



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

On December 18, 2009 the Ministry denied the Appellant's reconsideration request for the Monthly Nutritional Supplement for vitamin/minerals and bottled water. The Ministry found that the Appellant did not meet the legislative criteria; specifically he did not prove that he required the vitamin/minerals to prevent imminent danger to life and in respect of the bottled water the Appellant's physician did not confirm that he displayed symptoms of moderate to severe immune suppression.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) s. 67 and 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 at reconsideration included the following:

- Application for Monthly Nutritional Supplement dated October 27, 2009.
- Letter from Ministry dated November 24, 2009.
- Request for Reconsideration dated December 3, 2009.

In the Application for the Monthly Nutritional Supplement the Appellant's physician reports the following:

- that the Appellant has a chronic, progressive deterioration of health due to a severe medical condition being hepatitis C as well as chronic diarrhea and fatigue and pain in his kidneys.
- That the Appellant suffers from malnutrition described as malabsorption due to chronic diarrhea;
- That the Appellant has suffered a significant weight change of losing 40 pounds in the last six months;
- That the Appellant has suffered from the significant deterioration of an organ described as "Liver, Hep C, Kidney infections".
- That the Appellant requires nutritional items (proteins, fruits and vegetables) due to chronic liver function impairment.
- That the Appellant requires bottled water to prevent imminent danger to life specified as "Diarrhea, loss of K+[potassium] and minerals which will affect – [distant] – organs like heart etc.
- That the Appellant requires vitamin or mineral supplementation to alleviate the symptoms above (malnutrition, weight change and significant deterioration of an organ) but not to prevent imminent danger to life. The Appellants physician adds this comment "Vits and minerals supplement due to loss through ch. [chronic] diarrhea will benefit general level of immunity + CNS [central nervous system]."

Where the physician's handwriting was hard to read or used abbreviations the panel's interpretation is in square brackets.

The Letter from the Ministry dated November 24, 2009 advised the Appellant that he had been granted the MNS for nutritional items but not for bottled water or vitamins/minerals.

The Appellant's submission with his Request for Reconsideration stated the following:

- That he has two severe, chronic illnesses, one being chronic hepatitis C and the other an intestinal illness causing chronic diarrhea, kidney pain, kidney infections, chills and fever-like symptoms.
- In his opinion and his physician's opinion he should have bottled water and vitamins due to the loss of vitamins and minerals from his chronic diarrhea.

Neither of the parties provided any further evidence on appeal.

PART F – REASONS FOR PANEL DECISION

The issue on Appeal is the reasonableness of the Ministry's decision to refuse to provide a monthly nutritional supplement for bottled water and vitamins/minerals.

The relevant portions of section 67 and Schedule C, section 7 of the EAPWDR state 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;

ATTACH EXTRA PAGES IF NECESSARY

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 Appellant argues that he needs bottled water and vitamins and minerals and that his doctor agrees that he needs them. He argues that he needs these two supplements because he has two severe, chronic illnesses including chronic diarrhea.

The Ministry argues that the legislation requires the Appellant to need the vitamins and minerals to prevent imminent danger to life; and in respect of the bottled water it requires the Appellant to be suffering moderate to severe immune suppression. The Ministry says that the Application completed by the Appellant's physician does not confirm these two conditions.

Section 67(1)(c)(iv) requires a medical practitioner or nurse practitioner to confirm that the failure to obtain the item requested will result in imminent danger to the Appellant's life. This panel finds that the Application completed by the Appellant's physician specifically states that the vitamin/minerals are **not** required to prevent imminent danger to the Appellant's life as the physician specifically checked the "NO" box in answer to that question. Therefore the panel finds that the Appellant has not met the above legislative criteria for the supplement for vitamins and minerals.

Section 67(1)(c)(iii) requires a medical practitioner or nurse practitioner to confirm that the Appellant requires the item set out in section 7 of Schedule C which is "bottled water for a person suffering moderate to severe immune suppression". In respect of the application for the bottled water supplement the legislation is admittedly confusing. The Appellant does meet the criteria as set out in section 67 but Schedule C, section 7 adds another condition, that the bottled water is required for a person *suffering moderate to severe immune suppression*. The Appellant's physician left that box blank on the Application form and the answer could not be found in the written comments either. Therefore the panel finds that the Appellant has not met the above legislative criteria for the supplement for bottled water.

Therefore, this panel finds that the Ministry's decision is reasonably supported by the evidence and confirms the Ministry's decision.