

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated February 19, 2013 which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and additional nutritional items. The ministry held that the initial 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), Sections 9, 61.1 and 67(1) and Schedule A, Sections 2, 4, 6, 8, and 9.

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

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

- 1) Application for Monthly Nutritional Supplement (MNS) dated October 12, 2012 signed by the appellant's physician;
- 2) Print out of the ministry file notes covering the period November 4, 2011 through February 5, 2013;
- 3) Print out of the ministry procedures for the MNS;
- 4) Appellant's supplement application timeline covering the period January 2012 through January 21, 2013; and,
- 5) Request for Reconsideration- Reasons.

In his Notice of Appeal, the appellant expressed his disagreement with the ministry's reconsideration decision. The appellant wrote that he was not given a fair opportunity to apply for the MNS. The appellant wrote that the ministry has shown inefficiency and mishandling on numerous occasions. At the time the MNS application was requested and given to him, the ministry was to complete Part A and confirm basic eligibility but Part A was incomplete, eligibility was not assessed, and the application was nonetheless given to him. The appellant wrote that it took the ministry 3 months to review his application. On January 7, 2013, he was informed by phone that he did not meet the basic eligibility and informed of his right for reconsideration.

On January 10, 2013, he was told at the ministry office to request a reconsideration package be sent. On January 14, 2013, an advocate called the ministry to request that information be forwarded, and was advised that it will be ready for pick up on January 16, 2013. On January 16, 2013, the appellant went to the ministry office to pick up the reconsideration package and was told there was no package. The appellant wrote that on November 7, 2011, despite the ministry's note, no brochure was mailed to him. The appellant wrote that the reconsideration decision plays with rules and regulations and has cheated him out of his right to access benefits. He also disagrees with the ministry's procedures of misinformation and omission.

In his Request for Reconsideration, the appellant wrote that the ministry procedures require that the ministry confirm eligibility as the first step and to inform him immediately if he is not eligible. The appellant wrote that the ministry moved on to step two and opened a service request and provided him with a MNS application. The appellant wrote that the ministry thereby confirmed his eligibility. The appellant wrote that the ministry asked him to apply for CPP disability but when his CPP benefits increased in January 2012, the ministry no longer supported him. The ministry failed to inform him of his right to apply for supplements and other additional help available while receiving disability assistance.

The appellant wrote that he is a stroke survivor, unable to work for the rest of his life and unable to secure any type of additional income. His need for the MNS is real and present. The appellant wrote that after waiting 3 months, he was told that he was judged ineligible and his doctor's evaluation would not be reviewed. The appellant wrote that because his CPP allowance has increased a mere \$22.98 above disability rates, he is judged ineligible to a supplement that he would be eligible for if he was receiving disability assistance.

The appellant wrote that his medical and housing situations are precarious. After paying rent, he is unable to pay for off-the-counter medication and nutritional supplements much less food. His savings are melting away and he is a few months from being eligible for housing support. If he was to lose his current housing, he will find himself on the streets.

In his timeline, the appellant added that at the end of January 2012 his CPP monthly payment increased and he no longer received payment from the ministry. On October 10, 2012 he requested a MNS application and was judged eligible by the ministry and given the application package. On October 12, 2012, the appellant submitted the package to the ministry. On December 5, 2012, a request was made that the appellant's

application be reviewed as soon as possible, given that he has suffered a stroke. On January 9, 2013, the appellant received a call from the ministry informing him that he is not eligible for the MNS. On January 11, 2013, the ministry agreed that if the appellant was receiving the MNS before his CPP payment increased, he would still be eligible for it on technical grounds.

The ministry relied on its reconsideration decision which included information that the appellant applied for income assistance on November 2, 2011. On November 7, 2011, the appellant was approved for Persons With Disabilities (PWD) designation and became eligible for disability assistance in the amount of \$906.42 per month. A letter and brochure outlining the benefits to which he was entitled as a PWD were mailed to the appellant. On January 20, 2012, the ministry found that the appellant had been approved for CPP disability benefits in December 2011 in the amount of \$903.68 per month. On February 3, 2012, the ministry was notified by CPP that the appellant's CPP disability benefits increased to \$928.98 per month. As the appellant's CPP disability benefits exceeded the amount of disability assistance for which he was eligible, the appellant was transitioned to Medical Services Only (MSO).

On October 12, 2012, the appellant submitted an application for the MNS. The ministry noted that parts of Part A on the appellant's MNS application are not completed by the ministry, including coding and a date and signature by the worker. The ministry apologized for distress caused to the appellant by the failure of the ministry to follow procedures. On December 5, 2012, the ministry received a request for urgent adjudication of the appellant's application and it was found that the request did not meet the criteria for urgent adjudication. On January 7, 2013, the ministry reviewed the appellant's basic eligibility for the MNS supplement and found that the appellant was not receiving disability assistance. On January 7, 2013, the appellant was informed that he did not have basic eligibility to receive the MNS or to have his application considered.

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 because 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 61.1 of the EAPWDR provides:

Eligibility for medical services only

- 61.1 For the purposes of this Division, a person may be eligible for medical services only if
- (a) the person is a person with disabilities who is under age 65 and the person's family unit ceased to be eligible for disability assistance as a result of
 - (i) employment income earned by the person or the person's spouse,
 - (ii) money received by the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or
 - (iii) any person in the family unit receiving a pension or other payment under the Canada Pension Plan,
 - (b) the person's family unit ceased to be eligible for disability assistance on the day the person became 65 years of age,
 - (c) the person is a person with disabilities and the person's family unit ceased to be eligible for disability assistance because of
 - (i) financial assistance provided through an agreement under section 12.3 of the Child, Family and Community Service Act, or
 - (ii) an award of compensation under the Criminal Injury Compensation Act or an award of benefits under the Crime Victim Assistance Act made to the person or the person's spouse,
 - (d) the person is a dependant of a person referred to in paragraph (a) or (c), or
 - (e) the person is a dependant of a person referred to in paragraph (b), if the dependant was a dependant of the person referred to in paragraph (b) on the day that person became 65 years of age and remains a dependant of that person.

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 PWD who receives disability assistance under Section 2 (monthly support allowance), Section 4 (monthly shelter allowance), Section 6 (people receiving room and board), Section 8 (people receiving special care), or Section 9 (people in emergency shelters and transition houses) of Schedule A. The ministry argued that the information does not establish that the appellant is a PWD in receipt of disability assistance as described in Sections 67(1)(a) and (b) of the EAPWDR. The ministry argued that the appellant does not receive disability assistance as a monthly support allowance as set out in Section 2 or monthly shelter allowance as set out in Section 4 of Schedule A. The ministry argued that the appellant is not receiving disability assistance as room and board as set out in Section 6 and he is not residing in a special care facility that is an alcohol or drug treatment center as set out in Section 8 of Schedule A. The ministry argued that the appellant is not receiving disability assistance as residing in an emergency shelter or transitional house as set out in Section 9 of Schedule A. The ministry argued that the appellant was not in receipt of disability assistance as set out in Section 67(1) of the EAPWDR on the day he submitted the MNS application.

The appellant's position is that he was not given a fair opportunity to apply for the MNS. The appellant argued that the ministry failed to inform him of his right to apply for supplements while receiving disability assistance as no brochure was mailed to him at the time he was approved as a PWD. The appellant argued that he is a stroke survivor, unable to secure any type of additional income and his need for the MNS is real. The appellant argued that the ministry asked him to apply for CPP disability and, when his CPP benefits increased in January 2012, he no longer received payment from the ministry. The appellant argued that on October 10, 2012 when he requested the MNS application, the ministry confirmed his eligibility by moving to step 2 in its procedure and by not informing him immediately if he was not eligible. The appellant pointed out that it took the ministry 3 months to review his application and, on January 7, 2013, he was informed that he did not meet the basic eligibility. The appellant argued that because his CPP allowance increased a mere \$22.98 above disability rates, he was judged ineligible to a supplement that he would be eligible for if he was receiving disability assistance.

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 8 (people receiving special care), or Section 9 (people in emergency shelters and transition houses) of Schedule A. The panel finds that it is not disputed that the appellant was designated as a PWD on November 7, 2011. The panel finds that it is also not disputed that in February 2012 the appellant's CPP disability benefits increased so that the monthly amount exceeded the amount of disability assistance for which he was eligible. While the ministry may have asked the appellant to apply for CPP disability benefits, the triggering event for finding the appellant ineligible for disability assistance was not his application for CPP disability benefits, but the increase in the amount of those monthly benefits in February 2012 so that the appellant's net income exceeded the amount to which he was entitled from the ministry for disability assistance, as set out in Section 9 of the EAPWDR.

As the appellant was no longer eligible for disability assistance in February 2012, he was transitioned by the ministry to Medical Services Only, pursuant to Section 61.1 of the EAPWDR, which maintained the appellant's ability to apply for general health supplements under Section 62 and Schedule C of the EAPWDR. It was not until approximately 8 months later, in October 2012, that the appellant submitted an application for the MNS. The appellant pointed out that, according to the ministry's procedures, he should have been advised immediately if he was not eligible to be considered for the MNS, and that by taking his application the ministry thereby assessed him as eligible. The ministry acknowledged that there was a failure to follow its procedures for handling the appellant's MNS application.

However, the panel finds that Section 67 of the EAPWDR does not give the ministry the discretion to approve a request for a MNS that does not meet the initial requirements as stipulated in either sub-section (1)(a) or (b). The panel finds that it is not disputed that in October 2012, when the appellant submitted his MNS application, he was not in receipt of disability assistance as a monthly support and shelter allowance, as a person receiving

room and board or special care or in an emergency shelter and transition house, and the panel finds that the ministry reasonably determined that the appellant's request did not meet the requirements of Section 67(1)(a) or (b) of the EAPWDR.

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a MNS because 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.