

[REDACTED]

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The Decision under Appeal is the Reconsideration Decision of December 21, 2009 which held that the Appellant was not eligible for monthly nutritional supplement because the Appellant did not meet the eligibility criteria under section 67 and Schedule C, Section 7 of the EAPWDR.

The Ministry's decision was based on the conclusion that the Appellant did not require additional nutritional items that are part of a caloric supplementation in addition to normal dietary intake to alleviate symptoms or to prevent imminent danger to his life or bottled water to alleviate moderate to severe immune suppression or vitamin or Mineral supplementation to prevent imminent danger to life.

**PART D – RELEVANT LEGISLATION**

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Regulations (EAPWDR), Section 67  
Employment and Assistance for Persons with Disabilities Regulations (EAPWDR), Schedule C, Section 7.

## **PART E – SUMMARY OF FACTS**

The evidence before the Panel was provided in part in the Appeal Record and part through oral testimony from the Appellant and the Ministry, which was admitted under section 22(4) of the Employment and Assistance Act (EAA) as it was in support of the information that was before the Ministry.

The Appeal Record as part of the evidence were copies of the following documents:

1. Employment and Assistance Reconsideration Decision including Appendix A: Reconsideration Decision and Appendix B: Applicable Legislation dated December 21, 2009.
2. Employment and Assistance Request for Reconsideration signed by the Ministry November 10, 2009 and signed by the Appellant December 1, 2009.
3. Prescription form from the Appellant's Prescribed Professional stating that the Appellant suffers from Hepatitis C, HT and would benefit from a high protein low salt diet.
4. Ministry's original denial letter dated October 29, 2009.
5. Ministry's Monthly Nutritional Supplement Decision Summary dated October 29, 2009.
6. Application for Monthly Nutritional Supplement signed on September 28, 2009.

In the Reconsideration Decision the Ministry states that it is not satisfied that the Appellant requires nutritional items in addition to normal dietary intake to alleviate his symptoms or prevent an imminent danger to his life because although the Prescribed Professional has specified that the Appellant requires multivitamins, a low fat diet high in vegetables, fruit and fish and that he should avoid chlorine-treated water and use bottled spring water, the Prescribed Professional has not confirmed that the Appellant requires nutritional items to prevent imminent danger to life as required under EAPWDR, Section 67(1)(c)(ii) and Schedule C section 7(a).

The Ministry is not satisfied that the risk associated with immune suppression will be mitigated by bottled water to prevent imminent danger to life. Although the Prescribed Professional does recommend that the Appellant avoid chlorine-treated water she does not confirm that the risk associated with immune suppression will be mitigated by bottled water and will prevent imminent danger to life.

Based on the information provided, the Ministry denies the Appellant's request for vitamin/mineral supplementation because the Prescribed Professional has not referenced that it is needed to prevent imminent danger to life.

At the Hearing the Appellant presented 2 written pages of statement expressing three issues with the Reconsideration Decision denying his request for dietary supplement and a copy of the Appellant's reasons for request for reconsideration which already appears in the record. The Ministry offered no objection to the evidence and after deliberation; the Panel admitted the evidence into the Hearing under EAA, Section 22.

The first issue of the Appellant's concern is on the third page of the record, the name shown is not his. The second issue is that on the second page of the Ministry's Monthly Nutritional Supplement Decision form dated October 29, 2009, the female pronoun "her" is used.

The Appellant expressed concern that some other person's records were used in the original decision. The Appellant finds that as two prescribed professionals have prescribed vitamin supplements and bottled water, he has qualified under the legislation.

The Panel finds that in regards to the Appellant's concern over the errors in the Appeal Record of his name, that this error occurred at the Employment and Assistance Appeal Tribunal office when compiling the Appeal record since the page only shows the Appeal Record Number and was not part of the Reconsideration Decision documents. In the Reconsideration Decision Records the Appellant's name is correct. Therefore the Panel finds that the wrong name does not represent the file of another Ministry's client and the Reconsideration Decision is based on the Appellant's file.

As to the Appellant's concern over the use of the pronoun "her" in the Ministry's original decision Monthly Nutritional Supplement Summary dated October 29, 2009, the Panel finds that all the

**ATTACH EXTRA PAGES IF NECESSARY**

Appellant's file reference numbers shown on the form correspond to his Reconsideration Decision forms and that the word is a spelling error and therefore the Panel finds that the decision is based on the Appellant's information.

The Appellant gave further oral evidence that he suffers from Hepatitis C which attacks the liver by depriving it of the nutrition that the liver needs to function. Eventually the liver dies through starvation and no longer filters out toxins in the body which will cause his death. The dietary supplements and bottled water are not a cure for the liver's deterioration but will slow the progression and make his day to day illness more bearable. The Appellant stated that his Hepatitis C condition has become more severe in the last year or so, resulting in weight loss of over 20 pounds.

The Ministry gave evidence that the Appellant is receiving assistance as a PWD due to his medical condition plus an additional \$50.00 to cover supplements. The Ministry may under the legislation provide nutritional supplements to some receiving assistance as a PWD, if as a result of the chronic progressive deterioration of health, the person meets one or more of the following conditions:

- Malnutrition
- Underweight status
- Significant weight loss
- Muscle mass loss
- Bone density loss
- Significant deterioration of an organ
- Moderate to severe immune suppression

The Prescribed professional has recommended that a diet low in fat, high in vegetables, fruit, fish, a high liquid intake as well as multivitamins as well as the avoidance of chlorinated water by using bottled water. However the Prescribed professional has not indicated that multivitamins or bottled water are necessary to prevent imminent danger to life. The Ministry feels that his condition can be alleviated through proper diet. Therefore the Ministry denied the request.

The Appellant also confirmed that he is currently receiving an extra \$50.00 assistance to cover supplements but finds that this amount does not provide enough funds to cover the needed supplements requested.

**PART F – REASONS FOR PANEL DECISION**

(State the reasons for the panel decision)

The issue on appeal is whether the Ministry reasonably concluded that the Appellant was not eligible for monthly nutritional supplement because the Appellant did not meet the eligibility criteria under section 67 and Schedule C, Section 7 of the EAPWDR:

Under the EAPWDR, Section 67 and Schedule C, Section 7 states that:

**Nutritional supplements**

67 (1) The minister may provide a nutritional supplement in accordance with section 7 [monthly nutritional supplement] of Schedule C to or for a person with disabilities in a family unit who receives disability assistance under

(a) section 2 [monthly support allowance], 4 [monthly shelter allowance], 6 [people receiving room and board] or 9 [people in emergency shelters] of Schedule A, or

(b) section 8 [people receiving special care] of Schedule A, if the special care facility is an alcohol or drug treatment center 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, (B.C. Reg. 317/2008)

(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;

(d) the person is not receiving a supplement under section 2 (3) [general health supplement] of Schedule C;

ATTACH EXTRA PAGES IF NECESSARY

(e) the person is not receiving a supplement under subsection (3) or section 66 [diet supplements];

(f) the person complies with any requirement of the minister under subsection (2);

(g) the person's family unit does not have any resources available to pay for the items for which the supplement may be provided.

(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 a medical opinion from a medical practitioner other than the medical practitioner referred to in subsection (1) (c).

#### A. 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, \$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 finds that the Appellant has not qualified under the legislation because a prescribed professional has not confirmed that the nutritional supplements requested are needed to prevent imminent danger to life.

The Appellant contends that he has qualified under the legislation because two prescribed professional's have prescribed nutritional supplements to help alleviate his condition and to enable him to make his day to day living more bearable.

In regards to the Appellant's request for nutritional supplements that are part of a caloric supplementation in addition to normal dietary intake, the Panel finds that although the Appellant's Prescribed Professional has confirmed that the Appellant needs them to alleviate the symptoms of his severe condition, the Prescribed Professional has not confirmed that these nutritional items are needed to prevent imminent danger to life. Therefore the Appellant has not qualified under EAPWDR, Sections, 67(1)(c)(iv) and the Panel finds that based on the evidence provided, the decision of the Ministry was reasonable and also finds that there has been a reasonable application of the applicable enactment in the circumstances of the Appellant and therefore confirms the decision of the Ministry under Section 24(2)(a) of the EAA.

In regards to the Appellant's request for bottled water, the Panel finds that although the Appellant's Prescribed Professional has confirmed that the Appellant needs them to mitigate risks associated with immune suppression, the Prescribed Professional has not confirmed that these nutritional items are needed to prevent imminent danger to life. Therefore the Appellant has not qualified under EAPWDR, Sections, 67(1)(c)(iv) and the Panel finds that based on the evidence provided, the decision of the Ministry was reasonable and also finds that there has been a reasonable application of the applicable enactment in the circumstances of the Appellant and therefore confirms the decision of the Ministry under Section 24(2)(a) of the EAA.

In regards to the Appellant's request for Vitamin or mineral supplementation, the Panel finds that although the Appellant's Prescribed Professional has confirmed that the Appellant needs them to alleviate the symptoms of his condition, the Prescribed Professional has not confirmed that these nutritional items are needed to prevent imminent danger to life. Therefore the Appellant has not qualified under EAPWDR, Sections, 67(1)(c)(iv) and the Panel finds that based on the evidence provided, the decision of the Ministry was reasonable and also finds that there has been a reasonable application of the applicable enactment in the circumstances of the Appellant and therefore confirms the decision of the Ministry under Section 24(2)(a) of the EAA.