

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated January 15, 2014 which found that the appellant is no longer eligible for the Monthly Nutritional Supplement (MNS) of nutritional items and vitamin/mineral supplements on the basis that she did not meet the criteria set out in section 67(1) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

In particular the ministry found that as the appellant is receiving disability assistance under the EAPWDR Schedule A, section 8(1) for people receiving special care which is not an alcohol or drug treatment centre she was not eligible for the MNS.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) section 67.

PART E – Summary of Facts

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

1) The appellant's Request for Reconsideration (RFR) dated December 31, 2013 in which the appellant states that she would like funding for vitamins and Ensure nutritional supplements to enable proper diet and that due to unemployment and lack of income she is unable to pay for vitamins. The appellant states that she has poor health and dietary status requiring supplementation; she has had previous hospitalization for nutritional deficits. She states that she has digestive concerns that interfere with her appetite and is not always able to consume vitamins via diet. She states that her living facility does not supply the MNS and she has a lessened quality of life due to her poor health status;

In her Notice of Appeal dated February 5, 2014 the appellant states that her nutritional requirements are met by the residential facility where she resides but that vitamin supplements are not supplied. She requests a short term (3 month) funding for vitamins if long term would not be considered.

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*.

[REDACTED]

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision which found that the appellant is no longer eligible for the MNS of nutritional items and vitamin/mineral supplements as she resides in a long term care facility that is not an alcohol/drug treatment centre, as set out in EAPWDR section 67 was reasonable.

The relevant sections of the legislation are as follows:

EAPWDR

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.]

Position of the Parties

The ministry states that in accordance with EAPWDR section 67(1), to qualify for the MNS, the appellant must be a person with disability who receives disability assistance under EAPWDR section 67(1)

- (a) 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.

The ministry's position is that although the appellant is living in a long term care facility, it is not an alcohol or drug treatment centre as required by EAPWDR Section 67(1)(b) so she is no longer eligible for the MNS.

The ministry pays for the appellant's accommodation at the long term care facility on a monthly basis at the per diem rate of \$30.90 which means that monthly totals vary from \$920 to \$957.90 depending on the number of days per month. The ministry states that their expectation is that the nutritional needs of the appellant will be met by the facility. In addition, the ministry provides the appellant a comfort allowance of \$95 per month.

The appellant's position as set out in the RFR was that she was requesting funding for vitamins and Ensure nutritional supplements. In her Notice of Appeal the appellant states that her nutritional requirements are met by the long term care facility but that the facility does not provide vitamins so she requests a short term (3) month funding for vitamins if long-term funding would not be considered.

Panel Decision

EAPWDR section 67(1) states that the ministry may provide the MNS 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.

As the appellant is receiving disability assistance under section 8 of Schedule A as she has entered a long term care facility that is not an alcohol or drug treatment centre, the panel finds that the ministry reasonably determined that she did not meet the legislated criteria set out in EAPWDR Section 67(1) for basic eligibility for the MNS.

The panel notes that in the reconsideration decision the ministry states that the option of applying for a short-term nutritional supplement for a period of three months may be explored if the appellant has an acute short-term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from surgery, a severe injury, a serious disease or side effects of medical treatment. The panel notes that the information from the ministry in this regard is provided for information only and that any discussions between the appellant and the ministry with respect to a new request for a short-term nutritional supplement for a period of three months is separate from the issue at appeal before the tribunal.

Conclusion

In conclusion, the panel therefore confirms the ministry's reconsideration decision.