

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated November 20, 2017, which held that the appellant did not meet the legislated requirements for the provision of the Monthly Nutritional Supplement (MNS) set out in section 7 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because he is not in receipt of disability assistance, which is a requirement of section 67(1) of the EAPWDR.

**PART D – RELEVANT LEGISLATION**

EAPWDR, section 67(1) and section 7 of Schedule C

## **PART E – SUMMARY OF FACTS**

On August 16, 2017, the ministry received the appellant's "Application for Monthly Nutritional Supplement", completed by a medical practitioner who provides information relating to the appellant's need for the MNS of additional nutritional items and vitamins and minerals.

The appellant has been designated by the ministry as a Person with Disabilities (PWD). The appellant is not eligible for disability assistance as the total income for his family unit (OAS/GIS/ CPP) is in excess of the disability assistance rates, consequently, his ministry file is coded "Medical Services Only."

On September 26, 2017, the appellant's request was denied.

On October 25, 2017, the appellant requested reconsideration of the ministry's decision. In support of this request, the appellant provided reasons for the request, dated November 2, 2017, which include further details as to the supplements required and how they will prevent imminent danger to his life.

On November 20, 2017, the ministry issued its reconsideration decision, which again denied the appellant's request for the MNS.

The appellant's Notice of Appeal (NOA) was received by the tribunal on December 7, 2017. The NOA did not include additional evidence.

With the consent of the appellant, an observer from the ministry was in attendance at the hearing.

At the hearing, the appellant stated that his total monthly income is \$1500 which is comprised of \$1100 OAS, \$385 CPP-Disability, \$100 bus supplement, and GIS. He stated that he is left with only \$200 to cover his food costs after all other expenses are paid. The appellant was uncertain if the \$100 bus supplement was provided by the federal or provincial government. The appellant stated that his general practitioner, spinal cord neurologist and wound care specialist all support his request for additional funds to attend to his health needs, which especially include the need for increased protein.

At the hearing, the ministry stated that the monthly rate of disability assistance for the appellant was \$1,081.42, and has subsequently been increased to \$1,133.42, with the addition of the transportation supplement.

### *Admissibility of Information Provided on Appeal*

Section 22(4) of the *Employment and Assistance Act (EAA)* provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and "oral and written testimony in support of the information and records" before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the *EAA* – to determine whether the ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The panel determined that the oral testimony of the appellant and the ministry was consistent with and therefore in support of the information at reconsideration. Accordingly, it was admitted in accordance with section 22(4) of the *EAA*.

The arguments of both parties are set out in Part F of this decision.

## **PART F – REASONS FOR PANEL DECISION**

### **Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant's request for MNS on the basis that he has not met the requirement of section 67(1) of the EAPWDR, that he be in receipt of disability assistance, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

### **Relevant Legislation**

#### **EAPWDR**

**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.....

### **Panel Decision**

The appellant argued, in his reconsideration submission, that the information provided establishes that failure to provide the MNS of nutritional items and vitamins and minerals will result in imminent danger to his life, and that therefore he should be provided with the supplement. At the hearing, the appellant argued that his monthly income of \$1500 is insufficient to meet his medical nutritional needs. While the panel sympathizes with the appellant's circumstances and acknowledges his efforts to provide information attesting to his medical need for the requested MNS, the legislation, specifically section 67(1) of the EAPWDR, limits the minister's authority to provide a MNS to or for family units that are in receipt of disability assistance. This initial requirement must be met, regardless of whether the subsequent requirements which relate to medical need for the MNS are met. The appellant, who is a one-person family unit, is not in receipt of disability assistance, a fact that the appellant does not dispute and that is supported by the financial information provided by the appellant and the ministry respecting the amount of OAS/ CPP/ GIS the appellant receives. Accordingly, the panel concludes that the ministry was reasonable in determining that the appellant has not met the requirement of section 67 (1) of the EAPWDR and is therefore not eligible to receive the MNS for additional nutritional items and vitamins and minerals.

### **Conclusion**

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for the MNS was a reasonable application of the applicable legislation and therefore confirms the decision. The appellant is not successful on appeal.