

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration decision dated November 1, 2012 wherein the ministry found that the appellant met all of the criteria for monthly nutritional supplements (MNS) but denied the appellant's request for back pay for his MNS. The Ministry denied the request because the appellant is not entitled to reimbursement for a period prior to when he became eligible for MNS.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation Sections 23 and 67(1)
Employment and Assistance for Persons with Disabilities Regulation Schedule C and Section 7

PART E – Summary of Facts

In February 2012 the appellant made application for MNS. Over the next several months the appellant provided the ministry with various pieces of information to support his application. Despite the information provided, the appellant failed to satisfy the ministry that he met the criteria set out in the EAPWD regulation section 67(1.1)(b) and Schedule C, section 7 for the requested items. Accordingly, on September 26, 2012 the appellant's application for MNS of nutritional items and vitamin/mineral supplements were denied. The appellant applied for reconsideration and on reconsideration his application was granted. In granting his application, the ministry gave consideration to a supplemental medical note dated October 18, 2012 from the appellant's practitioner. The prescription note confirmed that the appellant displays the symptoms of malnutrition and significant weight loss, as he has lost 35 pounds in the past year.

On reconsideration, the ministry also considered the appellant's request for back pay of MNS. On this issue, the ministry found that the appellant is not eligible for back pay because he was not eligible for the supplement until the date of the reconsideration decision. It is this portion of the reconsideration decision that the appellant appeals.

In a letter to the ministry dated July 20, 2012, the appellant says he is finally submitting his monthly nutritional form and is so late getting it in because back in February Social Services lost his form and he waited to see if it would turn up somewhere but it didn't. He says that almost 4 months went by because of this mishap.

The ministry finds that the appellant is not eligible for back pay of her MNS. They contend that the information provided in the appellant's initial MNS application did not establish that the eligibility criteria had been met. Specifically, the ministry says that the initial application did not establish that the appellant demonstrated two symptoms of underweight status as set out by EAPWD Regulation subsection 67(1.1)(b). In addition, the ministry found the information provided did not establish that failure to provide the items requested would result in imminent danger to the appellant's life. The appellant's physician indicated that nutritional items and vitamin/mineral supplements were needed to increase and improve the appellant's immunity and health however, did not confirm that he was displaying the symptom of moderate to severe immune suppression. Therefore, it could not be determined that an imminent danger to life existed. The ministry says that with the information finally provided by the practitioner, by way of the prescription note dated October 18, 2012, helped satisfy that criteria. The ministry says they took a broad and liberal view of the legislation and determined that the appellant was eligible for the MNS, however only from the date of eligibility forward.

In his notice of appeal, the appellant says, "I think it was wrong for me to take my time and effort to see the doctor, not being in the greatest of health at the time, picking up the forms, filing (sic) them out when the doctor could only see me 1 a week then taking them in to the office directory (sic), thoroughly going over them and to my disappointment find out they lost them which they told me to hang tough they will turn up (they didn't so I lost 3 -4 worth of time and effort for nothing."

The panel has considered the new evidence submitted by the appellant and finds that it is admissible under section 22(4) of the Employment and Assistance Act as it is evidence in support of the information and records that were before the Ministry when the original decision was made.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry reasonably concluded that the appellant's request for back pay of a MNS should be denied.

The following section of the Employment and Assistance for Persons with Disabilities Regulation applies to this decision:

Effective date of eligibility

23 (2) A family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it

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.

(1.1) In order for a person with disabilities to receive a nutritional supplement under this section, the minister must receive a request, in the form specified by the minister, completed by a medical practitioner or nurse practitioner, in which the practitioner has confirmed all of the following:

(a) the person with disabilities to whom the request relates is being treated by the practitioner for a

chronic, progressive deterioration of health on account of a severe medical condition;

(b) as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms:

- (i) malnutrition;
- (ii) underweight status;
- (iii) significant weight loss;
- (iv) significant muscle mass loss;
- (v) significant neurological degeneration;
- (vi) significant deterioration of a vital organ;
- (vii) moderate to severe immune suppression;

(c) for the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more of the items set out in section 7 of Schedule C and specified in the request;

(d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

(2) In order to determine or confirm the need or continuing need of a person for whom a supplement is provided under subsection (1), the minister may at any time require that the person obtain an opinion from a medical practitioner or nurse practitioner other than the practitioner referred to in subsection (1) (c).

(3) The minister may provide a nutritional supplement for a period of 3 calendar months to or for a family unit if the supplement is provided to or for a recipient of disability assistance or a dependent child of a recipient of disability assistance if

(a) the recipient or dependent child is not receiving a supplement under subsection (1) of this section or section 2 (3) of Schedule C, and

(b) a medical practitioner or nurse practitioner confirms in writing that the recipient or dependent child has an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from

- (i) surgery,
- (ii) a severe injury,

(iii) a serious disease, or

(iv) side effects of medical treatment.

[am. B.C. Regs. 317/2008, s. 8; 68/2010, ss. 1 and 2.]

The Ministry's position is that the appellant did not meet the eligibility criteria for a nutritional supplement as set out by section 67(3)(b) during the time in question and therefore he is not eligible for the backpay pursuant to section 23(2). The ministry says the appellant did not become eligible for the supplement until the date of the reconsideration decision.

The appellant's position is, in summary, that he was not in good health throughout the application process and consequently had a difficult time getting into her doctor's office to obtain the requisite information. Further, he says that when he did finally make it to the doctor's office, that office lost his forms and he, as a result, lost 3 - 4 months worth of time for nothing.

The panel has considered all of the evidence in conjunction with the legislation. Section 23(2) of the legislation is clear that the appellant cannot be eligible for MNS until the date that the ministry finally determines that he is eligible for it. In this case, the ministry determined that the appellant was eligible on November 1, 2012 which is the date of the reconsideration decision. Accordingly, that is the date upon which the ministry can provide MNS. The ministry has no authority to provide back pay as the appellant was not eligible for MNS prior to November 1, 2012.

In summary, the panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the decision pursuant to section 24(2)(a) of the Employment and Assistance Act.