



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (Ministry)'s reconsideration decision dated May 16, 2016, finding the appellant is not eligible to receive a monthly nutritional supplement (MNS) for caloric supplementation because her application did not meet the legislative requirements set out in section 67, and section 7 of Schedule "C" of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) that she be in receipt of disability assistance.

PART D – Relevant Legislation

The relevant legislation is section 67 of the EAPWDR and section 7 of Schedule C of the EAPWDR.

PART E – Summary of Facts

The appellant was in receipt of disability assistance and multiple supplements, including monthly nutritional supplements for nutritional items and vitamin/mineral supplements (MNS), until she became eligible for federal benefits (Old Age Security and Guaranteed Income Supplement) in February 2016, at which time she became no longer eligible for disability assistance and became eligible for Medical Services Only (MSO). The ministry informed the appellant in March 2016 that as a MSO client she was no longer eligible to for the MNS.

The appellant applied for a reconsideration of the decision to cease to provide her with the MNS. The evidence before the ministry at the time of the reconsideration decision consisted of the following:

1. A 5-page handwritten statement by the appellant:
 - detailing her history of benefits received as a PWD, including the MNS;
 - pointing out that her federal benefits are less than she was receiving as a PWD;
 - stating that she had previously been informed by a ministry worker that she would remain eligible for the MNS upon becoming eligible for federal benefits;
 - outlining her discussions with a number of ministry employees, in which she was assured by some that she would remain eligible for the MNS, while others told her that she would become ineligible;
 - detailing her current expenses, including a number of important health-related expenses such as organic food and chemical-free household items.
2. A letter written by the appellant's physician dated April 15, 2016, which states that the appellant suffers from a number of complex health issues which will continue indefinitely, including a complicated bowel disorder which requires her to consume only liquid food from organic sources and means that she needs vitamin and mineral supplements in order to maintain her health which places significant financial strain on the appellant.
3. An application for the MNS dated November 10, 2001, detailing the multiple health issues suffered by the appellant.
4. The ministry MNS approval letter dated December 6, 2001.
5. An undated letter prepared by a naturopathic physician detailing the appellant's need for a liquid organic diet, supplements and naturopathic treatments.
6. A letter prepared by a registered dietician nutritionist dated October 24, 2001, outlining the appellant's medical conditions, nutritional concerns and diet recommendations.
7. A letter prepared by a registered nurse dated November 17, 2006, summarizing the appellant's medical conditions including food and chemical allergies, anemia and elimination disorder.
8. A doctor's note dated June 17, 2004, stating that the appellant is anemic and requires a restricted liquid diet.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision finding that the appellant is no longer eligible to receive the MNS because the appellant does not meet the legislative requirement that she be in receipt of disability assistance.

The relevant legislation is section 67 of the EAPWDR and section 7 of Schedule C of the 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 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.

(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).

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).

This was a written hearing.

The Appellant's Position

In her appeal submission the appellant describes her medical conditions: severe, complicated, multi-faceted bowel disorder; severely allergic to chemicals, synthetic sweeteners, etc; several foods, anesthetic, number of pharmaceuticals and pollens; osteopenia; glaucoma; hearing impaired; thyroid condition; severe, chronic anemia; insomnia and poor condition of teeth and hair. She goes on to restate the history of her income assistance. The appellant re-iterates that she was assured on a number of occasions over the years by ministry employees that she would be better off once she was eligible for federal benefits and that she would continue to receive the MNS. The appellant details her current expenses, making the point that without the MNS she cannot meet her monthly financial obligations. She asks that her MNS benefit be grandfathered and indicates that it is her understanding that a number of MSO clients continue to receive the MNS. The appellant concludes by stating that she is, despite what was stated by ministry employees in the past, worse off now than when she was receiving disability assistance and that the MNS is, for her, not a luxury but a necessity.

The Ministry's Position

In its reconsideration decision the ministry looks to the legislation which in s. 67(1) of the EAPWDR states that in order to qualify for the MNS, a person must be receiving disability assistance. As the appellant is no longer receiving disability assistance as of February 2016, when she became eligible for federal benefits and moved to MSO, she does not qualify under this section for the MNS.

The ministry also considered the applicability of s. 69 of the EAPWDR which allows the minister to provide certain health supplements to a person who is facing a life threatening health need. The ministry found that the health supplements that can be provided under this section are limited to medical supplies, medical transportation and medical equipment and does not include the MNS.

The Panel's Decision

In order to qualify for the MNS an applicant must meet all requirements under section 67. This includes the requirement that the "family unit" (in this case, the appellant) be in receipt of disability

assistance. As the appellant is no longer in receipt of disability assistance, she does not qualify for the MNS.

The panel notes that section 67 was amended in July 2015 such that prior to that date in similar circumstances the appellant may have continued to qualify for the MNS. This may explain the advice that was given her by ministry staff in the past. However, the legislation at the time the appellant moved from disability benefits to federal benefits came after the legislation was amended so that the terms of the current enactment apply in her situation. Neither the ministry nor this panel have the authority to 'grandfather' the appellant's request.

The fact that the appellant is receiving less per month now in federal payments than she was receiving in disability assistance is not a relevant consideration. Neither is the fact that the appellant may face financial hardship if she does not receive the MNS.

Section 69 is clear as to what health supplements the ministry is limited to providing in the case of an imminent life threatening health need. These are medical supplies, medical transportation and medical equipment, which does not include MNS.

As the appellant does not meet the requirement under section 67 of the EAPWDR that she be in receipt of disability assistance in order to receive the MNS, and as MNS is not a health supplement available under section 69 of the EAPWDR, the ministry's decision that the appellant does not qualify for the MNS was a reasonable interpretation of the legislation.

Accordingly, the Panel confirms the ministry's reconsideration decision.