

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

In the reconsideration decision dated January 22<sup>nd</sup>, 2008 your request for additional nutritional items, bottled water, and vitamin/mineral supplements has been denied.

**Nutritional Items**

Your request for this MNS item does not meet the criteria in Section 67 (1)(c) (iii) and (iv), and Schedule C, Section 7 (a) of the EAPWD Regulation. The Ministry is not satisfied that a medical practitioner has confirmed that you require additional nutritional items that are part of a caloric supplementation to a regular dietary intake, for the purpose of alleviating the specified symptoms, or that failure to obtain the items will result in an imminent danger to life.

**Vitamins and Minerals**

Your request for this MNS item does meet the criteria in Section 67 (1) (c)(iv). The Ministry is not satisfied that a medical practitioner has confirmed that failure to obtain this item will result in imminent danger to your life.

**Bottled Water**

Your request for this MNS item does meet the legislation requirements in Section 67 (1) (c) (iv) or Schedule C, Section 7 (b) of the EAPWD Regulation. The Minister is not satisfied that the risk associated with the immune suppression will be mitigated by bottled water, or that failure to obtain bottled water will result in imminent danger to your life. In addition it is not indicated that you are suffering from moderate to severe immune suppression.

**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 Panel was provided in the Appeal Record, which among other things contained the Application for the monthly nutritional supplements, and the oral testimony of the Appellant and the Representative from the Ministry. Neither of the Appellant or the Ministry Representative presented any additional documentation to the Panel. The Appellant explained that he suffers from chronic back, neck and knee osteoarthritis, GERD, asthma and hypertension. The Appellant explained that he has lost twenty-five pounds in weight in the last six months and that he has no explanation as to why he was losing this weight except it seems to go down every week. These health conditions were verified by the information contained in the Application completed by the Appellant's doctor.

With respect to the nutritional items the Application form completed by the doctor indicates that the Appellant does require nutritional items to alleviate the weight loss symptoms described in the Application. However on the Application form the Appellant's doctor has checked off "no" in the box related to whether these are required to prevent an imminent danger to life.

With respect to the bottled water, the doctor who completed the Application form checked the box "yes" in answering the question, "Will the Applicant's risk associated with immune suppression be mitigated by bottled water?" The doctor completing the Appellant's Application, however, checked the "no" box when he was asked, "Will it prevent imminent danger to life?"

With respect to the vitamins or mineral supplementation, again the doctor completing the Application has checked the "yes" box on the question "Does the Applicant require these to alleviate any of the symptoms that he is suffering from". However the doctor has checked "no" to the question, "Are they required to prevent imminent danger to life?" The Appellant's doctor has indicated on the form that there has been physical and psychological improvement with the supplement of vitamins and food, etc.

The Appellant indicated that he does not know why he has lost twenty-five pounds over the last few months. He indicated that he throws up a lot and that he has had hernia operations twice. He states that he cooks and cooks well for himself, that he always has breakfast and lunch, although he does occasionally miss his dinner in the evening. The Appellant testified that he takes vitamin supplements at the present time and that he takes them virtually every day. He takes Calcium, Vitamin C and other vitamins and minerals. With respect to his continuing loss of weight the Appellant has stated that he does not know why this is happening as he states he eats like a horse and yet continues to lose weight. The Appellant admitted that there was no imminent danger to his life, however, he questioned how long he can continue losing weight before it does become an imminent danger.

The Ministry Representative stated that the Ministry was aware that the doctor has indicated that the Appellant has a severe medical condition, however there was nothing in the Application form that would indicate how the additional nutritional items would assist in helping alleviate the conditions that the Appellant is suffering from. Also the Ministry Representative indicated that when the Application form was completed the doctor checked off that there was no imminent danger to the life of the Appellant if he did not receive these various nutritional items.

There was no conflict in the evidence between that of the Appellant and that of the Ministry and the Panel accepts the facts as set out by both of the parties.

ATTACH EXTRA PAGES IF NECESSARY

## PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue on Appeal is whether the Ministry decision to deny the Appellant the monthly nutritional supplements of vitamins and minerals, additional nutritional items and bottled water is reasonable based on the evidence and whether there was a reasonable application of the Act and Regulations in the circumstances of the Appellant.

There are many requirements under the legislation that have to be met before the request for monthly nutritional supplement items of vitamins and minerals, nutritional items and bottled water can be provided. The Ministry accepts that the Appellant's request meets the criteria in Section 67 (1) (a) of the EAPWD Regulation as he is designated as a Person With Disabilities in receipt of Disability Assistance. Also, the Ministry accepts the Appellant's request meets the criteria in Section 67 (1) (c) (i) of the EAPWD Regulation. The Ministry is satisfied that a medical practitioner has confirmed that the Appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition. A medical practitioner has indicated that the Appellant does have a chronic progressive deterioration due to a severe medical condition and specifies chronic neck, back, knee, Osteoarthritis, GERD, asthma, and hypertension. The Ministry also accepts that the Appellant meets the criteria under Section 67 (1) (c) (ii) of the EAPWD Regulation. As a direct result of the chronic progressive deterioration of the Appellant's health he does display one or more of the symptoms set out in the legislation and the key symptom being that as a result of the progressive deterioration of the Appellant's health he has lost twenty-five pounds in body weight in the last six months.

### Nutritional Items

The Ministry states that the Appellant does not meet the criteria in Section 67 (1) (c) (iii and iv) and Schedule C, Section 7 (a) of the EAPWD Regulation. The Ministry takes the position that they are not satisfied that a medical practitioner has confirmed that the Appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake, for the purpose of alleviating the specified symptoms or that the failure to obtain these items will result in imminent danger to life.

The Appellant takes the position that he does require the additional nutritional items as he is continuing to lose weight and no matter how much he eats he continues to lose weight. The Appellant indicated that while there is no imminent danger to life he wonders how long you can continue to lose weight before there is an imminent danger to life and when is that point reached.

### Vitamins and Minerals

The Ministry takes the position that the Appellant's request for vitamins and minerals does not meet the criteria in Section 67 (1) (c) (iv), as a medical practitioner has not confirmed that a failure to obtain these items will result in an imminent danger to the Appellant's life.

The Appellant again took the position that the vitamins and minerals do help him and they are expensive to obtain and that he again wonders how long one can continue to lose weight or go without the proper vitamin and mineral supplementation before it becomes an imminent danger to his life.

### Bottled Water

The Ministry takes the position that the Appellant does not meet the legislative requirements in Section 67 (1) (c) (iv) or Schedule C, Section 7 (b) of the EAPWD Regulation, as there is no information from a medical practitioner that would indicate the

risks associated with immune suppression will be mitigated by bottled water or that failure to obtain bottled water will result in imminent danger to the Appellant's life.

The Appellant takes the position that the bottled water would be useful and again expressed concern as to how long his condition could go before it does come to the point that there is an imminent danger to his life.

The Panel reviewed all of the evidence and the legislative criteria carefully and finds that a medical practitioner has indicated "no" to the question of whether the requested item will prevent an imminent danger to life with respect to each of the categories of bottled water, vitamins and minerals and nutritional items. As the medical practitioner has indicated there is no imminent danger to the life of the Appellant, the Panel finds that the Appellant does not meet the criteria in Section 67 (1) (c) (iii and iv) and therefore finds the decision of the Ministry is reasonable based on the evidence and that there has been a reasonable application of the Act and Regulations in the circumstance of the Appellant. Accordingly, the Panel confirms the decision of the Ministry pursuant to Section 24 (2) (a) of the EAA.