



## **PART C – DECISION UNDER APPEAL**

In the reconsideration decision of December 18, 2009, the appellant's request for the Monthly Nutritional Supplement (MNS) of nutritional items, bottled water and vitamin/mineral supplementation was denied by the ministry. Specifically, the minister is not satisfied that the appellant requires additional nutritional items or vitamins and minerals for the purpose of alleviating one or more of the symptoms that are a direct result of chronic, progressive deterioration of health and to prevent imminent danger to life as set out in Section 67 and Schedule C, Section 7 of the Employment and Assistance for Persons with Disabilities Regulation.

## **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**

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

The following is a summary of the key dates and information related to the appellant's Request for Reconsideration:

On September 10, 2009, the appellant requested monthly Nutritional supplements (MNS) from the Ministry.

On November 6, 2009, the ministry denied the request.

On December 2, 2009 the appellant submitted a Request for Reconsideration.

On December 18, 2009 the ministry completed its review of the Request for Reconsideration and denied the request.

The evidence before the ministry was comprised of the following:

- An application for Monthly Nutritional Supplement (MNS) dated September 10, 2009.
- The appellant's Request for Reconsideration dated November 9, 2009.
- A letter dated November 10, 2009 from the appellant's social worker (SW).
- Notice of Appeal dated January 4, 2010.

In the application for Monthly Nutritional Supplement (MNS) signed by the appellant on September 10, 2009, the medical practitioner stated that the appellant has a chronic, progressive deterioration of health due to a severe medical condition, has muscle mass loss and has significant deterioration of his liver. The medical practitioner also indicates that the appellant requires nutritional items to alleviate his symptoms and to prevent imminent danger to life. The medical practitioner indicated that additional items required to alleviate the specific symptoms are; better food, increased protein and increased calories. The medical practitioner further reports that bottled water will not mitigate the risks associated with the appellant's immune suppression, and does not require vitamin or mineral supplementation to alleviate the appellant's medical condition. The appellant's social worker (SW) indicates the appellant requires nutritional supplements such as Boost or Ensure.

Included in the appellant's Request for Reconsideration dated November 9, 2009, the medical practitioner indicated that he does not feel that bottled water is necessary for treatment of Hepatitis C.

In a letter dated November 10, 2009 the appellant's social worker reports that the appellant has a depressive disorder, narcotic dependence - in early remission, and hepatitis C. She also states that the appellant's two recent tests confirm compromised liver function, and he appears quite underweight.

### **Nutritional Items:**

The ministry in the Decision Under Consideration stated that the minister is not satisfied that the appellant requires nutritional items for the purpose of alleviating one or more symptoms that are a direct result of a chronic, progressive deterioration of health as set out in section 67(1)(c)(ii) of the Employment and Assistance for Persons with Disabilities Regulation. In the Reconsideration Decision the ministry stated that the appellant's medical practitioner has not confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition. In the appellant's application the medical practitioner indicates that the appellant requires nutritional items in addition to the appellant's normal daily intake to alleviate symptoms and to prevent imminent danger to life and that the medical practitioner indicated that the appellant requires better food, increased protein and increased calories. However he has not indicated what chronic, progressive deterioration of health that the appellant is being treated for. Also in the letter from the appellant's social worker confirming that the appellant has Hepatitis C, however there is no confirmation that the appellant suffers from malnutrition, underweight status, or suffered a significant weight change, based on this information the ministry concluded that the request for nutritional items does not meet the eligibility criteria set out in section 67(1)(c)(iii) and (iv) of the legislation.

**Bottled Water:**

In response to the appellant's request for bottled water, the ministry is not satisfied that bottled water is required to alleviate the symptom of moderate to severe immune suppression, nor is the ministry satisfied that bottled water is required to mitigate the risks associated with immune suppression and to prevent imminent danger to life. The ministry relies on the fact that the medical practitioner has not indicated that the appellant has moderate to severe immune suppression, nor has the medical practitioner indicated that bottled water is required to mitigate the risks associated with immune suppression. Further, the medical practitioner does not indicate whether or not bottled water will prevent imminent danger to life.

**Vitamin/mineral supplementation:**

In response to the appellant's request for vitamin/mineral supplementation, the ministry is not satisfied that these items are required to alleviate the symptoms of moderate to severe immune suppression, nor is the ministry satisfied that these are required to mitigate the risks associated with immune suppression and to prevent imminent danger to life. Again, the ministry relies on the medical practitioner information that these items are not required to alleviate his symptoms of chronic, progressive deterioration of health. Further, the medical practitioner has not indicated that the vitamin or mineral supplements will prevent imminent danger to life.

In his appeal application, the appellant stated that the ministry decision to deny PWD status is wrong because he has lost weight, muscle mass due to inadequate nutrition and he requires supplements to gain weight and get healthy.

At the hearing the ministry read from the Reconsideration Decision and stood by the minister's decision that based on the information provided, the minister is not satisfied that failure to obtain any of the requested Monthly Nutritional Supplement items will result in imminent danger to life.

**ATTACH EXTRA PAGES IF NECESSARY**

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry reasonably concluded that the appellant did not meet the criteria for qualifying for Monthly Nutritional Supplement (MNS), as the appellant is not being treated for a chronic progressive deterioration of health on account of a severe medical condition, and does not require additional nutritional items for the purpose of alleviating one or more of the symptoms that are a direct result of a chronic, progressive deterioration of health as set out in section 67 (1)(c)(iii) of the EAPWDR, and that failure to obtain these items will result in imminent danger to the appellant's life.

EAPWD Regulation Section 67(1) The minister may provide a nutritional supplement in accordance with section 7 (MNS) of Schedule C to or for a person with disabilities in a family unit who receives disability assistance under (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 to being treated by the medical practitioner or a nurse practitioner for chronic, progressive deterioration of health on account of a severe medical condition. (ii) as a direct result of the chronic pain, 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 argues that the appellant is not eligible for the MNS nutritional items. They argue that it is an eligibility criteria stated in EAPWD Regulation that a medical practitioner (a) confirm the requirements of the MNS request and (b) that failure to attain these items will result in imminent danger to life. In the Reconsideration Decision the ministry stated that the appellant's medical practitioner has not confirmed that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, and the appellant's social worker has not confirmed that the appellant suffers from malnutrition, underweight status or has suffered a significant weight change.

The panel notes that the medical practitioner has not indicated on the form that the appellant requires bottled water or vitamin or mineral supplementation. The ministry stated in the reconsideration decision that the medical practitioner, in the application of MNS does not request bottled water and that he does not feel that bottled water is necessary for treatment of Hepatitis C. Based on this information the ministry denied the appellant's request for bottled water as it does not meet the eligibility criteria set out in section 67(i) (c) (iii) and (iv) of the legislation. Regarding vitamin and mineral supplementation the ministry states that the medical practitioner does not request vitamin/minerals. Included in the appellant's reconsideration is a letter from a social worker; however there is no confirmation that the appellant requires vitamin/minerals to prevent imminent danger to life. Based on this information the appellant's request for vitamin/minerals does not meet the eligibility criteria set out in section 67(i)(c)(iii) and (iv) of the legislation.

The panel finds that the only issue that remains, then, is whether or not the requested nutritional items meet the criteria. The panel found that the evidence of the medical practitioner does indicate by a check mark on the completed application form for MNS that the appellant has a chronic, progressive deterioration of health due to a severe medical condition. The panel also finds that the medical practitioner has confirmed the appellant has displayed more than one symptom as a result of these medical conditions, that is, muscle mass loss and significant deterioration of an organ. The panel finds that the evidence does confirm the requirement of section 67(ii) as the medical practitioner clearly indicates that nutritional items are required to alleviate the appellant's symptoms and does indicate failure to obtain the nutritional items would result in imminent danger to life.

The panel noted that although the ministry stated in the Reconsideration Decision that the social worker has not confirmed that the appellant suffers from malnutrition, underweight status, or have suffered a significant weight change. The legislation states in EAPWDR, Section 67(c)(iii) for the purpose of alleviating a symptom referred to in subparagraph (H), the person requires one or more of the items set out in section 7 of schedule C and specified in the request. The panel finds that the appellant has met two of the required criteria. In determining this, the panel relied on the evidence found in the application for MNS, where the medical practitioner indicated that the appellant has muscle mass loss and significant deterioration of an organ.

ATTACH EXTRA PAGES IF NECESSARY



After considering all the evidence, the panel finds that it was not reasonable for the ministry to conclude that any of these criteria were not met. The medical practitioner was asked specifically to check yes or no to these questions and he answered each in the affirmative. It is not up to the ministry to determine any of these criteria. The legislation leaves that to the medical practitioner.

The panel therefore finds the decision of the ministry in respect to the nutritional items is not supported by the evidence and rescinds the ministry's decision in accordance with section 24(2)(b) of the Employment and Assistance Act.