

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 18, 2015 which found that the appellant was not eligible for a Monthly Nutritional Supplement (MNS) for additional nutritional items and vitamins and minerals under Section 67(1) of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) as she was no longer in receipt of disability assistance in March 2014, and that she received the MNS until July 2015 and was required to repay these amounts pursuant to Section 18 of the *Employment and Assistance for Persons With Disabilities Act* (EAPWDA).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67(1)

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 18

PART E – Summary of Facts

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

- 1) Letter dated July 14, 2015 to the appellant in which the ministry requested documentation from the appellant, including bank statements, rent receipts and documents to confirm the status of her claim of Old Age Security (OAS) and GIS [Guaranteed Income Supplement];
- 2) Bank statements for the appellant for the period November 2013 through July 2015 indicating that the appellant received federal benefits starting in January 2014;
- 3) Letter dated July 22, 2015 to the appellant in which the ministry enclosed an Overpayment Chart for the amount of \$205 per month for the period March 2014 through July 2015 and resulting in an overpayment amount of \$3,485; and,
- 4) Memo dated October 21, 2014 (sic) to the ministry in which an advocate wrote that:
 - The appellant received a letter stating that she owed \$3,485 since the ministry paid her a monthly supplement of \$205 from February 2014 to July 2015.
 - Starting in January 2014, the appellant began to receive her OAS and GIC and became ineligible for the Persons With Disabilities (PWD) income.
 - The appellant thought the nutritional supplement of \$205 was switched under “Medical Only.”
 - On March 5, 2015, the appellant spoke to the ministry about her paper work for her 2014 taxes.
 - The appellant is experiencing financial hardship and is unable to pay back the \$3,485 she owes.
 - The overpayment chart indicates that the ministry knew that the monthly overpayment was taking place for 17 months and did not notify the appellant immediately when the overpayment started.
 - The ministry admitted that an administrative error resulted in the appellant continuing to receive dietary and vitamin supplements for which she was not entitled.
 - The appellant should not be penalized for the ministry’s error.
 - Since this is not the appellant’s mistake, the debt should be forgiven; and,
- 5) Request for Reconsideration dated October 21, 2015:

In her Notice of Appeal dated November 30, 2015, the appellant expressed her disagreement with the ministry's reconsideration decision.

At the hearing, the appellant reiterated information at reconsideration and stated that:

- Contrary to the letter from the Tribunal dated January 29, 2016 stating that she no longer wished to have the advocate on her appeal, she actually stated that the advocate refused to attend the hearing since she stated that there was no loophole in the legislation and there is nothing further she could do for the appellant.
- Nevertheless, she wishes to proceed with the hearing and represent herself.
- When she became a senior, she was cut off disability assistance but the ministry left her with the monthly nutritional supplement (MNS). She assumed that she was receiving it under the “Medical Only.”
- She called the ministry on March 5, 2015 to ask for a slip for her income taxes relating to receipt of the MNS and she was told that she did not need a slip and that she did not need to declare the amount because it was “under medical.”
- She received a letter dated July 14, 2015 from the ministry asking her for all kinds of documents to prove her rent and bank statements and she had to go to her landlord

and the bank.

- On July 22, 2015 she talked to the ministry multiple times as the ministry wanted her to certify how much she was getting in OAS and GIC but then the ministry said not to worry.
- She is a person on a low income and she lives month-to-month. When she talked to the ministry, she was told not to worry because the debt will likely be cancelled since she is a senior.
- The ministry admitted that there was an administrative error.
- If the ministry was aware that her disability assistance had stopped in January 2015, she wonders how the ministry thought she was surviving with little or no income.

The ministry relied on its reconsideration decision as summarized at the hearing. The ministry also clarified that:

- The overpayment resulted because the appellant was issued a supplement that she was not entitled to.
- The ministry was aware that the appellant had become a senior and issuing of the monthly disability assistance cheque to the appellant was automatically stopped. As soon as she was no longer in receipt of disability assistance, the appellant was no longer eligible for the supplements.
- The appellant should have gone onto Medical Services Only (MSO) status when her disability assistance stopped and she was not entitled to the MNS.
- The appellant did not report her change in financial situation to the ministry.
- The ministry did not receive a data match on the appellant's federal benefits until the time of the investigation in July 2015.
- The onus remains on the clients to report any change in their circumstances to the ministry.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant was not eligible for a Monthly Nutritional Supplement (MNS) for additional nutritional items and vitamins and minerals under Section 67(1) of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) as she was no longer in receipt of disability assistance in March 2014 and that she received the MNS until July 2015 and is required to repay these amounts, 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 basic eligibility requirements for providing the nutritional supplement, 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 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, and
 - (b) is not described in section 8 (1) [people receiving special care] of Schedule A, unless the person is in an alcohol or drug treatment centre as described in section 8 (2) of Schedule A, 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 another nutrition-related supplement,
 - (e) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 7 (c).]
 - (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 18 of the *Employment and Assistance for Persons With Disabilities Act* (EAPWDA) provides:

Overpayments

- 18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.
- (2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [reconsideration and appeal rights].

Ministry's position

The ministry's position is that the appellant is not eligible for a MNS for additional nutritional items and vitamins and minerals under Section 67(1) of the EAPWDR as she was no longer in receipt of disability assistance in March 2014 and she received the MNS until July 2015 and is required to repay these amounts under Section 18 of the EAPWDA. The ministry acknowledged that an administrative error was made when the ministry continued to issue the MNS to the appellant after

her disability assistance was cancelled. The ministry argued that, according to Section 18 of the EAPWDA, the appellant remains liable to repay the amounts received for the MNS at \$205 per month from March 2014 to July 2015, as set out in the Overpayment Chart.

Appellant's position

The appellant's position is that it was the ministry's error that resulted in continuing to issue the MNS amount to her for over a year after her disability assistance stopped and she should not be required to repay these amounts. The appellant argued that she did not make a mistake since she thought the nutritional supplement of \$205 was continued under MSO and the debt should be forgiven by the ministry. The appellant argued that the overpayment chart indicates that the ministry knew that the monthly overpayment was taking place for 17 months and did not notify the appellant immediately when the overpayment started. The appellant argued that the ministry admitted that an administrative error resulted in the appellant continuing to receive dietary and vitamin supplements for which she was not entitled and she should not be penalized for the ministry's error. The appellant argued that she is experiencing financial hardship and is unable to pay back the \$3,485 she owes.

Panel decision

Section 67(1) of the EAPWDR stipulates that the ministry 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, and the appellant acknowledged that she was not in receipt of disability assistance over the period March 2014 through July 2015. As well, the ministry acknowledged that the ministry was aware that the appellant had become a senior and the ministry automatically stopped issuing the monthly disability assistance cheque to the appellant, but an error was made in continuing to issue \$205 per month to the appellant for the MNS. The ministry argued that the onus was on the appellant to report the change in her financial circumstances to the ministry, which the appellant admitted she did not do because she stated that she assumed the ministry knew she was in receipt of OAS and GIC since she required an income to survive and she also assumed that the MNS was part of her entitlement to MSO. The panel notes that it is not disputed that the appellant was ineligible for the MNS at the point that she was no longer in receipt of disability assistance in or about January 2014. As a supplement was provided to the appellant when she was not eligible for it, the panel finds that the ministry reasonably determined that the appellant is liable to repay the amount of the overpayment provided for that period, pursuant to Section 18 of the EAPWDA.

While the appellant argued that the ministry should have discovered the error earlier, which would have reduced the amount owing by her, the panel notes that the ministry's decision about the amount a person is liable to repay is not appealable to the Tribunal.

Conclusion

The panel finds that the ministry's reconsideration decision, which found that the appellant was not eligible for a MNS for additional nutritional items and vitamins and minerals under Section 67(1) of the EAPWDR as she was no longer in receipt of disability assistance in March 2014 and that she received the MNS until July 2015 and is required to repay these amounts, was reasonably supported by the evidence and the panel confirms the ministry's decision.