

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the ministry's Reconsideration Decision dated 2010 Jan 15 which denied the appellant's request for a monthly nutritional supplement (MNS). The decision states that the appellant did not meet the criteria for the program because the ministry is not satisfied that :

- the appellant requires additional nutritional items for alleviating one or more of the symptoms that are a direct result of a chronic , progressive deterioration of health
- the appellant requires bottled water for the purpose of alleviating the symptom of moderate to severe immune suppression that is the direct result of a chronic, progressive deterioration of health
- the appellant requires vitamins and minerals for alleviating one or more of the symptoms that are a direct result of a chronic , progressive deterioration of health
- failure to obtain any of the MNS items will result in imminent danger to life

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance For Persons With Disabilities Regulation (EAPWDR) Section 67 and 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 at Reconsideration was:

- the appellant's Request for Reconsideration application dated 12/24/09
- a letter to the appellant from the ministry dated November 26, 2009
- a ministry document titled "Monthly Nutritional Supplement Decision Summary"
- the appellant application for a MNS dated Oct 31 09

The ministry's Reconsideration Decision states that:

- with respect to nutritional items, the appellant's physician has not specified the additional items that the appellant requires in addition to normal dietary or how they will alleviate specific symptoms and, based on this, the request does not meet the criteria set out in EAPWDR Section 67 (1)(c)(iii)
- the appellant's physician has not specified how bottled water will mitigate the risks associated with immune suppression, based on this, the request does not meet the criteria set out in EAPWDR Section 67 (1)(c)(iii) and (iv)
- the appellant's physician has not specified what additional vitamin/mineral supplements the appellant might require and how they will alleviate the appellant's specific symptoms. Based on this, the request does not meet the criteria set out in EAPWDR Section 67 (1)(c)(iii) and (iv)

At the hearing, the appellant told the panel that he suffered from Hepatitis C and it was a ministry worker who suggested that he apply for the MNS. He also stated that he had previously been receiving a monthly allowance for bottled water and he could not understand why he was being denied one now. He explained that he had lost 40 lb over the last year and he feels that the ministry does not understand Hepatitis C. He also stated that his doctor indicated that his life was in imminent danger and referred to the last page of his MNS application where his doctor has so indicated. The appellant submitted documents that he had downloaded from the internet titled "What are the Main Symptoms of Hepatitis C?" and "What Science Says". He also submitted a note from his physician dated February 16/10 which states that the appellant needs bottled water, a weight supplement and enhanced nutrition. The ministry did not object to the internet documents being admitted. The ministry did object to the physician's note being admitted as the ministry did not have the note at the time of the reconsideration. The panel reviewed the material and determined that all of the material was in support of evidence in front of the ministry at reconsideration. The panel accepted it as evidence under Section 22(4) of the Employment and Assistance Act (EAA).

The ministry told the panel that the allowance that the appellant had been receiving previously was a \$40 per month dietary allowance. This allowance was not a MNS and had not been paid to the appellant for over 2 years. The ministry advised the appellant to reapply for the dietary allowance. With respect to the MNS, the ministry stated that it understood the nature and severity of the appellant's medical condition; however, the appellant's MNS application did not include sufficient information from the appellant's physician explaining why the appellant

needed an MNS and what specific items were required.

The panel concluded that the evidence is as follows:

- the appellant's physician has indicated in the MNS application that the appellant suffers from Hepatitis C, and he has symptoms of malnutrition, underweight status and significant weight change
- the appellant's physician has indicated in the MNS application that the appellant requires nutritional items to prevent imminent danger to life
- the appellant's physician has indicated in the MNS application that the appellant requires bottled water to prevent imminent danger to life
- the appellant's physician has indicated in the MNS application that the appellant requires vitamin or mineral supplementation to prevent imminent danger to life
- the physician's note states that the appellant needs bottled water to avoid waterborne infections and the appellant needs enhanced nutrition to regain weight.

PART F – REASONS FOR PANEL DECISION

The issue in this case is the reasonableness of the Ministry's decision to deny the appellant's request for a MNS supplement.

The relevant legislation is EAPWDR Section 67 (1) and EAPWDR Schedule C, Section 7. EAPWDR Section 67 (1) states:

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;

EAPWDR Schedule C, Section 7 states:

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's position is that the ministry does not understand his medical condition and that his physician had confirmed that he requires the MNS because he suffers from a life threatening condition.

The ministry does not dispute that the appellant has a serious medical condition or that the appellant displays one or more of the symptoms in EAPWDR Section 67 (ii). The ministry's position is that it has not been provided with information on what specific nutritional items and

vitamin/mineral supplements are required and how the nutritional supplements, vitamin/mineral supplement will alleviate specific symptoms and how bottled water will mitigate the risks associated with immune suppression.

The panel noted that the appellant's MNS application includes confirmation that the applicant requires nutritional items, bottled water and vitamin supplementation to alleviate symptoms of malnutrition and weight loss and that the items are required to prevent an imminent danger to life. The physician has not specified which specific nutritional items or vitamin or mineral supplements are required and how the nutritional items, vitamin/mineral supplements will alleviate specific symptoms. The physician also has not specified how bottled water will prevent imminent danger to life. The panel determined that there is no legislative requirement in EAPWDR Section 67 (1) and EAPWDR Schedule C, Section 7 for the physician to provide such specificity. As such the panel concluded that the appellant meets the criteria for an MNS per EAPWDR Section 67 (1) and EAPWDR Schedule C, Section 7. Accordingly, the panel finds that the ministry's decision is not reasonably supported by the evidence and the panel rescinds the ministry's decision.