

**PART C – Decision under Appeal**

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 19 May 2015 determined that the appellant was not eligible for the monthly nutritional supplement (MNS) under section 67(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because he was no longer a recipient of disability assistance.

**PART D – Relevant Legislation**

EAPWDR, s. 67.

## PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under s. 86(b) of the Employment and Assistance Regulation.

The following evidence was before the ministry at the time of reconsideration:

- The appellant has a person with disabilities (PWD) designation and was a recipient of disability assistance plus MNS of \$205 monthly for many years.
- In February 2015 the appellant started receiving Old Age Security (OAS) and Guaranteed Income Supplement (GIS).
- On 23 March 2015, the appellant contacted the ministry to enquire as to why he had received a lower cheque and was advised that since he started receiving OAS / GIS he was no longer eligible for disability assistance.
- On 10 April 2015, the appellant contacted the ministry about the MNS and was advised that because his income had become higher than the disability assistance rate he would otherwise be eligible for, he was no longer eligible for assistance and, consequently, for any supplements.
- On his request for reconsideration dated 5 May 2015, the appellant indicated he was approved for MNS over a decade ago and that was a lifesaver for him given his medical condition. With his request for reconsideration he attached the following document:
  - A letter dated 29 April 2015 by a physician indicating he was being followed for his chronic conditions issues and that he continued to require MNS for these multiple chronic conditions and his overall health.

In its reconsideration decision dated 19 May 2015, the ministry indicated that the appellant started receiving OAS/GIS as of February 2015 at a monthly rate of \$1,328.14 while his disability assistance would be \$906.42 and thus his monthly income was in excess of the monthly disability assistance he would otherwise be eligible for.

In his Notice of Appeal dated 29 May 2015 the appellant indicated he had asked to pass the physician's letter dated 29 April 2015 to the Health Reconsideration Branch and that the ministry had not.

At the hearing the ministry indicated that given the appellant's PWD designation, he was still eligible for Medical Services Only (MSO) that however excluded MNS. The panel determined the additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration and provided more information on the appellant's medical benefits.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for the MNS under section 67(1) of the EAPWDR because he was no longer a recipient of disability assistance, was a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation is s. 67 of the EAPWDR:

**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,

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.

S. 7 of Schedule C of the EAPWDR indicates the amounts that can be provided under s. 67 of the EAPWDR. As clarification on that section for those who still receive MSO, Appendix C of the Ministry Policy (30 April 2010) states:

Persons with MSO cases are not eligible for any of the following (this list is not all-inclusive):

...

- Monthly nutritional supplement...

The appellant argued that his MNS was approved many years ago, that it was a lifesaver for him and it had nothing to do with his pension.

The ministry argued that since he received his OAS / GIS, the total amount exceeded the disability assistance and therefore he was no longer eligible for such assistance. As a result, given that to be eligible for MNS the family unit must be a recipient of disability assistance, he was also no longer eligible for MNS.

### *Panel's decision:*

The panel notes that the appellant receives \$1,328.14 per month for OAS / GIS while his monthly disability assistance rate is \$906.42. Because the appellant's new income (OAS/GIS) exceeds his monthly assistance rate, the ministry reasonably determined he was no longer eligible for disability assistance, which is not disputed by the appellant. S. 67(1) of the EAPWDR clearly states that to be eligible for MNS, the family unit must receive disability assistance. Prior to receiving OAS/GIS, the appellant did not have other income and was eligible for disability assistance and consequently, for

MNS (\$205 / month). The panel finds that given the appellant was no longer receiving disability assistance the ministry reasonably determined the appellant was not eligible for MNS.

*Conclusion:*

The panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the reconsideration decision.