

[]

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

In a reconsideration decision dated January 15, 2010, the ministry advised the appellant that she was not eligible to receive Monthly Nutritional Supplements (MNS) specifically, nutritional items, bottled water and vitamin and mineral supplementation as per EAPWDR, section 67.1.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 67(1), 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 evidence before the ministry at the time of the reconsideration decision included: (a) Request for Reconsideration, dated December 30, 2009; (b) Letter from prescribed professional, 1 page, dated December 16, 2009; (c) Application for Monthly Nutritional Supplement, dated November 2, 2009.

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The ministry stated that the appellant has a confirmed diagnosis of celiac disease and that she requires a gluten free diet (as outlined in the letter from the prescribed professional dated December 16, 2009). Within the Application for Monthly Nutritional Supplement, dated November 2, 2009, a second prescribed professional also confirms the diagnosis of celiac disease and notes that the appellant does suffer from malnutrition, underweight status (109lbs at 5'3"), and muscle mass loss, as eating gluten renders a celiac person "unable to efficiently absorb nutrients". Although the prescribed professional does indicate that the appellant requires nutritional items to alleviate symptoms to prevent imminent danger to life, the prescribed professional does not indicate what additional items are required, but lists what kind of diet the appellant requires (gluten free). The ministry stated that this does not indicate required additional items but rather 'replacement' items instead of those food items that contain gluten (grains) or a gluten free diet is a diet that does not require additional items but rather is specific diet that requires the 'avoidance' of those nutrition items that do contain gluten. The ministry stated that the appellant is in receipt of PWD and also receives the ministry diet allowance (\$40.00 per month) to support those with celiac disease.

The ministry stated that bottled water was not requested by the prescribed professional.

The ministry stated that both prescribed professionals indicate that Vitamins and Minerals (VM's) are required for the appellant to alleviate her symptoms but there is no indication by either prescribed professional either in the letter dated December 16, 2009, or in the Application for Monthly Nutritional Supplement, that failure to provide these VM's would cause an imminent danger to life. One of the prescribed professional's does specify that the appellant has malabsorption syndrome due to a decreased ability to absorb nutrients but no specific VM's or items are listed by either prescribed professional or how the listed VM's would alleviate the specific symptoms are indicated.

From the Appeal Record, the appellant provided that her weight keeps decreasing because she cannot afford the food which is expensive. The appellant provided that she knows that she is underweight which is confirmed by the letter from the prescribed professional dated December 16, 2009. That same prescribed professional does indicate that the appellant requires a gluten free diet "in addition to some vitamin and mineral supplementation".

The panel finds that the facts in this case are not in dispute.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this case is the reasonableness of the ministry's reconsideration decision dated January 15, 2010 which advised the appellant that she was not eligible to receive Monthly Nutritional Supplements (MNS) specifically, nutritional items, bottled water and vitamin and mineral supplementation as per EAPWDR, section 67.1 and Schedule C, section 7.

EAPWDR, section 67(1)(c) provides (i) the person with disabilities to whom the request relates is being treated by the medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition and that (ii) as a result of the chronic, progressive deterioration of health, the person displays one or more of the following symptoms:

- A) malnutrition
- B) underweight status
- D) muscle mass loss

Additionally, (iii) for the purpose of alleviating a symptom, 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 subsection (iii) will result in imminent danger to the person's life.

EAPWDR, Schedule C (7), provides that the amount of a nutritional supplement that may be provided under section 67 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, \$165. each month;
- (b) for bottled water for a person suffering moderate to severe immune suppression, \$20. each month;
- (c) for vitamins and minerals, \$40. each month.

The ministry's position is that the appellant does not meet all the legislative requirements to receive monthly nutritional supplements under EAPWDR section 67(1). The appellant does have a chronic, progressive deterioration of health, but the prescribed professionals have not identified or confirmed that the appellant meets all the other legislated requirements.

The appellant's position is that she does meet the legislated requirements to receive monthly nutritional supplements as per the request of her prescribed professional. The appellant argues that she requires the monthly nutritional items (additional calories to prevent imminent danger to life) and VM's due to malabsorption syndrome due to the celiac disease.

With regard to EAPWDR, Schedule C (7)(a) the panel finds that the prescribed professional's documentary evidence with regard to additional nutritional items that are part of a caloric supplementation, is incomplete or absent. The prescribed professional notes that the appellant requires caloric supplements to alleviate her symptoms to prevent imminent danger to life, but only

[REDACTED]

lists a gluten free diet which does not require additional caloric intake, but rather is a diet that completely avoids gluten or replaces gluten-full food items with gluten-free items. The appellant did submit that she is currently underweight and cannot afford the gluten free items as they are expensive, but the appellant also receives PWD assistance and the ministry diet allowance for celiacs. As the prescribed professional must provide confirmation of additional items required rather than a specific diet to follow, the panel determined that the ministry reasonably concluded that the legislated requirements of EAPWDR, Schedule C (7)(a) had not been met, and the panel confirms the ministry's decision on this issue.

With regard to EAPWDR, Schedule C (7)(b), the panel finds that the prescribed professional has not indicated or requested bottled water as required by legislation. As such, the panel determined that the ministry reasonably concluded that the legislative test of EAPWDR, Schedule C (7)(b) had not been met, and the panel confirms the ministry's decision on this issue.

With regard to EAPWDR, Schedule C (7)(c), the panel finds the prescribed professional confirms that the appellant has a malabsorption syndrome due to a decreased ability to absorb nutrients. Both prescribed professionals have confirmed that the appellant does require VM's to alleviate her symptoms, but it is not indicated in the Application for Monthly Nutritional Supplements or in the prescribed professional's letter dated December 16, 2009, that failure to provide the VM's would prevent imminent danger to life. Both prescribed professionals indicate the need, but also neither specify the additional VM items that are required and how they will alleviate specific symptoms. Therefore, the panel finds that the ministry reasonably concluded that the legislated requirements of EAPWDR, Schedule C (7)(c) had not been met and the panel confirms the reasonableness of the ministry's decision on this issue.