

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision of October 30, 2015 in which the ministry denied the appellant’s reapplication for disability assistance (DA) and a monthly nutritional supplement (MNS) because her monthly Canada Pension Plan (CPP) income exceeded her DA rate, rendering her ineligible for DA under Section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry also determined that the appellant was not eligible for a life-threatening health need (LTHN) supplement under EAPWDER Section 69 because nutritional supplements are not included under that provision.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA): Section 3 (b)

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):

- Sections 1 (f), 9 (2), 24, 67 (1), and 69

PART E – Summary of Facts

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

- Request for Reconsideration received by the ministry October 30, 2015 to which the appellant appended a two-page letter stating that:
 - she lost her job due to an ongoing dental infection;
 - loss of the MNS causes her undue hardship and has threatened her mental and physical health;
 - she has lost 50 pounds since being denied MNS and is experiencing muscle loss;
 - she is no longer able to claim disability status for discounts related to auto insurance, public transportation and recreational amenities;
 - September 21, 2015 note from the appellant's family physician (Dr. L) stating that she suffers from severe medical problems and requires nutritional supplements and extra vitamins to prevent health deterioration and threat to her life;
- appellant's medication list dated September 28, 2015;
- October 25, 2015 letter from the appellant to her social worker (A) disclosing:
 - details which led to the development of PTSD and the effect of these traumatic events upon her life;
 - her health history;
 - her attempts to return to work.
- September 3, 2015 letter from the appellant to her MLA;
- October 13, 2015 letter from A to the ministry, including legislation and case law, in support of the appellant's request for reconsideration,
- 2005 academic article entitled "The Human Rights Approach to Reducing Malnutrition".

At the hearing the appellant tendered new documentary evidence which included:

1. Letter from Dr. L dated Nov. 16, 2015 certifying that the appellant was unable to work for a period of one month;
2. December 2, 2015 email from the appellant to A seeking advice for accessing non-prescription health items and recreation passes;
3. November 8, 2015 hospital emergency department note stating that the appellant has sustained a concussion and must avoid heavy mental stimulation;
4. October 30, 2015 letter from the appellant's dentist indicating that she had undergone emergency dental extractions;
5. December 2, 2015 statement from the appellant's dentist showing a balance owing of \$435.10;
6. Appellant's banking summary dated December 2, 2015 showing an overdraft of \$4,984.74;
7. September 25 and December 3, 2015 email letters from the appellant to her MLA seeking assistance and requesting legislative change;
8. December 1, 2015 letter from Dr. L stating that vitamin, mineral, fish oil, probiotic and nutritional supplements are crucial to the appellant's health and lack of these supplements are life-threatening given the appellant's serious medical conditions. Dr. A added that the appellant also requires fresh fruits and vegetables, and since losing her MNS has suffered muscle loss and worsening health.

The ministry representative did not object to the inclusion of documents 1, 2, 3, 6, 7 and 8 but objected to the inclusion of documents 4 and 5 because they relate to dental care, which was not an issue before the ministry at reconsideration.

The panel determined that documents 1, 2, 3, 6, 7 and 8 were admissible under s. 22(4) of the EAA as evidence in support of the records before the minister at reconsideration because they related to the appellant's request for a MNS, but did not accept documents 4 and 5 as evidence in support because they related to the appellant's dental health, which was not an issue considered by the ministry at reconsideration.

The ministry relied on the reconsideration decision which is summarized as follows:

- The appellant was a sole recipient of DA and the MNS between 2002 and May 2015. Until May 2015 she was receiving \$201.93 per month, which consisted of DA of \$906.42 plus MNS of \$205 (totaling \$1,111.42) from which her CPP income of \$909.49 was deducted.
- In June 2015 the appellant's file was switched to Medical Services Only (MSO) coverage because the appellant reported EI income.
- When the appellant's EI was terminated in August 2015 she reapplied for DA and the MNS but was denied DA because her CPP income of \$909.49, which was unearned income under EAPWDR Schedule B, exceeded the Schedule A disability assistance rate of \$906.42 for a sole recipient with no dependents.
- Because the appellant was no longer a recipient of DA she was unable to apply for the MNS as stipulated in EAPWDR Section 67.
- The appellant also was not eligible for a LTHN supplement because this supplement does not include a provision for nutritional supplements.

At the hearing the ministry representative clarified that if a DA recipient chooses to work and upon termination of employment qualifies for EI she/he must first access available EI funds, because the ministry is the payer of last resort.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision in which the ministry denied the appellant's reapplication for disability assistance (DA) and a monthly nutritional supplement (MNS) because her monthly Canada Pension Plan (CPP) income exceeded her DA rate, rendering her ineligible for DA under Section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry also determined that the appellant was not eligible for a life-threatening health need (LTHN) supplement under EAPWDER Section 69 because nutritional supplements are not included under that provision.

The applicable legislation is as follows:

EAPWDA:

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

EAPWDR:

1 (1) In this regulation:

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (f) any type of class of Canada Pension Plan benefits;

Limits on income

9 (2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

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 family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who

(a) is a person with disabilities,

Health supplement for persons facing direct and imminent life threatening health need

69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

(a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,

(b) the health supplement is necessary to meet that need,

(c) a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and

(d) the requirements specified in the following provisions of Schedule C, as applicable, are met:

(i) paragraph (a) or (f) of section (2) (1);

(ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

The appellant argues that because she has been an eligible recipient of DA and MNS since 2002 and her disability has not improved her eligibility should be "grandfathered". She believes that she is being penalized under provincial legislation because federal CPP benefits increase annually due to cost of living adjustments while provincial DA rates do not change. She argues further that she requires the MNS to prevent a life-threatening deterioration in her physical health, and if she is ineligible for the MNS she should be granted a nutritional supplement under the LTHN provisions in EAPWDR Section 69.

The ministry argues that pursuant to EAPWDR Section 24 the appellant is ineligible for DA because her Schedule B monthly net income of \$909.49 derived from CPP benefits exceeds the Schedule A disability assistance rate of \$906.42 for a sole recipient with no dependents. She is therefore ineligible for the MNS under Section 67 because she is no longer a recipient of DA. The ministry also argues that the appellant does not qualify for the LTHN supplement under EAPWDR Section 69 and Schedule C Sections 2 (1) (a) and (f) because the LTHN supplement is limited to assisting with medical supplies, equipment and transportation.

Panel Decision

1. Eligibility for DA

The legislation governing eligibility for DA is clear and unequivocal. EAPWDA Section 3 states that a person or family unit is eligible for DA if she/he meets the initial and ongoing criteria under the Act, and has not been declared ineligible. Section 9 of the EAPWDR states family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit. CPP benefits are included in the definition of “unearned income” in Section 1 and are included in calculating Schedule B net income. Although the appellant’s Schedule B net income exceeds her Schedule A DA by only \$3.07 there is no provision in the legislation to enable the ministry to apply discretion in determining eligibility for DA. The panel therefore finds that the ministry reasonably determined that the appellant is ineligible for DA because her net income under Schedule B exceeds her DA rate calculated under Schedule A.

2. Eligibility for MNS

EAPWDR Section 67 states that the ministry may provide a MNS to a recipient of DA. For the reasons cited above the appellant is no longer eligible for DA. The panel finds that the ministry reasonably determined that the appellant is ineligible for a MNS under Section 67 because she is not a recipient of DA under Section 3 of the EAPWDA and Section 9 of the EAPWDR.

3. Eligibility for LTHN

When a person who is not otherwise eligible for a health supplement under the EAPWDR faces a direct and imminent life threatening health need the ministry may, pursuant to Section 69, provide medical or surgical supplies, medical equipment and devices, and/or transportation to and from a hospital or medical specialist. Section 69 does not contain a provision that allows the ministry to provide a nutritional supplement to a person who is ineligible for DA. The panel therefore finds that the ministry reasonably determined that the appellant is ineligible for a LTHN supplement.

Conclusion

Although the panel accepts the appellant’s evidence that her health is severely compromised without nutritional supplements the panel nevertheless finds that the ministry’s decision to find the appellant ineligible for DA because her Schedule B income exceeds her Schedule A assistance rate, and ineligible for the MNS because she is no longer a recipient of DA , and ineligible for a LTHN supplement because the LTHN provisions are inapplicable to nutritional supplements are all reasonable applications of the applicable legislation, and confirms the decision.