
- (iv) significant muscle mass loss;
- (v) significant neurological degeneration;
- (vi) significant deterioration of a vital organ;
- (vii) moderate to severe immune suppression;

(c) for the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more of the items set out in section 7 of Schedule C and specified in the request;

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

(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 who completed the form referred to in subsection (1.1).

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

[am. B.C. Regs. 317/2008, s. 8; 68/2010, ss. 1 and 2; 145/2015, Sch. 2, ss. 7 and 8; 123/2019, App. 2, s. 3; 21/2023, App. 2, s. 7.]

Schedule C

<....>

Health Supplements

<....>

Diet supplements

6 (1)The amount of a diet supplement that may be provided under section 66 [*diet supplements*] of this regulation is as follows:

- (a)\$15 for each calendar month for a person who requires a restricted sodium diet;
- (b)\$60 for each calendar month for a person who has diabetes;
- (c)\$50 for each calendar month for a person who requires kidney dialysis;
- (d)\$65 for each calendar month for a person who requires a high protein diet;
- (e)\$65 for each calendar month for a person who requires a gluten-free diet;
- (f)\$65 for each calendar month for a person who has dysphagia;
- (g)\$80 for each calendar month for a person who has cystic fibrosis;
- (h)\$65 for each calendar month for which a person requires a ketogenic diet;
- (i)\$65 for each calendar month for which a person requires a low phenylalanine diet.

(2)A diet supplement under subsection (1) (d) may only be provided if the diet is confirmed by a medical practitioner, nurse practitioner or dietitian as being necessary for one of the following medical conditions:

- (a)cancer that requires nutritional support during
 - (i)radiation therapy,
 - (ii)chemotherapy,
 - (iii)surgical therapy, or
 - (iv)ongoing medical treatment;
- (b)chronic inflammatory bowel disease;
- (c)Crohn's disease;
- (d)ulcerative colitis;
- (e)HIV positive diagnosis;
- (f)AIDS;
- (g)chronic bacterial infection;
- (h)tuberculosis;
- (i)hyperthyroidism;

- (j)osteoporosis;
- (k)hepatitis B;
- (l)hepatitis C.

(3)A person who is eligible for a supplement under subsection (1) (d) or (f) is also eligible for a \$50 payment towards the purchase of a blender.

(4)If a person has more than one of the medical conditions set out in subsection (1), the person may receive only the amount of the highest diet supplement for which the person is eligible.

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.

APPEAL NUMBER 2023 - 0394

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

Corrie Campbell

Signature of Chair

Date (Year/Month/Day)

2024/04/04

Print Name

Susan Ferguson

Signature of Member

Date (Year/Month/Day)

2024/04/04

Print Name

Wesley Nelson

Signature of Member

Date (Year/Month/Day)

2024/04/04