

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated October 24, 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 program criteria set out in Section 67(1) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as the appellant does not receive disability assistance as described by sub-sections 67(1)(a) or (b) of the EAPWDR,

**PART D – Relevant Legislation**

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67(1) and Schedule A, Section 8

## PART E – Summary of Facts

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

- 1) License dated October 14, 2009 for the facility at which the appellant resides, under the *Community Care and Assisted Living Act*, and listing the types of services as mental health and substance use;
- 2) Application for Monthly Nutritional Supplement dated March 29, 2012 signed by the appellant's physician and stating in part that the appellant's severe medical conditions are Type 2 Diabetes, Schizophrenia and Mental Retardation;
- 3) Letter from the ministry dated July 18, 2012 to the appellant approving her request for both nutritional items and vitamins and minerals and enclosing a copy of the decision summary;
- 4) Fax dated October 15, 2012 to the ministry from the appellant and her care worker stating that the facility at which the appellant resides is licensed under the same services as the facility referred to in the attached Telephone Log dated March 17, 2010; the Telephone Log is from a reconsideration officer to a manager stating in part that points for clarification for a request involving a third party residing in a facility and requesting Tens incontinence pads; the business license of the facility indicates the type of service as "mental health and substance use"; the ministry has been advised previously that there is no money budgeted for physical health medical supplies, that the funding received from the Vancouver Health Authority is for staff support and resident programs; confirmed that there is no money budgeted and no funding available for physical health supplies in mental health housing; and,
- 5) Request for Reconsideration.

In her Notice of Appeal, the appellant stated, with the assistance of her care worker, that the facility in which she resides is a 24-hour residential licensed psychiatric facility and that the appellant requires 24-hour 1:1 care and assistance. The \$30.93 per diem rate received by the facility is used to cover the following costs for the appellant: 1) three meals a day plus snacks, 2) transportation to all appointments and outings as the appellant requires 1:1 assistance for the staff to transport and attend each and every event including medical appointments for on-going care and oncological, diabetic conditions and psychiatric management, 3) costs of bedding, linens, toilet supplies, 4) recreational activities with activity worker, 5) 24-hour facility staffing due to clients care level needs which also requires staff nursing care, and 6) housekeeping: care and maintenance of facility which includes the appellant's bedroom and laundry. The \$95.00 comforts allowance is used to cover the costs of the appellant's daily needs for colouring books and crayons, personal hygiene products, shampoo and soap, dental hygiene products, haircuts, and prescribed skin cream due to diabetic condition.

In her Request for Reconsideration, the appellant stated, with the assistance of her care worker, that the appellant is a resident in a specialized care facility licensed to provide services for mental health and substance use. The appellant is not a long-term care client. The facility where the appellant lives is not a long term care facility and does not receive funding for medical supplies, dietary supplements, hygiene products related to medical conditions, nor for any non-benefit items prescribed by medical practitioners or specialists. The appellant only receives a monthly comfort allowance of \$95.00. The appellant is an insulin dependent diabetic and costs related to this care are not covered either.

Although the appellant attended the hearing, her advocate spoke for her. The advocate stated that the appellant resides in one of four mental health facilities, known as 'group homes', which are short-term care facilities to get mentally ill clients to prepare to move out into semi-independent living. The advocate stated that the appellant, however, does not have a mental illness. She spent all her life in one area of the city, she was hidden away by her parents in their apartment, she did not go to school, and then her parents have both passed away. The appellant was labeled as mentally ill, as having schizophrenia, but she has been assessed as being mentally handicapped only. The appellant was referred to Community Living B.C. (CLBC) and an intelligence test showed that the appellant is mentally handicapped and that she is, therefore, eligible for services from CLBC. While the appellant is now on the wait-list for CLBC, the average wait for services is 5 years or more. In the meantime, the appellant has special needs that the other residents in her facility do not. The other 9 residents in the facility have serious mental illnesses, such as schizophrenia and bi-polar disorder, whereas the appellant has many physical problems. She has Type II Diabetes and is insulin dependent, and

she was diagnosed as "failure to thrive" and is very thin even though she eats as much as she is allowed to keep her blood sugar levels up. The appellant's physician has prescribed therapeutic supplements and indicated that these are necessary for the appellant. The appellant does not have the intellectual ability to choose foods that are good for her, she cannot make these decisions on her own. The advocate stated that the appellant's diabetic supplies alone cost over \$200 per month.

The advocate stated that the third party who made a request from the ministry for incontinence supplies is also on the wait list for services from CLBC and that request was approved. The advocate stated that the facility at which the appellant resides is not a long-term care facility and it is not expected to buy the medical supplies and supplements for their clients. Nursing homes, on the other hand, are funded for these items, but the appellant is too young. In response to a question, the advocate stated that some of the residents of the facility also have substance abuse issues, but that is secondary to the mental illness that they are primarily dealing with.

The appellant's care worker stated that she has worked since 2003 at the facility in which the appellant resides, and this is the first application for the MNS made on behalf of a client. The appellant is in a unique situation because she has no next-of-kin and there are no funds from an estate to help pay for the items that she requires. The appellant recently had surgery for cancer and the facility was required to go through the Office of the Public Trustee to get the proper consents to the surgery since there was no family member available to do so. In response to a question, the witness stated that the facility is privately owned. The witness stated that the funding has not increased in 10 years so that it is not even keeping up with inflation. The panel finds that the oral testimony of the witness relates to the available funding for the appellant and is in support of information that was before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

The ministry relies on its reconsideration decision which stated that on April 12, 2012, the appellant submitted an application for MNS of nutritional items and vitamin/mineral supplements to the ministry. On July 18, 2012, the ministry approved the appellant's request for the MNS of nutritional items and vitamins/supplements in the amount of \$205 per month. On August 31, 2012, implementation of the approval failed as it was determined that the appellant does not have basic eligibility to receive the supplements. The appellant is receiving disability assistance as a person receiving special care. The ministry is currently paying for the appellant's accommodation and care at the facility on a monthly basis at the per diem rate of \$30.90. Monthly totals paid by the ministry vary from \$920.00 to \$957.90 depending on the number of days in the month. It is the expectation of the ministry that the nutritional needs of the resident will be met by the facility from the funds received. The ministry is also paying the appellant a comforts allowance of \$95.00 per month. At the hearing, the ministry clarified that the per diem rate is a flat rate for the type of facility which is a 'mental health residential facility' under the *Residential Care Regulation* and the *Continuing Care Act* and there is no discretion to increase this rate. The ministry stated that some medical supplies, as opposed to the monthly nutritional supplement, could be covered under general health supplements, depending on the circumstances. The ministry stated that a special care facility that is an alcohol or drug treatment center runs short-term treatment programs and the clients often have eligibility for MNS coming into the program and the ministry will maintain this coverage while they are in the short-term program.

## 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 because the program criteria set out in Section 67(1) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as the appellant does not receive disability assistance as described by sub-sections 67(1)(a) or (b) of the EAPWDR, 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 program criteria which are at issue on this appeal for providing the MNS, 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. . . .

Section 8 of Schedule A of the EAPWDR provides:

### **People receiving special care**

- 8 (1) For a person with disabilities who receives accommodation and care in a special care facility (other than a special care facility described in subsection (3)) or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 24 (a) [amount of disability assistance] of this regulation is the sum of
- (a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus
  - (b) a comforts allowance of \$95 for each person for each calendar month.
- (2) If the special care facility under subsection (1) is an alcohol or drug treatment centre, the minister may, in addition, pay either or both of the following while the applicant or recipient is in the alcohol or drug treatment centre:
- (a) actual shelter costs for the applicant's or recipient's usual place of residence up to the amount under section 4 for a family unit matching the applicant's or recipient's family unit;
  - (b) a monthly support allowance for the applicant's or recipient's family unit, equal to the amount calculated under sections 2 and 3 of this Schedule minus the portion of that allowance that would be provided on account of the applicant or recipient.
- (3) For a person with disabilities who receives accommodation and care in a special care facility operated by a service provider as defined in section 1 of the Community Living Authority Act, the amount referred to in section 24 (a) [amount of disability assistance] of this regulation is the sum of
- (a) the support allowance that is applicable under sections 2 and 3 of this Schedule for a family unit matching the

applicant's or recipient's family unit, plus

(b) the maximum shelter allowance that is applicable under section 4 of this Schedule for a family unit matching the applicant's or recipient's family unit.

The ministry's position is that Section 67(1) of the EAPWDR requires that to be eligible for the MNS, the appellant must be a person with disabilities (PWD) who receives disability assistance 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) of Schedule A, if the special care facility is an alcohol or drug treatment center. The ministry points out that the appellant is receiving disability assistance as a person receiving special care under Section 8 of Schedule A and the ministry is paying for her accommodation at the facility on a monthly basis at the per diem rate of \$30.90 and the comforts allowance of \$95.00 per month. However, the ministry argues that the appellant does not reside in a special care facility that is an alcohol or drug treatment center. The ministry argues that the appellant does not receive monthly support allowance as set out in Section 2 or monthly shelter allowance as set out in Section 4 of Schedule A. The ministry argues that the appellant is not receiving room and board as set out in Section 6 and she is not residing in an emergency shelter or transitional house as set out in Section 9 of Schedule A. The ministry argues that some medical supplies, as opposed to the MNS, could be covered under general health supplements, depending on the circumstances, and that the situation of the third party's request for incontinence pads is not comparable to the appellant's request for MNS. The ministry argues that the per diem amount paid for the appellant's care is a set rate established for the type of facility, as set out in Section 8 of Schedule A of the EAPWDR, and that there is no discretion for the ministry to increase this amount.

The appellant's position is that that the facility in which she resides is a 24-hour residential licensed psychiatric facility, known as a 'group home', which is short-term care facility to get mentally ill clients to prepare to move out into semi-independent living. The appellant argues, through her advocate, that the appellant was tested and found to be mentally handicapped rather than mentally ill and that she is, therefore, eligible for services from CLBC, but she is on a wait-list with an average wait of 5 years or more for services. The advocate argues that the third party who resides in a similar facility and is also on the wait list for services from CLBC made a request from the ministry for incontinence supplies and was approved. The appellant argues, through her advocate, that the facility in which she resides is not a long term care facility and does not receive other funding for medical supplies, dietary supplements, hygiene products related to medical conditions, nor for any non-benefit items prescribed by medical practitioners or specialists. The advocate acknowledges that while some of the residents of the facility also have substance abuse issues, that this is secondary to coping with issues relating to mental illness. The appellant points out that the \$30.93 per diem rate received from the ministry is used to cover a number of costs for care of the appellant, including three meals a day plus snacks, transportation to all appointments and outings, costs of bedding, linens, toilet supplies, recreational activities with activity worker, 24-hour facility staffing due to clients care level needs, and housekeeping, while the \$95.00 comforts allowance is used to cover the costs of the appellant's daily needs for personal care products. The appellant argues that she is an insulin dependent diabetic and costs related to this care are not covered, and the cost of the appellant's diabetic supplies are over \$200 per month. The advocate argues that the appellant's physician has prescribed therapeutic supplements and indicated that these are necessary for the appellant.

Section 67(1) of the EAPWDR requires that to be eligible for the MNS, the appellant must be a PWD who receives disability assistance 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) of Schedule A, if the special care facility is an alcohol or drug treatment center. The panel finds that it is not disputed that the appellant is a PWD and that she receives special care pursuant to Section 8 of Schedule A of the EAPWDR, and that she does not receive monthly support allowance or monthly shelter allowance, she does not receive room and board or reside in an emergency shelter or transition house. The facility in which the appellant resides is licensed under the

*Community Care and Assisted Living Act*, to provide services for mental health and substance use issues. The advocate acknowledged that while some of the residents of the facility also have substance abuse issues, that this is secondary to addressing issues relating to mental illness as the facility primarily provides psychiatric services. The panel finds that the ministry reasonably determined that the facility in which the appellant resides is not an alcohol or drug treatment centre, as required by Section 67(1)(b) of the EAPWDR. The advocate pointed out that the third party who resides in a similar facility and is also on the wait list for services from CLBC made a request to the ministry for incontinence supplies and was approved, and the ministry explained that some medical supplies, as opposed to the MNS, could be covered under general health supplements, depending on the circumstances. The panel agrees with the ministry that the situation of the third party's request for incontinence pads involves the consideration of other sections of the EAPWDR and is not comparable to the appellant's request for MNS under Section 67. The evidence demonstrates that the appellant has a need for the MNS and that the facility in which she currently resides is struggling to cover the costs for supporting the appellant with her many mental and physical needs, however the panel finds that Section 67 does not give the ministry the discretion to approve a request that does not meet the program requirements as stipulated in either sub-section 67(1)(a) or (b), or to increase the per diem amount as set out in Section 8 of Schedule A.

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a MNS because the program criteria set out in Section 67(1) of the EAPWDR were not met as the appellant does not receive disability assistance as described by sub-sections 67(1)(a) or (b) of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant.