

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”), reconsideration decision dated October 9, 2013 in which the ministry determined that the appellant was not eligible for Monthly Nutritional Supplement (MNS) while she resides at her current residential facility as the ministry is not satisfied that the facility is licensed as an alcohol and drug treatment center as described in section 67(1)(b) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance Persons for Disabilities Regulation (EAPWDR)
– section 67, Schedule C section 7, Schedule A section 8

PART E – Summary of Facts

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

1. Ministry's decision dated September 20th, 2013, which temporarily suspended the appellant's MNS as the appellant was residing at a special care facility that is not classified as an alcohol and drug and alcohol center as prescribed under section 67(1)(b) of the EAPWDR;
2. A letter dated September 27, 2013 from the special care facility where the appellant is currently residing which, amongst other things, states that under the Residential Care Regulation, the said facility has been designated since October 2009 as a mental health and substance use facility;

Subsequently to the reconsideration decision, the appellant has submitted a Notice of Appeal dated October 16, 2013 in which she states that the facility at which the appellant is currently residing is a licensed mental health care facility and she included another letter dated October 16, 2013 from the said facility, which is identical to the letter dated September 27, 2013 mentioned above.

The appellant's submission in the Notice of Appeal was followed by a further submission from the appellant on November 25, 2013, which attached a Licence issued under the Community Care and Assisted Living Act confirming that the facility where the appellant living is authorized to provide "mental health and substance use" services. The ministry did not object to admission of the copy of the Licence as additional evidence. The panel admitted the copy of the Licence submitted by the appellant was admissible under Section 22 (4) (b) of the Employment Assistance Act in support of the information and records that were before the ministry when the decision being appealed was made.

At the hearing, the appellant made a case to demonstrate her acute need for MNS. She stated that she had completed a 90-day treatment at an alcohol and drug treatment facility and had personally elected to move to her current special care facility, which provides her a continuum of therapies that are similar to those that she was receiving at her former alcohol and drug treatment facility. The appellant told the panel that she needs to continue receiving MNS supplements to support her recovery process.

The appellant's representative argued that the appellant's current special care facility is authorized to provide services relating to mental health and substance abuse, and that the appellant is receiving a level of care that is greater than that she was receiving at her former alcohol and drug treatment center. The representative also contended that lack of MNS and limited financial resources forces the appellant to use of analgesic as substitutes that result in additional negative medical consequences for the appellant.

In response to the appellant's submission, the ministry acknowledged that the appellant is eligible to receive MNS provided she was residing at an approved "*alcohol and drug treatment center*", but not if she continued to reside at her current special care facility as that facility is currently registered with the ministry as a "*long-term care facility*" and not as an "*alcohol and drug treatment center*". The ministry representative also contended that the criteria applicable to, as well as compensation

payable to, an *“alcohol and drug treatment facility”* are different from those applicable to a *“mental health and substance use facility”*. Therefore, the appellant would remain ineligible for MNS until she either moved to an *“approved alcohol and drug treatment center”* or if the existing special care facility of the appellant applied for and was recognized by the ministry as an *“approved alcohol and drug treatment center”*.

Based on the foregoing, the panel makes the following finding of fact:

- The care facility where the appellant is living a *“long term care facility”* and not an approved *“alcohol and drug treatment center”* described in section 67 (1) (b) of EAR.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated September 13, 2013, which determined that the appellant was not eligible for the Monthly Nutritional Supplement (MNS) while she resides at her current residential facility as the ministry is not satisfied that it is licensed as an alcohol and drug treatment facility as described in section 67 (1) (b) of Employment and Assistance for Persons with Disabilities Regulation.

The relevant applicable legislation is 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 center,

The appellant's position is that she has completed a 90-day treatment at an alcohol and drug treatment facility and that she is now at a recovery stage at her current special care facility, which is licensed to provide services relating to mental health and substance use. She further contends that her MNS should continue at her current special care facility as without them she encounters new medical challenges and may relapse. The appellant also argues that the level and scope of care that she is currently receiving is comparable and higher than what she was receiving at her former treatment center.

The ministry's position is that the current special care facility is registered with the ministry as a "*long term care facility*" and not as an "*alcohol and drug treatment facility*". Under the ministry policies the criteria for recognition and the level of compensation payable to each of the two types of facility are distinct. Therefore, the ministry can only provide MNS to eligible applicants that are resident at "*approved alcohol and drug treatment centers*."

The applicable legislation on this issue is clear. Section 67 (1) (b) of the EAPWDR states that the minister may provide a nutritional supplement to an eligible family unit receiving special care at "an alcohol and drug treatment center". The panel finds that the appellant is currently not receiving special care at an "alcohol and drug treatment center" described under section 67(1)(b) of the EAPWDR.

Therefore, the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the relevant enactment in the circumstances of the



appellant, and confirms the reconsideration decision of the ministry. The panel confirms the reconsideration decision of the ministry.