

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The ministry in its reconsideration decision dated December 21, 2009 refused the appellant's request for a Monthly Nutritional Supplement for nutritional items and bottled water as the request did not meet the legislative criteria. Based on the medical information, the ministry was satisfied a medical practitioner was treating the appellant for a chronic, progressive deterioration of health on account of a severe medical condition. The ministry, however, found the appellant was not eligible for the nutritional items because although the appellant's physician described them as necessary to alleviate symptoms of significant weight change (increase or gain) and decreased muscle mass the items described are not part of a caloric supplementation to a regular dietary intake. The ministry found the symptoms as indicated by her medical practitioner were the result of poor diet caused by a limited budget and not the direct result of a chronic deterioration of health as set out in the legislation. It further found the diet recommended by the medical practitioner did not establish that the appellant required nutritional items that are part of a caloric supplementation to a regular dietary intake to alleviate the symptoms. With respect to bottled water, it found the physician did not indicate the appellant had a symptom of moderate to severe immune suppression to require this and did not confirm she required it to prevent an imminent danger to her life.

**PART D – RELEVANT LEGISLATION**

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, section 67 and 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 is as follows:

- September 9, 2009 in her application for monthly nutritional supplements the appellant's physician indicates that the appellant has a chronic, progressive deterioration of health due to a severe medical condition of Type 2 diabetes and schizophrenia. The physician comments with respect to the latter "delicate balance of medications and supplements have kept her out of hospital". The physician also indicates a symptom of 'neurological degeneration' and comments "exacerbation of thought disorder without supplements and meds". He further indicates the appellant requires as nutritional items: niacin, B complex, fish oil, omega 3, B12, Vitamin C, chromium, calcium, magnesium and comments "this regime has helped stabilize her schizophrenia". The physician does not tick whether the appellant needs the nutritional items to prevent imminent danger to life but comments "potentially". The physician in the application makes no indication that the appellant is suffering from a symptom of moderate to severe immune suppression and requires bottled water to mitigate risks and as above does not indicate it will prevent imminent danger to life. The physician also indicates that the appellant requires vitamin and mineral supplementation to alleviate her symptoms but does not tick whether the appellant needs the supplementation to prevent imminent danger to life but again comments "potentially". As additional comments, the physician states "she's enjoyed several years of stability with her schizophrenia while on her current regime. It would be catastrophic to disrupt it".
- October 14, 2009 the ministry informs the appellant that after considering her request for monthly nutritional supplements it has approved her request for vitamins and minerals but, based on the information in her application denies her request for nutritional items and bottled water.
- November 16, 2009 the appellant files a request for reconsideration and requests an extension in order to obtain relevant documentation from her physician.
- December 8, 2009 a letter from the appellant's physician in support of her request for a full monthly nutritional supplement indicates that the appellant has limited financial resources to buy food and is unable to afford good quality fruit, vegetables and lean proteins essential to maintaining a healthy weight and normal muscle mass. As a result, he reports the appellant resorts to inexpensive foods with refined sugars, food additives and preservatives, but needs organic, gluten-free foods that are healthful for her schizophrenia and has gained considerable weight and a decrease of muscle mass. The physician also notes that all of this leads to insulin resistance, a hyperinsulinemic state and further weight gain which in turn leads to a worsening of her diabetes and diabetic complications and states "if she continues to be limited to poor quality nutrition by the financial confines of her PWD payments, she is likely to experience a chronic and progressive deterioration in her health".

In her Notice of Appeal dated January 5, 2010 the appellant states "the ministry has misapplied the legislation regarding my nutritional needs and eligibility".

At the hearing, the appellant's advocate presented a 4 page submission comprised of legal argument and support letter from the appellant's spouse dated January 21, 2010. The panel accepted these submissions under section 22(4) of the Employment and Assistance Act as being in support of the information and records before the ministry at reconsideration.

The letter of support from the appellant's spouse describes how the appellant's income assistance as a person with disabilities does not cover her need for good quality food and that she needs the nutritional supplement for items such as lean meats and organic fruit and vegetables. The appellant's spouse reports that the appellant is morbidly obese and that an improved diet would greatly assist in the appellant's weight reduction

The appellant's advocate argued as follows:

- (i) The legislation should be interpreted in a large and liberal manner and any ambiguity in the EAPWD legislation must be resolved in the appellant's favour.
- (ii) The appellant's doctor has told the appellant she has to follow a weight reduction program to bring her weight down to a healthy range and once that range is obtained she must adhere to a strict diet of additional protein, fresh fruits and vegetables and complex carbohydrates to avoid a deterioration in health.
- (iii) The appellant's family physician has told the appellant that when she experiences mood fluctuations which are unpredictable as a result of her schizophrenia it is essential to her health that she consume calorie supplementing drinks when she is confined to her bed for days on end. The advocate reports further that because the appellant is unable to get out of bed for the simplest meal preparation this can have dangerous effects on her blood sugar levels and that access to calories, proteins, vitamins and minerals are need during these time to avoid these effects and to prevent any dangerous blood sugar fluctuations which could pose a danger to her health.
- (iv) Further to the physician's letter dated December 8, 2009 which describes that the appellant has significant food sensitivities and her requirement to consume organic, gluten-free foods that are healthful for her schizophrenia, the advocate adds that these food sensitivities have a drastic affect on the appellant's schizophrenia and that when she "consumes certain foods, she experiences a significant fluctuation in her mood which often brings on an exacerbation of symptoms." The advocate further outlines that because the appellant " has both a physical and mental impairment that affect her ability to consume certain foods, to process natural sugars and to regulate her own blood sugar levels , she is constantly at risk for extreme health issues as her diabetes is quickly and dangerously affected by the effects of her schizophrenia." The advocate feels the legislation which notes only the symptom of 'underweight status' is discriminatory if applied to someone who, like the appellant, is grossly obese and whose caloric needs fluctuate.
- (v) That the appellant has been struggling to provide herself with proper nutritional items, bottled water, and vitamins and minerals for years within the confines of her limited income and has experienced a continuous deterioration in health and that she meets all the legislative requirements set out in the EAPWDR particularly with symptoms of 'malnutrition', 'significant weight change', 'muscle mass loss', neurological degeneration' and 'moderate to severe immune depression'.

At the hearing, appellant indicated that she is 150 pounds overweight and has had diabetes for six years. She confirmed that she receives a supplement of \$40.00 per month for vitamins and minerals as well as a diet supplement of \$35.00 which is used to purchase blood test tabs for her diabetes.

The ministry stood by the record and confirmed the above additional supplements.

The panel makes the following finding of facts:

1. The Appellant is designated as Person with Disabilities and receives disability assistance.
2. The appellant is being treated for medical conditions consisting of type 2 diabetes and schizophrenia that result in a chronic deterioration of health.
3. The appellant receives a monthly \$40 supplement for vitamins and minerals to meet these needs outlined by her physician in the original application required to stabilize her schizophrenia. The appellant receives a further diet supplement of \$35 that she uses for blood test tabs related to her diabetes.
4. A medical practitioner has confirmed the appellant displays symptoms of 'significant weight change', 'muscle mass loss' and neurological degeneration' but not 'malnutrition' nor 'moderate to severe immune depression'. With respect to the latter, A medical practitioner has not confirmed that the appellant requires bottled water due to suffering moderate to severe immune suppression
5. A medical practitioner has confirmed the appellant needs, but cannot afford due to a limited budget good quality fruit, vegetables and lean proteins essential to maintain a healthy weight and normal muscle mass and that consuming organic , gluten-free foods are healthful to her schizophrenia. Because of her poor diet the appellant has gained considerable weight and experienced a significant loss of muscle mass that leads to insulin resistance, a hyperinsulinemic state and further weight gain.

**PART F – REASONS FOR PANEL DECISION**

(State the reasons for the panel decision)

The only issue to be decided is the reasonableness of the ministry's decision to deny the appellant monthly nutritional items that are part of a caloric supplementation to a regular dietary intake and bottled water. The ministry agrees that the appellant is being treated for a chronic, progressive deterioration of health on the account of a severe medical condition and has approved the appellant's requirement for vitamin and mineral supplementation.

In this case, the relevant legislation from the EAPWDR considered is as follows:

## Section 67 - 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 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;

(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.

ATTACH EXTRA PAGES IF NECESSARY

### Schedule C. Section 7 - 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 argues that although the appellant is being treated for a chronic, progressive deterioration of health on account of severe medical condition involving type 2 diabetes and schizophrenia, that the additional nutritional items are not required for the purpose of alleviating her symptoms of neurological degeneration, significant weight change and muscle mass loss that are the direct result of a chronic progressive deterioration of health. It also argues that a recommended diet of good quality fruit, vegetables and lean protein which would help regain and maintain a healthy weight and normal muscle mass does not establish that the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake to alleviate her symptoms. It finally argues that there is nothing to indicate the appellant requires bottled water to alleviate a symptom of moderate to severe immune suppression and that failure to obtain the nutritional items or the bottled water will result in imminent danger to life.

The appellant's position is that she is eligible for the monthly nutritional supplement of 'additional nutritional items that are part of a caloric supplementation to a regular dietary intake' and bottled water' because her mental and physical impairments affect her ability to consume certain foods, to process natural sugars and to regulate her own blood sugar levels and she is constantly at risk for extreme health issues as her diabetes is quickly and dangerously affected by the effects of her schizophrenia. The appellant argues further when she experiences mood fluctuations which are unpredictable as a result of her schizophrenia it is essential to her health that she consume calorie supplementing drinks when she is confined to her bed for days on end. She needs access to calories, proteins, vitamins and minerals during these times to prevent significant blood sugar fluctuations and resulting danger to her health. She finally argues that her limited funds prevent her from accessing a proper diet and, at times, the needed caloric supplements.

The panel finds that a medical practitioner has confirmed that the appellant has a chronic, progressive deterioration of health on account of a severe medical condition and displays one or more of the listed symptoms. However, the evidence from the medical practitioner does not confirm the appellant requires bottled water due to suffering from a 'moderate to severe immune suppression' and requires it to prevent imminent danger to life. Further, it finds there is no medical confirmation that the appellant suffers from a symptom of 'malnutrition' as a direct result of a chronic progressive deterioration of health due to her medical conditions or that her diagnosed medical condition has directly resulted in this symptom. When considering the criterion that additional 'nutritional items' be part of a caloric supplementation to a regular dietary intake, the panel applies a plain meaning and interprets "caloric supplementation" as extra or added calories.

The panel does not find the items of good quality fruit, vegetables and lean proteins as described by the physician to be monthly nutritional items that are part of a caloric supplementation to a regular dietary intake. It also finds that the physician has not indicated a need for extra calories due to her medical condition, but rather the need for good quality nutrition or diet that she cannot afford due to her limited income on a person with disability payments.

As the appellant's request for a monthly nutritional supplement for 'nutritional items' and 'bottled water' does not meet the legislative criteria, the panel confirms the reconsideration decision as it is a reasonable application of the legislation in the circumstances of the appellant.