

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The following is a summary of the Ministry Reconsideration Decision of January 8, 2010, which denied the appellant her request for Monthly Nutritional Supplement (MNS).

- The minister is not satisfied that you require nutritional items in addition to normal dietary intake to alleviate your symptoms or to prevent imminent danger to your life.
- The minister is not satisfied that the risks associated with immune suppression will be mitigated by bottled water and to prevent imminent danger to life.
- The minister is not satisfied that you require vitamin/mineral supplementation to alleviate your symptoms or to prevent imminent danger to life.

**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 evidence before the ministry was based on an Application For Monthly Nutritional Supplement form submitted by the appellant on October 8, 2009. Part B of this form was completed by a medical practitioner and signed by him on September 16, 2009. Section 67 (1) of the EAPWDR lists the criteria that must be met to be approved for MNS. Section 7 of Schedule C outlines the additional eligibility criteria for nutritional items and bottled water and limits the amount the ministry may provide for MNS items.

The medical practitioner confirms that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specified as diabetes. The form asks if the applicant has any of the following eight symptoms: - malnutrition, underweight status, significant weight change, muscle mass loss, bone density loss, neurological degeneration, significant deterioration of an organ, and moderate to severe immune suppression. The medical practitioner indicates, malnutrition (high caloric diet) and significant weight change (increased weight due to poor diet).

For nutritional items, the medical practitioner states that the appellant requires nutritional items in addition to normal dietary intake to alleviate symptoms of chronic, progressive deterioration of health and to prevent imminent danger of life. He specifies that the appellant requires an increase in fruits, vegetables and low carbohydrate foods. For bottled water it is indicated that the appellant's risk associated with immune suppression will not be mitigated by bottled water. The medical practitioner confirms that the appellant requires vitamin/mineral supplements to alleviate symptoms of her chronic, progressive deterioration of health. He specifies that she requires calcium and vitamin D supplementation to support bone health. There is also evidence of a prescription slip signed by the medical practitioner on December 18, 2009. It simply states that the appellant "has had a significant weight gain".

The appellant has included a letter dated February 8, 2010 in her submission, which the panel has accepted as information. It states: - "My physician has confirmed that I have a severe medical condition that causes a chronic progressive deterioration of health. To alleviate these conditions I require fresh fruits and vegetables in my diet, which are additional costs to my regular groceries. These dietary changes are necessary to prevent imminent danger to my life. I have had significant weight gain which also will be addressed by dietary changes. As noted previously I have been diagnosed with deteriorating spinal disorder by my physician. I was prescribed supplemental vitamin D and calcium, which are quite costly items".

ATTACH EXTRA PAGES IF NECESSARY

**PART F – REASONS FOR PANEL DECISION**

(State the reasons for the panel decision)

The issue in this hearing is the reasonableness of the ministry's decision to deny the appellant her request for MNS, specifically nutritional items, bottled water and vitamin/mineral supplements.

The legislation provides for MNS under the EAPWDR, Section 67 and Schedule C, Section 7.

**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

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];

(g) the person's family unit does not have any resources available to pay for the items for which the supplement may be provided.

**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 confirms that the appellant is in receipt of disability assistance and has submitted a completed request in the form specified by the minister. A medical practitioner confirms that the appellant is being treated for a chronic progressive deterioration of health on account of a severe medical condition, specifically diabetes. The ministry argues, however, that the medical practitioner does not establish that the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake to alleviate the symptoms as set out in the Regulation. It indicates that the appellant requires a low carbohydrate diet with more fruits and vegetables. The medical practitioner reports that the appellant's malnutrition is related to an increased caloric diet. It does not indicate wasting symptoms, which would suggest a need for caloric supplementation such as underweight status or muscle mass loss. He notes the symptom of significant weight change and reports that weight has increased because of poor diet.

The ministry is not satisfied that the medical practitioner indicates that the appellant is displaying the symptoms of moderate to severe immune suppression. He also does not confirm that risks associated with immune suppression will be mitigated by bottled water and prevent imminent danger to life. The ministry is also not satisfied that vitamin/mineral supplementation is required to alleviate the appellant's symptoms or to prevent imminent danger to life. The medical practitioner specifies the need for calcium and vitamin D supplementation to support bone health, but does not indicate that the appellant is displaying the symptoms of bone density loss.

The panel finds that the medical practitioner has indicated that the appellant does have a chronic, progressive deterioration of health because of a severe medical condition. He has indicated that the appellant shows the symptoms of malnutrition as well as significant weight change. He indicates that the appellant requires a low carbohydrate diet with more fruits and vegetables, not additional nutritional items that are part of a caloric supplementation to a regular dietary intake. The medical practitioner indicates significant weight change, which has increased due to poor diet. He does not indicate that the appellant is displaying wasting symptoms, such as underweight status, that would require caloric supplementation. The medical practitioner has not indicated the need for bottled water.

The medical practitioner has indicated that the appellant has 2 of the 8 symptoms listed under Section 67 (1) (c) (ii): - malnutrition and significant weight change. Section 67 (1) (c) (iii) indicates that for the purpose of alleviating a symptom in (ii) the person may be eligible for one or more of the

items in Schedule C, Section 7. The medical practitioner states that the appellant requires calcium and vitamin D supplementation to support bone health. The two symptoms indicated as being applicable to the appellant's medical condition are malnutrition and weight change. There is no indication of bone density loss being a symptom. The panel therefore finds that the criteria set out in the Regulation has not been met. The appellant states in her Appellant's Submission: - "As noted previously, I have been diagnosed with deteriorating spinal disorder by my physician. I was prescribed supplemental vitamin D and calcium which are quite costly items". The panel finds that the physician did not indicate in his report that the appellant has a spinal disorder.

The panel does not find that the appellant meets the legislative criteria for MNS, specifically nutritional items, bottled water or vitamin/mineral supplements. The panel therefore confirms the Reconsideration Decision under the EAA, Section 24 (1) (a) and 24 (2) (a) as it is reasonably supported by the evidence.