

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration Decision dated September 17, 2008, which held that the Appellant is not eligible for a monthly nutritional supplement or a diet supplement. Sections 66 and 67 of the EAPWDR permit the minister to pay for diet supplement and nutritional supplement respectively for a recipient of disability assistance. The Appellant is not currently a recipient of disability assistance, therefore he is not eligible for the diet or nutritional supplement.

**PART D – RELEVANT LEGISLATION**

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 1, "disability assistance"

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 66

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

**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 information before the Ministry at Reconsideration included:

- the Appellant's Request for Reconsideration
- an Employment and Assistance Appeal Tribunal Decision dated September 3, 2008

The Appellant gave evidence that his wife's monthly maintenance income has made him ineligible for disability assistance. This will change in November, 2008, when his eldest dependant turns 18 years of age and the family unit will again be eligible for health benefits. He gave evidence that his purpose in appealing the Ministry's decision was to extend his health benefits until the Panel makes a decision, thereby reducing the period he will be without benefits because he is receiving them while awaiting the outcome of the appeal. He wishes to continue receiving the benefits as long as possible.

The Ministry gave evidence that income assistance is income and asset tested. The Appellant's income is higher than his support and shelter rate, therefore he is not receiving support or shelter benefits from the Ministry. The legislation restricts eligibility for diet supplement and nutritional supplement to those persons who are in receipt of disability assistance under Section 2, 4, 6 or 9 of Schedule A, EAPWDR, namely monthly support allowance, monthly shelter allowance, room and board or persons in emergency shelters. The Appellant does not meet any of those criteria; therefore he is not eligible for diet or nutritional supplements.

ATTACH EXTRA PAGES IF NECESSARY

**PART F – REASONS FOR PANEL DECISION**

(State the reasons for the panel decision)

The issue in this appeal is whether the Ministry reasonably denied the Appellant's request for monthly diet and nutritional supplements.

Sections 66 and 67, EAPWDR state that in order to be eligible to receive diet or nutritional supplements an applicant must be in receipt of disability assistance under Section 2, 4, 6 or 9 of Schedule A, EAPWDR.

The Appellant argues that the Ministry's decision is based on financial criteria and has nothing to do with his well-being. He does not argue that the Ministry's determination of his eligibility is incorrect.

The Ministry argues that their determination of the Appellant's eligibility is in accordance with the legislation. The Appellant does not meet the legislative criteria and is not eligible for the requested supplements.

The issue of the Appellant's eligibility for disability assistance has previously been determined. He is not in receipt of assistance at this time therefore he does not meet the legislative criteria for approval of diet or nutritional supplements.

The Panel finds that the Ministry's decision to deny the Appellant's application for diet and nutritional supplements was reasonably supported by the evidence and confirms the decision.

ATTACH EXTRA PAGES IF NECESSARY