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**PART C – DECISION UNDER APPEAL**

The decision under appeal is the ministry reconsideration decision dated January 8, 2010 which denied the appellant's application for Boost, a nutritional supplement product, because she did not meet the criteria of Section 69 and Schedule C of the Employment and Assistance for Persons with Disabilities Regulation.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities (EAPWD) Act, Section 1

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 67, 69 and Schedule C

[REDACTED]

## **PART E – SUMMARY OF FACTS**

On November 12, 2009, the appellant request the nutritional supplement, Boost, from the ministry.

On November 12, 2009, the ministry denied the request.

On December 18, 2009, the appellant submitted a Request for Reconsideration.

On January 8, 2010, the ministry confirmed the decision of November 12, 2009.

The evidence in the appeal package includes:

1. Two letters from the appellant's physician dated November 10, 2009 and December 9, 2009 stating that the appellant requires two Boost Nutritional Supplements per day due to chronic renal failure with a kidney transplant, chronic diarrhea, chronic constipation, and severe diverticulosis with malabsorption.
2. The original decision from the ministry denying the application for Boost under section 67 (1) and the EAPWD Regulation and schedule C, section 2 (3). The decision states that the information provided does not establish an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from surgery, a severe injury, a serious disease, or side effects of a medical treatment. In addition, the decision states that the applicant is in receipt of Medical Services Only and is not eligible.
3. A Request for Reconsideration in which the appellant states that she believes her medical conditions are life threatening and that Boost is critical for her to maintain her health.

The appellant is designated as a Person with Disabilities in receipt of Medical Services Only (MSO).

At the hearing, the appellant stated that her physician has prescribed Boost and that she has to buy special foods, Imodium and bottled water to supplement her regular diet. She also stated that she had initially received a supply of Boost from the ministry. She noted that she has a weakened immune system and that she neither smokes nor drinks.

The appellant reported that her health is deteriorating and that she is required by her physician to take a variety of vitamins and medications.

The appellant's advocate noted that the ministry acknowledges that the appellant faces a life-threatening health need for a diet/nutritional supplement and that she does not have the resources available to meet that need. He also stated that a worker at the ministry informed him that the appellant should apply for the monthly nutritional supplement.

At the hearing, the ministry representative stated that the appellant is in receipt of MSO and is only eligible for prescriptions, physician's visits, and medical equipment and supplies. The representative also stated that the appellant has applied for a nutritional supplement under Section 7 of Schedule C but that the application was not being processed at this time. She stated that under ministry policy the appellant was not eligible for supplements under that section.

The panel finds that there is no dispute as to the severity of the appellant's medical condition and the deterioration of her health.

## **PART F – REASONS FOR PANEL DECISION**

The issue in this case is whether or not the Ministry reasonably concluded that the appellant is not eligible for the nutritional supplement of Boost.

The legislation (Section 69 EAPWDR) provides that the minister may provide any health supplement set out in Schedule C, EAPWDR, to a person with disabilities if the health supplement is provided to a person who is otherwise not eligible for the health supplement under this regulation, and if

- (a) the person faces a life-threatening health need and there are no resources available to the person's family unit with which to meet that need, and
- (b) the minister determines that the health supplement is necessary to meet that need.

The appellant's position is that as a result of her present chronic illness, she requires two cans of Boost Nutritional supplement each day. The appellant's physician confirmed this need stating that the appellant requires the supplement due to chronic renal failure with a kidney transplant, chronic diarrhea, chronic constipation, and severe diverticulosis with malabsorption.

The ministry was not satisfied that the appellant met the criteria for nutritional supplement items as set out in Schedule C. The ministry determined that the appellant faces a life-threatening health need for a diet/nutritional supplement and that she does not have the resources to meet that need, however, the ministry argued that the appellant was not eligible for Boost because short-term nutritional supplements are not set out in Schedule C of the EAPWDR.

The panel reviewed all of the evidence and the legislative criteria carefully and finds that the appellant does meet the criteria in Section 69 of the EAPWDR and that there is no evidence to indicate that the appellant has a short-term need for a nutritional supplement. The appellant's physician's letter indicates that the appellant suffers from no less than three chronic conditions which indicate an on-going need for nutritional supplements. The panel finds that the appellant is eligible for nutritional supplements under Schedule C.

Therefore the panel finds the decision of the ministry is not a reasonable application of the applicable enactment based on the evidence and that there has not been a reasonable application of the Act and Regulations in the circumstance of the appellant. Accordingly, the panel rescinds the decision of the ministry pursuant to Section 24 (2) (b) of the EAA.