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PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Reconsideration Decision dated January 7, 2009 , denied the Appellant's application for monthly nutritional health supplements namely, nutritional items, bottled water and mineral supplements because she did not meet the criteria in section 67 (1)(c) of the EAPWD regulations .

The Appellant did not meet the criteria for provision as a health supplement for persons facing a life-threatening need as set out in EAPWD sec 67 because the Appellant's doctor does not confirm that the Appellant displays symptoms that are a direct result of a chronic, progressive deterioration of health as set out in section 67 (1) (c) (ii) and does not confirm that failure to obtain any of the requested monthly nutritional supplement items will result in imminent danger to life as required by 67 (1) (c) (iv).

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C,
section 7

PART E – SUMMARY OF FACTS

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision was being made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

The Panel reviewed the Appeal record including the following items, namely:

1. Notice of Appeal dated January 15, 2009
2. Reconsideration Decision dated January 7, 2009
3. Extracts from legislation
4. Request for reconsideration
5. Diet Allowance Information Sheet
6. Rx slips from Dr. K, April 7, 2008, and July 19, 2008
7. Rx slip from Dr. R, October 17, 2008
8. Rx slip from Dr. B, December 10, 2008
9. Undated receipt re Shoppers Drug Mart
10. Written Submission from Appellant
11. Monthly Decision Summary, November 28, 2008
12. Application for Monthly Nutritional Supplement signed by Dr. R dated November 24, 2008
(Application for MNS)

The evidence is that the Appellant's doctor completed part B of the Application for MNS. The Doctor did not indicate that the Appellant displayed any one of the list of symptoms in question 3. The list is the same list as set out in sec 67(1) (c) (ii) of the EAPWDR. The Panel reviewed the Doctor's answer to questions no. 5, 6, and 7 in Part B signed by the doctor. In question 5 the doctor answered no to the question whether the appellant required the nutritional item to prevent imminent danger to life. In question 6 the doctor answered no to the question whether bottled water would prevent imminent danger to life. In question 7 the doctor answered no to the question whether the applicant required vitamin or mineral supplements to prevent imminent danger to life.

The Appellants states that she has a very severe medical condition and that she needs the health supplements that she has requested to improve her health. She states that she has the symptom referred to in the legislation, specifically a significant weight loss of more than approximately 150 lbs, even if the doctor hasn't specifically stated so. She submits that she has researched and provided a lengthy submission as to the benefits of the health supplements that she has requested.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue is the reasonableness of Ministry's decision to deny the monthly nutritional health supplement to the Appellant as the application did not meet the criteria set out in EAPWDR Section 67(1)(c)(ii). This section lists the relevant criteria.

67 (1) The minister may provide a nutritional supplement in accordance with section 7

if the minister is satisfied that all of the following conditions are met:

(c) the minister receives a completed request in the form specified by the minister in which a medical practitioner or nurse practitioner has confirmed that

(i) the person with disabilities to whom the request relates is being treated by the medical practitioner or nurse practitioner for a chronic, progressive deterioration of health on account of a severe medical condition,

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

- (A) malnutrition;
- (B) underweight status;
- (C) significant weight change;
- (D) muscle mass loss;
- (E) bone density loss;
- (F) neurological degeneration;
- (G) significant deterioration of an organ;
- (H) moderate to severe immune suppression,

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

(iv) failure to obtain the items referred to in subparagraph (iii) will result in imminent danger to the person's life;"

The Ministry's position is that the medical evidence required to consider the Appellant's application for nutritional supplements is not evident in the application form and supporting material from the Doctor. The Ministry did not comment on whether all or any of the items requested were items listed in Schedule C. Their position was that she did not meet the criteria set out in the legislation for any supplements listed in Schedule C. The Appellant must meet all of the criteria set out in Sec 67(1)(c)(i)(ii)(iii) and (iv) in order to qualify for a health supplement listed in Schedule C.

The Ministry argues that the Appellant has not provided medical evidence to identify any symptom

listed in sect 67 (1) (c) (ii) which is one of the criteria required to be eligible for supplements listed in section 7 Schedule C. The Ministry also argues that the Appellant's doctor did not confirm that failure to obtain the requested nutritional item, the bottled water , or the vitamin/mineral supplement will result in imminent danger to the Appellant's life , which is the criteria stipulated as necessary in Section 67 (1) (c) (iv).

The Appellant position is that she is severely ill and suffering from a chronic progressive deterioration of health on account of her severe medical conditions. She states that she displays one or more of the symptoms set out in the legislation and directed the panel to her evidence of significant weight change which is a symptom listed in Section 67 (1) (c) (ii) (C) . The Appellant's advocate submitted that failure to obtain the items requested by the Appellant will result in imminent danger to her life. She suggested this could be taken from the doctor's answer in Question 1 of the form where he answered that the applicant does have a progressive deterioration of health due to a severe medical condition.

The Panel has reviewed the medical evidence from the Doctor in the Application for MNS and the Doctor did not complete question no. 3 where he was asked to confirm a symptom from a list that included significant weight change. He did not indicate any symptom at all. The Panel cannot accept the Applicants argument that a symptom can be assumed without having the doctor name such a symptom on the basis that the doctor answered yes to Question 1. of the Application for MNS and commented that the Appellant had Celiac's Disease and Gluten - Losing Entropathy. Sec 67 (1) (c) (ii) is very specific and lists 8 specific symptoms, any one of which would have satisfied this criteria if the doctor had indicated one. He did not. Therefore the Panel found as a fact that the Doctor had not confirmed that the Appellant had a symptom as a direct result of a progressive deterioration of health.

The Panel reviewed the Doctors answer to the question no. 5, 6, and 7 in the medical form signed by the doctor. In all three questions dealing with nutritional supplement, bottled water and vitamin/mineral supplement, the doctor answered that the requested item would not prevent imminent danger to life. This is exactly the opposite of what the legislative criteria is.

The legislation sets out that the Health supplements are only available if there is medical evidence of one of the sec 67 (1) (c) (ii) symptoms and that the failure to receive same would result in imminent danger to life as set out in sec 67 (1) (c) (iv). The Panel found as facts that the doctor's medical form did not include this medical information from the doctor. The criteria were not all satisfied and therefore the Panel can only conclude that the decision was a reasonable application of the legislation in the circumstances and the Panel must confirm the decision