

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated July 11, 2012 which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and additional nutritional items. The ministry held that the requirements of Section 67(1)(a) or (b) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as the appellant's family unit does not receive disability assistance under Schedule A of the EAPWDR for:

- monthly shelter allowance (Section 2) or monthly support allowance (Section 4), receiving room and board (Section 6), or residing in an emergency shelter or transition houses (Section 9); or,
- receiving special care in a special care facility that is an alcohol or drug treatment center (Section 8).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67(1) and Schedule A

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Ministry policy dated April 30, 2012 for eligible health supplements for Medical Services Only (MSO);
- 2) Letter dated June 4, 2012 from the Ombudsperson to the appellant regarding the appellant's complaint regarding the ministry and stating that an assistant supervision contacted the appellant on June 3, 2012 to discuss the appellant's concerns and the complaint is considered resolved; and,
- 3) Request for Reconsideration- Reasons.

At the hearing, the appellant provided additional documents as follows:

- 1) Application for monthly nutritional supplement (MNS) dated April 11, 2003 which states in part that the appellant has a severe medical condition including trigeminal neuralgia, chronic depression and anxiety with post traumatic stress disorder, osteoporosis with chronic back pain;
- 2) First page of an application for MNS dated June 6, 2003 which states in part that the appellant has a severe medical condition including trigeminal neuralgia which restricts her ability to chew and eat;
- 3) Prescription Form dated August 8, 2012 from the appellant's physician which states in part that the appellant has severe trigeminal neuralgia, poor nutritional status, difficulty eating and a chronic deteriorating neurological condition (trigeminal neuralgia); and,
- 4) Undated Prescription Form from the appellant's physician stating in part that the appellant needs acupuncture for trigeminal neuralgia.

The appellant explained that the applications for MNS were referred to in her Request for Reconsideration but were not included in the record. The ministry did not object to admission of these documents. The panel reviewed the new documents and admitted them, pursuant to Section 22(4) of the Employment and Assistance Act, as either being before the ministry on reconsideration (the MNS applications) or relating to the appellant's diagnosed condition of trigeminal neuralgia and being in support of the information before the ministry on reconsideration.

In her Notice of Appeal, the appellant states that because of her income, she cannot buy food that she needs for her health. The appellant states that her weight fluctuates up and down due to all the stress in her life and her condition is exacerbated when she is not eating properly. The appellant states that she needs the supplement for her physical and mental health.

In her Request for Reconsideration, the appellant states that she was told by several workers with the ministry that she would still receive the nutritional and protein allowance. The appellant states that she feels penalized for turning 65 and receiving GIS, OAS and CPP. The appellant states that she has neuralgic pain and cannot eat sometimes on the left side and she needs to take vitamins for it. Her weight goes up and down because of her condition. The appellant states that she has arthritis now on her right foot and sometimes has severe pain on her right foot and hand. The appellant states that as a senior she should not suffer because her age and finances have changed. The appellant states that the ministry told her that she may qualify for the "grandfather clause" since she has ongoing problems with her health. The appellant states that her medical condition is not going to improve.

The appellant consented to a ministry observer attending the hearing for training purposes. At the hearing, the appellant stated that she saw her doctor recently and he provided the two documents to confirm her condition that results in neuralgia pain that goes from her head to her ear and neck, and that her pain is worse with stress. The appellant stated that the pain is very severe and that she had to leave a performance that she was attending with her friends because the pain was so intense and she had forgotten to take her medication. The appellant stated that she was told that those with trigeminal neuralgia are prone to suicide because of the intensity of the pain. The appellant stated that she went to several doctors with the symptoms of her condition and it was finally diagnosed by her dentist. The appellant stated that she cannot eat when she has this pain. The appellant stated that she was extremely frustrated because every time she spoke with someone from the ministry through the main telephone number she was told different things, she would get different stories, and

she has become stressed because of this uncertainty. The appellant stated that she turned 65 years of age in December 2011 and acknowledges being in receipt of CPP, OAS and GIS since then. The appellant stated that she has not been in receipt of disability assistance since January 2012, however she received the MNS until June 2012. The appellant stated that the ministry told her that she would continue to receive the MNS because of her medical condition. In response to a question, the appellant stated that no other option was explained to her other than receiving the full amount of \$205 per month for the MNS. The appellant stated that even though she is receiving amounts for CPP, OAS and GIS, she still feels that she is a widow, with low income and many health problems.

The ministry relies on its reconsideration decision which states that the appellant is a Person With Disabilities (PWD) and was in receipt of disability assistance until December 2011 at which time she was transitioned to medical services only (MSO) coverage. The appellant has not been in receipt of disability assistance since January 2012. However, the appellant continued to receive the MNS of \$205 per month until June 2012. At the hearing, the ministry clarified that the ministry looked at the amount of the appellant's income from CPP, OAS and GIS and considered whether she was eligible for an amount under comparable provision to that which existed prior to 2009. Prior to 2009, there was a provision for a small percentage of clients to receive an amount for MNS where there were special medical needs. When the new provision for MNS came into force, these clients had a choice whether to continue with the coverage they were receiving, through a "grandfather clause", or to apply for the MNS. The ministry explained that there is currently no "grandfather clause" available, but rather a regional review to evaluate a client's income versus what they would be eligible for from the ministry, including the MNS, and to determine whether there might be a sliding scale benefit that the ministry would pay.

The ministry provided an example of a case where a client has been receiving \$906.42 in support and shelter allowance plus \$225 for MNS (which includes an amount for bottled water, that has been discontinued), for a total income of \$1,131.42 per month. If the client is receiving \$1,000 per month in CPP, that amount would be deducted from the monthly income, leaving a balance of \$131.42 that the client would receive as the sliding scale amount, to be reviewed periodically throughout the year. The ministry stated that in the appellant's case, however, she currently receives CPP of \$667.86 and OAS/GIS in the amount of \$762.88 for a total of \$1,430.74 in monthly earnings and had been receiving \$531.42 in support and \$375 in shelter allowance plus \$205 for the MNS from the ministry, for a total of \$1,111.42. The ministry stated that the appellant's current monthly income (\$1,430.74) exceeds the amount for which she would be eligible from the ministry (\$1,111.42) by \$319.42 per month and she is, therefore, not eligible for the sliding scale amount and is actually receiving more each month than she was before.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry decision, which denied the appellant's request for a Monthly Nutritional Supplement for additional nutritional items and for vitamins and minerals because the requirements of Section 67(1)(a) or (b) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 67(1) of the EAPWDR sets out the eligibility requirements which are at issue on this appeal for providing the monthly nutritional supplement, 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 centre,

if the minister is satisfied that

- (c) based on the information contained in the form required under subsection (1.1), the requirements set out in subsection (1.1) (a) to (d) are met in respect of the person with disabilities,
- (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*],
- (f) the person complies with any requirement of the minister under subsection (2), and
- (g) the person's family unit does not have any resources available to pay the cost of or to obtain the items for which the supplement may be provided.

The ministry argues that under Section 67(1)(a) and (b) of the EAPWDR, to be eligible for the MNS, the appellant must be a PWD in a family unit that receives disability assistance under Schedule A, Section 2 (monthly support allowance), Section 4 (monthly shelter allowance), Section 6 (people receiving room and board), Section 9 (people in emergency shelters and transition houses) or Section 8 (people receiving special care if the special care is an alcohol or drug treatment center). The ministry acknowledges that the appellant is a PWD, but argues that she has not been in receipt of disability assistance since January 2012. The ministry points out that the appellant does not receive monthly shelter allowance or monthly support allowance, she does not reside in a special care facility that is an alcohol or drug treatment center, she is not receiving room and board, and she is not residing in an emergency shelter or transition house and receiving shelter and support. The ministry points out that the ministry also made an evaluation of the appellant's eligibility under its policy for a sliding scale benefit and that as her income exceeds the amount she was receiving from the ministry, she is not eligible for the sliding scale amount.

The appellant's position is that because of her income, she cannot buy food that she needs for her health. The appellant argues that her weight fluctuates up and down due to all the stress in her life and her condition is exacerbated when she is not eating properly. The appellant argues that she needs the supplement for her

physical and mental health and that she is being penalized for turning 65 and receiving GIS, OAS and CPP. The appellant argues that the ministry told her that she may qualify for the "grandfather clause" since she has ongoing problems with her health and that she would continue to receive the MNS of \$205. The appellant argues that her medical condition is not going to improve and that her physician has confirmed this in the recent notes provided.

For the MNS to be provided in accordance with Schedule C of the EAPWDR, Section 67(1) of the EAPWDR requires that the person who is a PWD is in a family unit that receives disability assistance under Schedule A of the EAPWDR, either under Section 2 (monthly support allowance), Section 4 (monthly shelter allowance), Section 6 (people receiving room and board), Section 9 (people in emergency shelters and transition houses) or Section 8 (people receiving special care if the special care facility is an alcohol or drug treatment center). The appellant admits that as of January 2012, she was no longer in receipt of disability assistance in the form of monthly support allowance (Section 2) and monthly shelter allowance (Section 4) and that she has been in receipt of GIS, OAS and CPP since she turned 65 years of age in December 2011. The appellant does not dispute that she does not receive room and board (Section 6), she is not in an emergency shelter or transition house (Section 9), and she is not receiving special care in an alcohol or drug treatment center (Section 8). Although the appellant points out that she continued to receive the MNS until June 2012, after her disability assistance was discontinued in January 2012, and that she was told by the ministry that she would continue to receive it, the panel finds that the ministry conducted a separate evaluation to consider whether the appellant might be eligible for a sliding scale benefit and that the ministry determined that the appellant was not eligible under this policy because her monthly income (\$1430.74) exceeds the amount to which she would be entitled from the ministry including the MNS (\$1,111.42). The panel finds that the appellant has not been in receipt of the monthly support allowance and the monthly shelter allowance from the ministry since 2012 and that, therefore, her family unit is not in receipt of disability assistance, as required by Section 67(1) of the EAPWDR.

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a Monthly Nutritional Supplement for additional nutritional items and vitamins and minerals because the requirements of Section 67(1)(a) or (b) of the EAPWDR were not met, was reasonably supported by the evidence and the panel confirms the ministry's decision.