

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

In a reconsideration decision dated July 19, 2010, the Ministry denied the Appellant's request for monthly nutritional supplement, specifically nutritional items, bottled water, and vitamin and minerals, because he did not meet the legislative criteria needed to be eligible to receive the supplements.

**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**

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 Appellant is classified as a single recipient with disability status. On March 16, 2010, the Appellant requested a monthly nutritional supplement (MNS) by submitting an application that was filled out by a medical practitioner (MP).

In the application, the MP confirms the Appellant is being treated for a chronic, progressive deterioration of health and that the Appellant has congestive heart failure and insulin dependent diabetes. The MP states the Appellant has two symptoms, malnutrition, with the note "insufficient protein in diet" and muscle mass loss with the note "marked loss in lean muscle mass" as a result of the chronic, progressive deterioration of health. The MP notes the Appellant requires nutritional items to alleviate the symptoms and that they are necessary to prevent imminent danger to the Appellant's health. He also states that vitamin or mineral supplements will alleviate the symptoms but are not necessary to prevent imminent danger to health. The MP concludes the application with the note that the Appellant requires protein supplement.

Additional information before the Ministry at the time of the reconsideration was a note from the MP that states the Appellant has moderately severe asthma, heart failure with ejection fraction, insulin dependent diabetes mellitus, severe GERD with a history of duodenal ulcer, osteoarthritis with bilateral knee replacement surgery. The MP states because of the heart failure the Appellant needs a low sodium diet and because of the diabetes he needs a balanced protein, carb. and fat diet. He summarizes that the Appellant currently cannot afford a proper diet and can only afford carbs.

At the hearing the Appellant's Advocate stated the Appellant has at least three symptoms as a result of a chronic progressive deterioration of health. He stated the MP had confirmed malnutrition and muscle mass loss and because of the diagnosed congestive heart failure, the Appellant has a third symptom, significant deterioration of a vital organ.

The Appellant stated he has congestive heart failure and has had pancreatitis. He explained that he needs to keep his diet balanced to maintain his insulin levels.

At the hearing the Panel accepted, under the Employment and Assistance Act, Section 22(4), a note from a MP because it was the same MP that had filled out the application for nutritional supplements and it confirmed information before the Ministry at the time of the reconsideration decision. The note confirmed the Appellant's diagnosis and the need for dietary and vitamin supplementation.

At the hearing the Ministry reviewed the Appellant's application for monthly nutritional supplements and the applicable legislation. The Ministry accepts that the Appellant is being treated for a chronic and progressive deterioration of health on account of a severe medical condition. However the Ministry accepts only one symptom (muscle mass loss) is a direct result of a chronic, progressive deterioration of health. The Ministry acknowledges that the MP had stated nutritional items were required to alleviate the Appellant's symptoms however the Ministry argued that nutritional items are not required as a caloric supplement to a regular dietary intake, that is, the Appellant is not displaying

the symptoms of underweight status or significant weight loss.

The Ministry argues the Appellant does not require vitamin /mineral supplements to alleviate symptoms or prevent an imminent danger to health because the MP did not specify what is required and how they will alleviate the symptoms. Also the MP did not indicate that failure to obtain the supplements will result in imminent danger to life.

**PART F – REASONS FOR PANEL DECISION**

(State the reasons for the panel decision)

The issue in the case is the reasonableness of the Ministry to determine the Appellant is not eligible for the requested monthly nutritional supplements, that is, nutritional items, bottled water, and vitamin and mineral supplements.

The legislation provides under EAPWDR, Section 67(1.1):

*(1.1) In order for a person with disabilities to receive a nutritional supplement under this section, the minister must receive a request, in the form specified by the minister, completed by a medical practitioner or nurse practitioner, in which the practitioner has confirmed all of the following:*

*(a) the person with disabilities to whom the request relates is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;*

*(b) as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms:*

*(i) malnutrition;*

*(ii) underweight status;*

*(iii) significant weight loss;*

*(iv) significant muscle mass loss;*

*(v) significant neurological degeneration;*

*(vi) significant deterioration of a vital organ;*

*(vii) moderate to severe immune suppression;*

*(c) for the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more of the items set out in section 7 of Schedule C and specified in the request;*

*(d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.*

The Ministry argues the Appellant is not eligible for monthly nutritional supplements because he does not meet all the necessary criteria specified in the legislation; specifically the Ministry accepts a single identified symptom related to his severe medical condition. The Ministry does not accept that nutritional items are part of a caloric supplementation to a regular dietary intake, or the bottled water or vitamin /mineral supplements are necessary to prevent an imminent danger to the Appellant's life.

ATTACH EXTRA PAGES IF NECESSARY

The Appellant argues he needs the nutritional items and vitamin and mineral supplements to increase his health and alleviate his chronic and progressive deterioration of health.

The legislation requires the MP to confirm four criteria. The MP confirms the first criteria, that is, the Appellant has a chronic, progressive deterioration of health due to a severe medical condition.

In order to meet the second criteria, the Appellant must display two or more of the listed symptoms. The MP indicates two symptoms, malnutrition and significant muscle mass loss. The Ministry argues, based on the information provided that one symptom, malnutrition, is not a direct result of a chronic progressive deterioration of health. The Panel finds the legislation states the MP to confirm the criteria and in this case the MP has confirmed an extensive list of medical conditions that is causing the Appellant's chronic, progressive deterioration of health and two symptoms as a direct result of the chronic, progressive deterioration of health. The MP has not made any note to differentiate one symptom from the other as to the cause in the application. The Panel finds the Appellant does meet the second criteria because two or more symptoms have been indicated by the MP.

The third criteria stipulates that for alleviating the symptoms referred to under the second criteria, the Appellant must require one or more of the items set out in the following Section 7 of Schedule C, EAPWDR.

*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, up to \$165 each month; (B.C. Reg. 68/2010)*

*(b) Repealed (B.C. Reg. 68/2010)*

*(c) for vitamins and minerals, up to \$40 each month. (B.C. Reg. 68/2010)*

The MP confirms the Appellant requires nutritional items to alleviate his symptoms and specifies a protein supplement. The Panel finds these items specified by the MP do fall within the legislated definition of "part of a caloric supplementation to a regular dietary intake" because protein is part of the caloric total of a regular dietary intake. The MP also confirms the Appellant needs vitamin and mineral supplements to alleviate his symptoms. The Panel finds the Appellant does meet the third criteria because the MP specifies the Appellant requires nutritional items and vitamin/ mineral supplements to alleviate his symptoms.

The fourth and final criteria that must be met is that failure to obtain the nutritional items and vitamin/ mineral supplements will result in imminent danger to the Appellant's life. The MP clearly indicates that nutritional items are necessary to prevent imminent danger to the life of the Appellant. The Panel finds the Appellant meets the fourth criteria because the MP has confirmed the nutritional items are

necessary to prevent imminent danger to his life.

The MP indicates that failure to obtain bottled water and the vitamin/ mineral supplements will not result in imminent danger to the Appellant's life. The Panel finds the Appellant does not meet the fourth criteria because the MP has not confirmed that bottled water or the vitamin /mineral supplements are necessary to prevent imminent danger to his life.

The Panel finds the Appellant does not meet the necessary criteria as defined in the legislation in order to be eligible to receive monthly nutritional supplements for bottled water.

The Panel finds the Appellant does not meet the necessary criteria as defined in the legislation in order to be eligible to receive monthly nutritional supplements for additional vitamin/ mineral supplements.

The Panel finds the Appellant meets the necessary criteria as defined in the legislation in order to be eligible to receive monthly nutritional supplements for additional nutritional items.

The Panel finds the Ministry's decision to deny the Appellant monthly nutritional supplements was a not reasonable application of the applicable legislation and rescinds the decision. Therefore, the Ministry's decision is overturned in favour of the Appellant.

## **PART G – ORDER**