

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated April 11, 2011, which held that the Appellant is not eligible for a Monthly Nutritional Supplement (MNS) because she resides in a special care facility that is not an alcohol or drug treatment center and she is not receiving disability assistance under Section 2, 4, 6 or 9 of Schedule A, EAPWDR. Section 67(1), EAPWDR sets out the criteria under which an MNS may be provided; however it does not include people receiving special care unless the special care facility is an alcohol or drug treatment center.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67; Schedule C, Section 7

PART E – Summary of Facts

Information before the Ministry at Reconsideration included:

- the Appellant's Request for Reconsideration, dated March 29, 2011.

At the hearing, the Ministry stated that the Appellant's request for reconsideration was with respect to the discontinuation of a monthly Diet Supplement, not a request for a Monthly Nutritional Supplement. The Ministry stated that Diet Supplements are dealt with at the local Ministry office, whereas MNS requests are sent to Victoria, and the Appellant's request for an MNS has not yet been decided. The Reconsideration Decision dealt with MNS, not a diet supplement.

The Appellant responded that this information is correct; she applied for a reconsideration of the Ministry's termination of her Diet Supplement, but received a response to a different matter.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision to deny the Appellant a Diet Supplement on the basis that she did not meet the criteria for a Monthly Nutritional Supplement (MNS).

Legislation

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 person with disabilities in a family unit who receives disability assistance under

(a) section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A, or

(b) section 8 [*people receiving special care*] of Schedule A, if the special care facility is an alcohol or drug treatment centre,

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 a supplement under section 2 (3) [*general health supplement*] of Schedule C,

(e) the person is not receiving a supplement under subsection (3) or section 66 [*diet supplements*],

(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.

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.

The Appellant and Ministry's positions are the same: The Ministry erred in providing a Reconsideration Decision with respect to a Monthly Nutritional Supplement when the Appellant's request was for a reconsideration of a discontinuation of a Diet Supplement. In fact, The Ministry has not yet decided the Appellant's request for a Monthly Nutritional Supplement.

Because the Ministry did not address the issue under reconsideration, or more specifically, addressed a different issue from the one to be reconsidered, the Panel finds that the Ministry applied the wrong legislation in the Reconsideration Decision. The Panel rescinds the Ministry's decision because the Appellant requested a monthly dietary supplement and was adjudicated at Reconsideration on the basis of a request for a Monthly Nutritional Supplement, which was not a reasonable application of the legislation in the circumstances of the Appellant.