

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 18 October 2017, which determined that the appellant was not eligible for a Monthly Nutritional Supplement (MNS) for nutritional items and vitamin/mineral supplements because he had not met the legislated criteria under section 67 the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). The ministry determined that the appellant has the Person with Disabilities (PWD) designation but is not receiving disability assistance and is therefore, not eligible for MNS.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation section 67 and Schedule C section 7.

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration consisted of the following:

- The appellant has PWD designation and was previously in receipt of PWD benefits and MNS from the ministry;
 - The appellant turned 65 years old in April 2017;
 - The appellant has been ineligible for disability assistance since June 2017 because his federal benefits income exceeds ministry disability rates. As a result, the appellant's file was switched to Medical Services Only (MSO) and the appellant's MNS was discontinued; and
 - The appellant's file was subjected to a financial review in September 2017. The review concluded that the appellant's combined monthly OAS (Old Age Security)/GIS (Guaranteed Income Supplement) and CPP (Canada Pension Plan) benefits from the federal government exceed the ministry's disability benefits rate for a single recipient and the appellant was determined to be eligible for medical services only.
- **Request for Reconsideration**
In the Request for Reconsideration dated 1 October 2017, the appellant argues that his request is concerned with medical need. He states that the tribunal previously approved his request and nothing has changed. The appellant stated that he does still qualify for MNS and has lost out on a total of \$8400. The appellant states that the government is taking away his CPP. The appellant states that the ministry forced him to apply for CPP early at age 60 and this has lowered his CPP rate by \$450+ per month, resulting in federal benefits of \$1360 rather than \$1680. He says that, because of this, he cannot afford to purchase the vitamins and supplements he requires due to his medical conditions. The appellant asks that the tribunal agree that he has medical need and reinstate MNS retroactively to the cut-off date. He states that his total monthly benefits now are less than he was previously receiving.

Notice of Appeal

In the Notice of Appeal dated 1 November 2017, the appellant gives as reasons for appeal: *I wish a third party to address my health needs supplement to cover health needs for items [illegible] vits, IBS meds, present expense for [illegible] skin infestations, etc.*

Hearing Submissions

At the hearing the appellant stated that he cannot understand why when PWD payments stop at age 65 payment for healthcare needs also stops. The appellant also stated that he currently requires expensive medication (\$25/tube) for skin infections. The appellant brought 3 documents (described below) to the hearing, which were read by the panel members and the ministry representative (copies of these documents were not submitted as evidence). The appellant stated that these documents support his need for MNS.

Documents:

- A prescription pad page, undated with no patient name, from a doctor described by the appellant as his GI (gastrointestinal) specialist with the following:
IBS
 1. Avoid dairy
 2. Avoid wheat
 3. FODMAP diet
- An unsigned letter dated 30 August 2017 from the appellant's GP stating that the appellant is 65 years old, suffers from chronic hepatitis C and takes supplements including Vitamin D that he feels are benefiting his health. The GP states that the cost is about \$250/month and the appellant requires systems be provided so that he may continue to benefit from vitamins, supplements and complementary medications.
- An unsigned letter dated 14 November 2017 from the appellant's GP stating that the appellant has several significant diagnoses, including hepatitis C, which lead to impaired liver function, weight loss, muscle loss and digestive disturbance and pain. The GP also states that the appellant has been forced to occupy low cost housing and is afflicted by bed bugs and scabies. The GP indicates that the appellant was previously living outside of the downtown core successfully without legal issues or medical complications. The GP states that the appellant requires and deserves reinstatement of funding so that he may live in dignity and meet his health needs for treatment of hepatitis C and his digestive system.

The ministry relied on the reconsideration decision. The ministry representative clarifying that the ministry is not disputing the appellant's need for MNS, rather that he is not eligible under section 67 because he is not in receipt of PWD benefits.

Admissibility

The panel finds that the information provided in the Notice of Appeal is admissible in accordance with section 22 (4)(b) of the *Employment and Assistance Act* because it provides some reiteration and explanation in support of information and records before the ministry at reconsideration.

As well, the panel finds that the information provided by the appellant at the hearing, including the material in the documents he presented, consist of elaboration and reiteration of information and records before the ministry at reconsideration and are admissible in accordance with section 22 (4)(b) of the *Employment and Assistance Act*. The panel notes, in making this determination that the ministry representative objected to the admissibility of the information contained in the 14 November letter from the appellant's GP, arguing that it was not relevant because the ministry is not disputing need. As well, the ministry argued that the letter is not accurate in its content with respect to reduced funding. The ministry argued that the appellant's current combined benefits from the federal government are more than his previous provincial benefits, including MNS.

The panel finds that the information provided by the ministry at the hearing consisted of argument and will be considered as such.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision determining that the appellant did not meet the statutory requirements of Section 67 of the *EAPWDR* for MNS eligibility is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The following sections of the *EAPWDR* apply to this appeal:

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).

(3) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 8.]

[am. B.C. Regs. 317/2008, s. 8; 68/2010, ss. 1 and 2; 145/2015, Sch. 2, ss. 7 and 8.]

Schedule C

Monthly nutritional supplement

7 The amount of a nutritional supplement that may be provided under section 67 [*nutritional supplement*] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):

(a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;

(b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]

(c) for vitamins and minerals, up to \$40 each month.

In the reconsideration decision, the ministry determined that the appellant is not eligible for MNS because, although he has PWD designation, he is not in receipt of disability assistance because his combined federal benefits income exceeds the provincial disability benefits rate. At the hearing, the ministry stated that the appellant's federal benefits income is \$1394.55, which exceeds the appellant's previous provincial disability benefits and CPP income of \$1004.37. The appellant argues in his reconsideration submission that his federal benefits income is \$1360 per month. The panel notes that this amount also exceeds the \$1004.37 (disability assistance and CPP) that the ministry stated the appellant had been receiving. The panel notes that the appellant does not argue that he is in receipt of PWD benefits, nor that he should be in receipt of provincial disability benefits. Rather, he argues that the ministry is wrong and it is hiding and denying programs that people qualify for. He argues that he should be eligible for MNS but for a technicality and the ministry is engaging in faulty interpretation of PWD. The appellant stated that the technicality he is referring to is the fact that he turned 65. He argued that MNS should be reinstated retroactively to the cut-off date in June 2017.

The panel finds that section 67(1) of the EAPWDR clearly states that MNS is only available where the family unit is in receipt of disability assistance. The panel finds that there is no dispute between the parties that the appellant has PWD designation but is not in receipt of disability assistance. As such, the panel finds that the ministry's decision determining that the appellant is not eligible for MNS because he is not in receipt of disability assistance as required by the legislation is reasonable.

The panel notes that the appellant has also argued that he has demonstrated medical need for MNS. He argued that he had previously been receiving MNS for 13-14 years. However, the panel further notes that the ministry's reconsideration decision does not address medical need as set out in section 67(1.1) as a reason for denying MNS and, at the hearing, the ministry clearly stated that it is not disputing the appellant's need. The panel finds that whether or not the appellant meets the section 67(1.1) criteria is not an issue in this appeal. Likewise, the panel does not have jurisdiction to address the appellant's argument that that it is unfair for the ministry to force people to apply for CPP early, resulting in reduced CPP benefits, and that he has met with his MP (member of parliament) about this.

Conclusion

The panel finds that the ministry's reconsideration decision, determining that the appellant is not eligible for MNS because he is not in receipt of disability assistance, was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.