

## **PART C – DECISION UNDER APPEAL**

The Reconsideration Decision dated December 23, 2009 denied the Appellant's request for monthly nutritional supplements (MNS) because the Appellant's request did not meet the criteria for nutritional items set out in s. 67 of the EAPWD Regulations and Schedule C s. 7. The Appellant did not meet the criteria because

1. the Appellant's physician does not confirm that the Appellant requires nutritional items in addition to normal dietary intake to alleviate his symptoms;
2. the information does not establish that the Appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake to alleviate his symptoms;
3. the Appellant's medical practitioner does not confirm that additional nutritional items are required to prevent imminent danger to life;

## **PART D – RELEVANT LEGISLATION**

Employment and Assistance Act ( EA Act)  
Employment and Assistance for Persons with Disabilities (EAPWD) Act  
EAPWD Regulations, section 67, and Schedule C , s. 7

## **PART E – SUMMARY OF FACTS**

The Panel reviewed the Appeal Record which included administrative information and the following:

- Reconsideration Decision dated December 23 2009
- Request for Reconsideration dated December 5, 2009
- Extracts from legislation
- Ministry Monthly Nutritional Supplement decision Summary
- Application for Monthly Nutritional Supplement

The Appellant submitted that he requested a monthly nutritional supplement because he has a heart condition and is a borderline diabetic patient. He says the best diet for him is a diet of fruits, vegetables, lean meats and high fibre products. He submits that he cannot afford to purchase these foods as his budget includes rent, utilities, truck payment and insurance payment, that leave him only just over 100 dollars for groceries each month. He submits that in the last few months since he left Alberta his health is deteriorating and he has gained 15 lbs for no apparent reason. He states that his income assistance was greater in Alberta and he was able to afford the healthy diet of high fibre, fruit, vegetables and lean meat, which is the diet that best meets both his conditions as a diabetic and a heart patient. The patient submits that he is frustrated with the paperwork and the time limitations as he wanted to have additional or substitute supporting documents from a doctor for this application but he did not have a local doctor at the time of making his application. He believes and states that his health is suffering from the lack of a proper diet and the stress of this application increases his chance of a heart attack.

The Ministry submitted that the Appellant is bound to satisfy the legislative criteria that must be evident in order to qualify for a monthly nutritional supplement. The Ministry states that the EAPWD Regulations states that 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 are available if the minister is satisfied that the a defined health issue exists. The Ministry states that this criteria can be satisfied by the provision of confirmation from a medical practitioner or nurse practitioner with details including the confirmation that failure to obtain additional nutritional items will result in imminent danger to life. The Ministry finds that the necessary confirmation from a doctor or nurse practitioner was not provided and therefore it cannot grant the request.

**ATTACH EXTRA PAGES IF NECESSARY**

## PART F – REASONS FOR PANEL DECISION

The issue is whether the Ministry's decision to deny the Appellant's request for a monthly nutritional supplement, specifically for nutritional items is a reasonable decision based on the legislation. Section 67(1) of the EAPWD Regulation provides for the issuance of a supplement to a person who receives disability assistance if certain conditions are shown to exist. The applicable extracts from S. 67 (1) (c) read as follows:

### **“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 and transition houses*] 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,

(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.”...

The Appellant's position is that the medical information he has provided to date including his success in obtaining the PWD designation and the application form in this material is proof that he has serious medical health problems with his heart and diabetes and possible other undiagnosed issues. This should be sufficient evidence that has a progressive deteriorating condition and that he needs a healthy diet to ward off further heart attacks and a diabetic coma.

The Ministry's position is that they are guided by the EAPWD Regulation that sets out the conditions of eligibility for a monthly nutritional supplement. The supplement is not designed to increase income but is available to help where certain legislative criteria have been established to determine eligibility. In this case the Ministry states that the Nurse Practitioner did not describe the progressive deteriorating condition to satisfy s. 67 ( 1 ) ( c ) ( ii ) and did not satisfy s. 67 ( 1 ) ( c ) ( iv ) to confirm that failure to provide the items needed would result in imminent danger to the person's life.

The Panel finds that a nurse practitioner (NP) completed the Ministry's form of application for a monthly nutritional supplement. In that form the NP answered question 3 which asked for an indication of whether the appellant had any of the 8 symptoms listed in s. 67 ( 1 ) ( c ) ( ii ) and the NP ticked the box for significant deterioration of an organ but did not provide a clear description other than to type in " ? CHF/CVD. In question 4 the NP indicated a nutritionist was not involved in the Appellant's treatment plan but made the notation, "will refer". In question 5 headed "Nutritional Items" the NP did not answer the question, "Does the applicant require these to alleviate any of the above symptoms? (note: must be in addition to normal dietary intake)". In the second part of the question which reads: "To prevent imminent danger to life?" the NP answered, "No". Based on this evidence the Panel finds that the NP has not given evidence to confirm that the Appellant requires nutritional items in addition to normal dietary intake to alleviate his symptoms. The Panel finds that an NP has not confirmed that the failure to obtain the needed items will result in imminent danger to the Appellant's life. . The Panel finds that the NP has not indicated that nutritional items are required that are part of a caloric supplementation to a regular dietary intake. In question 5, the NP listed a diet that should be part of the Appellant's regular dietary intake but that is not the information that satisfies the criteria of being a caloric supplementation in addition a normal dietary intake.

Therefore the Appellant has not satisfied all of the criteria required to be eligible for a monthly

nutritional supplement as set out in section 67 (1) (c ).

For these reasons the Panel finds that Appellant has failed to satisfy the legislative criteria and the Panel confirms the Ministry's decision as a reasonable application of the applicable enactment.