

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated September 28, 2017, which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and additional nutritional items. The ministry found that a requirement of Section 67(1) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) was not met, as the appellant is not in receipt of disability assistance.

## PART D – Relevant Legislation

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

## PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

- 1) Application for Monthly Nutritional Supplement (MNS) dated July 25, 2017, 2017; and,
- 2) Request for Reconsideration dated September 19, 2017.

In his Request for Reconsideration, the appellant wrote:

- His health is deteriorating and he needs the ministry to reinstate the nutritional supplement that he had before he got married in November 2014.
- When he reported that he became married, the financial portion of his disability assistance was discontinued because of his wife's unearned income of CPP and Old Age Security.
- After the ministry terminated the cash portion of his PWD assistance, he and his wife now live on \$1,580 per month, and their rent increased to \$970 per month.
- He was diagnosed with diabetes and pancreatitis in October 1993 and he suffers incredible pain and has repeatedly required hospital stays to this day.
- He was later diagnosed with neuropathy, which causes him to endure gastroparesis. He is severely nauseated all day, every day, for over 4 years now. He had to have a Port-O-Cath surgically inserted into his chest and he must inject IV Gravol 3 to 6 times daily. This condition eliminates appetite, which requires him to take nutritional supplements and to drink Ensure.
- His renal doctors and his general practitioner believe he should have nutritional supplements.
- He vomits more often than he should and he is not able to process the necessary nutrients needed for a healthy life.
- His muscle mass has deteriorated to the point that he can no longer stand for more than 10 minutes at a time or he falls down. He has met with an occupational therapist who acknowledges that he requires a power wheelchair since his arms cannot even drive a scooter and he cannot walk more than 20 feet before falling down.
- He is now a skeleton and exhausted all the time.
- If he falls down, he cannot stand up. He has had to call ambulance personnel to help him get back on his feet.
- He was healthy but is now unhealthy due to a disease that restricts his body's ability to eat and use nutrients, and the nutritional supplements would help very much.
- He has very little energy directly related to having no appetite all day, every day, which has negatively affected his life. He is seriously concerned that without nutritional supplements he could get worse and pass away.

### ***Additional information***

In his Notice of Appeal dated October 5, 2017, the appellant expressed his disagreement with the ministry reconsideration decision and wrote that he used to be on the MNS. He currently urgently requires the MNS as he has been losing weight due to a lack of access to sufficient nutrition, and financial difficulties.

The ministry relied on the reconsideration decision, as summarized at the hearing.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry decision, which denied the appellant's request for a Monthly Nutritional Supplement for vitamins and minerals and additional nutritional items because a requirement of Section 67(1) of the EAPWDR was not met, 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 eligibility requirements which are at issue on this appeal for providing the monthly nutritional supplement (MNS), 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.

In the reconsideration decision, the ministry found that the appellant does not meet the requirement in Section 67(1) of the EAPWDR as, although he is a person with disabilities (PWD), he is not in receipt of disability assistance. The ministry wrote that the appellant's family unit has a total combined income, which includes OAS/GIS/ CPP, that is in excess of the disability rates and the appellant is, therefore, not eligible for disability assistance and is in receipt of "medical services only."

The appellant argued in his Notice of Appeal and his Request for Reconsideration that he used to receive the MNS before he got married and his and his wife's incomes were combined. The appellant wrote that his several medical conditions have symptoms, such as nausea and pain, that have caused loss of appetite, muscle mass and weight loss, lack of energy and weakness, and that his need for the MNS is urgent. However, the appellant did not deny that he is no longer in receipt of disability assistance, and the panel finds that the ministry reasonably concluded that being in receipt of disability assistance is an initial requirement in Section 67(1) of the EAPWDR and that the appellant has not met this requirement.

### *Conclusion*

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a MNS for vitamins and minerals and additional nutritional items because a requirement of Section 67(1) of the EAPWDR was not met, was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant's appeal, therefore, is not successful.