

PART C – DECISION UNDER APPEAL

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 01 April 2020 that determined the appellant was not eligible for a monthly nutritional supplement (MNS) for vitamins and minerals prior to when the appellant first applied for MNS in February 2020. The ministry held that, because section 23(2) of the Employment and Assistance for Persons with Disabilities Regulation states that a family unit is not eligible for a supplement before the ministry determines the family unit eligible for it, the ministry was unable to provide the MNS prior to the date of the appellant's initial request for MNS.

Note: In the reconsideration decision, the ministry stated it has addressed the appellant's request for a monthly nutritional supplement for additional nutritional items under separate reconsideration.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 5 and 16.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 23(2) and 67 and Schedule C, section 7.

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration:

- The appellant's file has been open since 27 April 2017.
- 02 October 2017: the ministry approved the appellant's persons with disabilities (PWD) designation, effective 01 November 2017.
- 18 February 2020: the appellant applied for an MNS, (which may consist of one or both for vitamins and minerals and for additional nutritional items that are part of a caloric supplementation to a regular dietary intake [hereinafter "additional nutritional items"]).
- 28 February 2020: the ministry approved the appellant's request for MNS for vitamins and minerals and denied the request for MNS for additional nutritional items.
- 09 March 2020: the appellant requested a retroactive payment of MNS for vitamins and minerals back to 25 October 2017 (27 payments x \$40 = \$1040), stating that he was given misinformation regarding his eligibility for the MNS.
- 10 March 2020: the ministry denied the request for a retroactive payment. In the letter advising the appellant of this decision, the ministry states that a review of his file does not reveal any administrative error, or that any misinformation was given regarding his eligibility to apply for the MNS. The ministry further notes that the appellant was eligible to apply for the supplement once designated PWD, citing a pamphlet mailed with every PWD designation approval that provides a link to the information available on the ministry's website
- 13 March 2020: the appellant provided a note from the appellant's medical practitioner in support of a renewed application for MNS for additional nutritional items. In part this note reads, "These circumstances for [the appellant] are chronic and it is reasonable to consider this need has been ongoing for several years, (prior to 2017, for example)."
- 16 March 2020: The appellant submitted a Request for Reconsideration. Under Reasons, the appellant writes:

"I draw your attention to the document I will again submit from [the medical practitioner] which addresses my needs for this have been since before I was on PWD, first payment received October 25, 2017. This is reason I should receive retroactive payment for this entire period.

I reiterate I was dissuaded from getting more than the diabetic diet amount from your MSDPR Staff.

Your staff acted in an adversarial manner and did not objectively inform me of the MNS and Vitamin Supplement criteria. Even speaking recently with your staff [...] didn't know if I'd qualify. But the staff on the phone years back actually dissuaded me and I'm PWD recipient not a lawyer well versed in the PWD Legislation."

Notice of Appeal

The appellant's Notice of Appeal was received by the tribunal on 03 April 2020, accompanied by a letter of the same date to the ministry. In this letter the appellant writes that he had been

recently approved for MNS for vitamins and minerals beginning in February 2020 and for additional nutritional items beginning in March 2020.

In the letter the appellant requests \$165 since he had to get additional information from his doctor once the application for additional nutritional items was denied, and this “caused extra pain, time and gas etc. expenses to have to go for another medical appointment to clarify my qualification for the MNS due to the MSDPR lack of transparency of language and criteria necessary to qualify.”

The appellant also writes that he “should be provided the Vitamin and MNS amounts retroactive to my initial date of PWD eligibility, which is considered to be May 2016...Getting this amount paid retroactive is based on deservedness...I should not reasonably be expected to be aware of MSDPR (MNS) policy that even general MSDPR staff lack awareness of; being MNS criteria to meet eligibility”. The amount the appellant requested was \$9,800 calculated as 48 months at \$205 per month.

Additional information submitted before the hearing

In a letter dated 19 April 2020, the appellant corrected an error in his letter of 03 April 2020. The appellant revised his request for retroactive payments to be \$6,355 calculated as 31 months at \$205 per month. The reduction in duration is because the appellant amended the date alleged for his entitlement from May 2016 to October 2017.

In a submission dated 22 April 2020, the appellant puts forward arguments in support of his appeal. There are reproduced in Part F (Reasons for Panel Decision) below.

In a further submission dated 27 April 2020 the appellant emailed a copy of a letter from the ministry dated 02 May 2018 providing a monthly breakdown from May 2016 to February 2017 of assistance issued to the appellant subsequent to a new reconsideration decision dated 17 April 2018. The total amount is \$5,922.74. In that email, the appellant wrote:

“Kindly file the attached example of a previous MSDPR retroactive payment to me for a different issue than the current MNS and Vitamin supplement monies I am seeking. The point here is that the MSDPR cannot reasonably hide behind legislation which vaguely and narrowly states monies can just be oweable (sic) from the date a benefit is approved; blindly.”

The hearing

At the hearing, the appellant articulated his arguments for providing a “backdated” MNS, both for vitamins and minerals and for additional nutritional items (see Part F below for a discussion on the scope of this appeal). The appellant emphasized the following:

- Ministry “malfeasance,” in that a ministry employee or representative dissuaded him from applying for the MNS when he was designated PWD in October 2017.

- How his doctor has put on the record an opinion that his medical condition is chronic and that it is reasonable to consider his need for MNS has been ongoing for several years.
- His negative views on the eligibility criteria for MNS, how confusing they are to read and how difficult it is for even his doctor to understand them.
- His view that nothing in the legislation precludes the minister to “backdate” approval of MNS.

The ministry stood by its position at reconsideration.

Admissibility of additional information

The panel finds that the information provided by the appellant regarding the payment to him by the ministry for backdated assistance from May 2016 to February 2017 is reasonably required for a full and fair disclosure of the matter under appeal, as it contributes to the panel’s understanding of the appellant’s arguments for backdated MNS. The panel therefore admits this information as evidence pursuant to section 22(4) of *the Employment and Assistance Act*.

The panel accepts as argument the other material covered in the Notice of Appeal, the appellant’s submissions before the hearing, and statements made at the hearing.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry was reasonable in determining the appellant was not entitled to a monthly nutritional supplement (MNS) for vitamins and minerals prior to the date they first applied for MNS in February 2020.

Specifically, the issue is whether the ministry's determination is a reasonable application of section 23(2) of the EAPWDR in the circumstances of the appellant:

The relevant sections from the EAPWDA are:

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Reconsideration and appeal rights

16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

(a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;

...

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

(3) Subject to a regulation under subsection (5) and to sections 9 (7) [*employment plan*], 17 and 18 (2) [*overpayments*], a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the [Employment and Assistance Act](#) and the regulations under that Act.

The relevant sections from the EAPWDR are:

Effective date of eligibility

23 (2) Subject to subsections (3.01) and (3.1), a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it.

(3.01) If the minister decides, on a request made under section 16 (1) [*reconsideration and appeal rights*] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

- (a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and
- (b) the applicable of the dates referred to in section 72 of this regulation.

(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).

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, nurse practitioner or dietitian, in which the practitioner or dietitian has confirmed all of the following:

- (a) the person with disabilities to whom the request relates is being treated by a medical practitioner or nurse 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, nurse practitioner or dietitian other than the medical practitioner, nurse practitioner or dietitian who completed the form referred to in subsection (1.1).

And from 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.

Preliminary considerations

Scope of the appeal

At the hearing, the appellant argued that the scope of this appeal includes two issues: the ministry's denial of his request for a "retroactive" entitlement for a MNS for vitamins and minerals; and for an entitlement to a MNS for additional nutritional items. The appellant stated that their appeal submissions addressed both these issues and that they had the right to define the scope of his appeal.

The ministry responded that there were two distinct decisions and that the appellant could not combine two decisions into a single appeal. The ministry stated the existence of two decisions

was communicated to the appellant in the reconsideration decision before the tribunal by the statements: “We regret to inform you that upon reconsideration you have been denied back dated Monthly Nutritional Supplement (MNS) for vitamins and minerals prior to February 2020” and “This decision is about your request for a backdated Monthly Nutritional Supplement for vitamins and minerals. The ministry has addressed your request for a Monthly Nutritional Supplement for dietary items under separate reconsideration.”

Panel finding

The panel notes that section 16 of the EAPWDA reads in part: [emphasis added]

Reconsideration and appeal rights

16 (1) Subject to section 17, **a person may request the minister to reconsider** any of the following decisions made under this Act:

(a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;

(3) Subject to a regulation under subsection (5) and to sections 9 (7) [*employment plan*], 17 and 18 (2) [*overpayments*], **a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.**

The ministry’s original decision was conveyed to the appellant in a letter dated 10 March 2020, stating, “You were found eligible for the vitamin and mineral supplement in February 2020. You are requesting this approval be backdated to the date of your PWD designation, which was October 2, 2017.” After giving reasons, the ministry states, “As a result, your request to backdate your approval for vitamin and mineral supplementation is denied.” There is no mention of any request for backdating approval for the MNS for additional nutritional items.

It was this original decision that was the “Decision to be reconsidered,” with the ministry section of the Request for Reconsideration stating, “Your request for retroactive payment for the vitamin portion of MNS was denied and you were sent a letter advising you of the decision via the ministry’s online portal.”

The panel determines that its jurisdiction is confined to the issue of the denial of retroactive payment for the MNS of vitamins and minerals. Under EAPWDA section 16(3), the appellant can only appeal the outcome of the request for reconsideration (i.e. the reconsideration decision) to the tribunal. Accordingly, the panel confirms that the scope of this appeal is limited to the denial of the appellants request for backdating the MNS for vitamins and minerals.

Analysis

The appellant’s position

In his submission dated 22 April 2020, the appellant argues:

“1. The MSDPR had a legal obligation to provide me with all benefits I deserve when I deserve them. As is clear in my physician’s letter to the Ministry, I deserved both the

- MNS & Vitamin supplements at the time my PWD benefits were commenced; 1st payment October 25 2017. The MSDPR failed to do its due diligence or it would have indicated I needed to apply for these benefits, but it never did.
2. I am a pain disabled layperson and cannot reasonably be expected to have knowledge about MSDPR policy that even general MSDPR staff and physicians lack.
 3. MSDPR looked into my deservedness for the diabetic diet amount in 2017 and is negligent in overlooking my deservedness for these benefits.
 4. MSDPR staff previously dissuaded me from applying by insisting I would not qualify – so, I did not apply until recently becoming skeptical of this MSPR misinformation.
 5. The MSDPR now clearly has knowledge I deserved these claimed benefits now and has no genuine reason to correct its omission and provide me retroactive benefits.
 6. The MSDPR errs in using MNS/Vitamin application forms its own staff and intellectually elite physicians lack understanding of – having no clue whether one qualifies or not.
 7. The MSDPR further errs in intentionally confounding PWD recipients by not making the application available online – staff have to arrange to have it sent to PWD recipients.
 8. I acted in good faith at all times, yet have lost out on approximately 29 months x \$170 = \$4,930 plus interest because of the shrouded MNS/Vitamin supplements availability.
 9. There is no legislation precluding the MSDPR to provide warranted retroactive benefits.
 10. PRECEDENT: The MSDPR has previously (2018) provided me approximately \$6,000 in retroactive basic financial assistance when I disputed the original effective date of my eligibility for benefits, from February 2017 back to May 2017.”

The ministry's position

The position of the ministry, as set out in the reconsideration decision, is that it acknowledges that the appellant's need for vitamins and minerals may have been present prior to February 2020, but he did not apply for nor did the minister determine he was eligible for a MNS for vitamins and minerals prior to February 2020.

The ministry refers to section 23 (2) of the EAPWDR, which states a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it. It is for this reason that the ministry found that it is unable to approve the appellant's request for a backdated MNS for vitamins and minerals prior to February 2020.

Panel finding

The BC Employment and Assistance Program is administered by the ministry in accordance with the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act* and the Regulations made thereunder. This legislation authorizes the minister to issue monthly assistance and provide supplements to recipients based on the eligibility criteria and the rates and amounts set out in the legislation.

This legislative scheme is based on individuals applying for benefits and providing the information necessary to satisfy the minister that they meet the legislated eligibility criteria for the benefit.

The panel considered the appellant's statement that "*The MSDPR failed to do its due diligence or it would have indicated I needed to apply for these benefits.*" The panel finds that this is not consistent with the legislative scheme. There is no requirement, nor apparent authority, for the ministry to have a positive obligation to investigate whether a person may be entitled to a benefit under the BC Employment and Assistance Program. The panel finds it reasonable to expect that the ministry provide the information to the public and to its clientele on the availability of benefits, the eligibility criteria for benefits and the process to apply for benefits, but it is the responsibility of the person interested in being provided a benefit to make application.

The panel considered the appellant's allegation that "*MSDPR staff previously dissuaded me from applying by insisting I would not qualify – so, I did not apply until recently.*" In the panel's view, this is not supported by the evidence before the tribunal. In fact, in a letter sent to the appellant on October 2, 2017 informing them that they have been designated as a Person With Disabilities the ministry enclosed what it described as "an information sheet outlining the various supplements and services for which you may be eligible" that included "Health Supplements" with a link to the ministry government website.

The panel considered the appellant's allegation "*There is no legislation precluding the MSDPR to provide warranted retroactive benefits.*" Under the legislative scheme, the minister is only authorized to provide a supplement in accordance with the regulation (see EAPWDA, s. 5). The panel has reviewed the legislation and EAPWDR section 23(2) reads:

"[...] a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it."

The plain reading of this section is that eligibility commences once the minister has determined a family unit is eligible for it, and not the date that the eligibility criteria is satisfied. The panel notes that the minister cannot determine that a family unit is eligible for a supplement unless the family unit has initiated an application for a supplement. This understanding of the section, and the prohibition on 'backdating' an entitlement, is reinforced by section 23(3.01) that states that if the minister decides on reconsideration that a family unit is eligible for a supplement, that entitlement commences on the date the reconsideration is made. The panel also notes that the ministry is confined to the powers conveyed to it by legislation.

The panel considered the appellants argument that the ministry was authorized to determine the date of his entitlement to a MNS at a time prior to his application in February 2020 based on "*The MSDPR has previously (2018) provided me approximately \$6,000 in retroactive basic financial assistance when I disputed the original effective date of my eligibility for benefits, from February 2017 back to May 2017 (sic).*" The panel was not provided with an explanation or legal basis for this decision. Without any further evidence or explanation, the panel is unable to determine whether this statement, assuming it is true and which the panel does not question, has any effect on this appeal."

Again, the panel notes that the ministry is confined to the powers conveyed to it by legislation and the existence of a prior decision by the ministry does not affect a determination if the decision under appeal is a reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Pursuant to the legislation, the effective date of eligibility for a supplement is when the minister determines the family unit is eligible for it. The legislation does not give the minister the authority to determine eligibility as of any other date. Thus, the minister does not have the discretion to “backdate” the effective date of the appellant’s entitlement to a MNS.

Conclusion

The panel finds that the ministry’s reconsideration decision denying the appellant’s request to backdate MNS for vitamins and minerals is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry’s decision. The appellant’s appeal is thus not successful.

APPEAL NUMBER
2020-00106

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 May 04

PRINT NAME

Trevor Morley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 May 04

PRINT NAME

Joseph Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 May 04