

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated August 13, 2012 in which the ministry determined that the appellant was not eligible for a diet supplement under section 66(1) of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"). The ministry determined that while the appellant met the requirements of section 66(2) of the EAPWDR in that the need for a special diet was confirmed in writing by a medical practitioner, the ministry held that the appellant does not receive a monthly support allowance, monthly shelter allowance or room and board and he does not live in an emergency shelter or transition house as is required by section 66(1) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 66, Schedule A sections 2, 4, 6, 8 and 9, Schedule C section 6

PART E – Summary of Facts

The evidence before the ministry at the time of the Reconsideration Decision consisted of copies of the following:

1. The appellant's Request for Reconsideration dated August 1, 2012;
2. A medical note prepared by the appellant's physician and dated October 12, 2011 indicating that the appellant has Type 2 Diabetes and requires a diabetic diet allowance for the next 12 months ("Medical note #1");
3. A medical note prepared by the appellant's physician and dated June 28, 2012 indicating that the appellant has Type 2 Diabetes and requires a diabetic diet allowance for the next 12 months ("Medical note #2");
4. A copy of Medical note #2 with handwritten notes by an advocate on it; and
5. A ministry Decision Report dated July 24, 2012.

The ministry relied on the Reconsideration Decision and did not introduce any new evidence. In the appellant's Notice of Appeal, he states that the legislation needs to be changed and updated to be more accommodating. He goes on to submit that his \$95.00 per month comfort allowance is not enough welfare money for his diabetic dietary needs. He states that the welfare each month is too little to support one person. He says he needs money for medication and testing.

The appellant receives assistance. On July 24, 2012, he applied to the ministry for a diet supplement in respect of his diagnosed condition of Type 2 Diabetes. This condition is confirmed in Medical note #1 and Medical Note #2. The ministry determined that the appellant was not eligible for the diet supplement because he did not receive a monthly support or shelter allowance, monthly room and board or live in an emergency shelter or transition house but rather, he lives in a long term care facility where he receives special care.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's Reconsideration Decision in which the Ministry determined that the appellant was not eligible for a diet supplement under section 66(1) of the EAPWDR. The ministry determined that while the appellant met the requirements of section 66(2) of the EAPWDR in that the need for a special diet was confirmed in writing by a medical practitioner, the ministry held that the appellant does not receive a monthly support allowance, monthly shelter allowance or room and board and he does not live in an emergency shelter or transition house as is required by section 66(1) of the EAPWDR.

Section 66 of the EAPWDR provides as follows:

Diet supplement

66 (1) The minister may pay for a diet supplement in accordance with section 6 *[diet supplements]* of Schedule C for a recipient of disability assistance under 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 a dependant of that person if the recipient or dependant requires

(a) a special diet for a specific medical condition described in section 6 of Schedule C, or

(b) a special diet described in section 6 of Schedule C.

(2) A person is not eligible for a supplement under subsection (1) unless the need for the special diet is confirmed in writing by

(a) a medical practitioner,

(a.1) a nurse practitioner, or

(b) a registrant of the College of Dietitians of British Columbia established under the *Health Professions Act*.

(3) The minister may not provide a supplement under this section to or for a family unit for a person on account of whom the minister is providing a supplement under section 67 (1) or (3) *[nutritional supplements]*.

Schedule A, sections 2, 4, 6, 8 and 9 of the EAPWDR provide as follows:

Monthly support allowance

2 (0.1) For the purposes of this section, "warrant" has the meaning of warrant in section 14.2 *[consequences in relation to outstanding arrest warrants]* of the Act.

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(b) the amount calculated in accordance with subsections (2) to (5) for each dependent child in the family unit.

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"warrant" has the meaning of warrant in section 14.2 [consequences in relation to outstanding arrest warrants] of the Act.

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

Item	Column 1	Column 2
	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375

People receiving room and board

6 (1) For a family unit receiving room and board other than in a facility mentioned in section 8 or 9 of this Schedule or from a relative referred to in subsection (2), the amount referred to in section 24 (a) [amount of disability assistance] of this regulation is the smaller of

(a) the sum of

(i) the actual cost of the room and board, plus

(ii) \$60 for each calendar month for each applicant or recipient, plus

(iii) \$40 for each calendar month for each dependent child in the family unit, and

(b) the amount calculated under sections 1 to 5 of this Schedule for a family unit matching the applicant's or recipient's family unit.

(2) If a family unit receives room and board from a parent or child of an applicant or a recipient in the family unit, only the following amounts may be provided:

(a) the support allowance that is applicable under sections 2 and 3 of this Schedule to a family unit matching the applicant's or recipient's family unit.

(b) Repealed. [B.C. Reg. 62/2010, s. (b).]

People receiving special care

8 (1) For a person with disabilities who receives accommodation and care in a special care facility (other than a special care facility described in subsection (3)) or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus

(b) a comforts allowance of \$95 for each person for each calendar month.

(2) If the special care facility under subsection (1) is an alcohol or drug treatment centre, the minister may, in addition, pay either or both of the following while the applicant or recipient is in the alcohol or drug treatment centre:

(a) actual shelter costs for the applicant's or recipient's usual place of residence up to the amount under section 4 for a family unit matching the applicant's or recipient's family unit;

(b) a monthly support allowance for the applicant's or recipient's family unit, equal to the amount calculated under sections 2 and 3 of this Schedule minus the portion of that allowance that would be provided on account of the applicant or recipient.

(3) For a person with disabilities who receives accommodation and care in a special care facility operated by a service provider as defined in section 1 of the *Community Living Authority Act*, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the support allowance that is applicable under sections 2 and 3 of this Schedule for a family unit matching the applicant's or recipient's family unit, plus

(b) the maximum shelter allowance that is applicable under section 4 of this Schedule for a family unit matching the applicant's or recipient's family unit.

People in emergency shelters and transition houses

9 For a family unit receiving accommodation and care in an emergency shelter or transition house, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is

(a) the actual cost, if any, to the family unit of the accommodation and care at the rate approved by the minister for the type of emergency shelter or transition house, plus

(b) the support allowance calculated under sections 2 and 3 of this schedule for a family unit matching the family unit of the applicant or recipient.

Schedule C, section 6 of the EAPWDR provides as follows:

Diet supplements

6 (1) The amount of a diet supplement that may be provided under section 66 [*diet supplements*] of this

regulation is as follows:

- (a) \$10 for each calendar month for a person who requires a restricted sodium diet;
- (b) \$35 for each calendar month for a person who has diabetes;
- (c) \$30 for each calendar month for a person who requires kidney dialysis if the person is not eligible under the kidney dialysis service provided by the Ministry of Health Services;
- (d) \$40 for each calendar month for a person who requires a high protein diet;
- (e) \$40 for each calendar month for a person who requires a gluten-free diet;
- (f) \$40 for each calendar month for a person who has dysphagia;
- (g) \$50 for each calendar month for a person who has cystic fibrosis;
- (h) \$40 for each calendar month for which a person requires a ketogenic diet;
- (i) \$40 for each calendar month for which a person requires a phenylalanine diet.

(2) A diet supplement under subsection (1) (d) may only be provided if the diet is confirmed by a medical practitioner or nurse practitioner as being necessary for one of the following medical conditions:

(a) cancer that requires nutritional support during

- (i) radiation therapy,
- (ii) chemotherapy,
- (iii) surgical therapy, or

(iv) ongoing medical treatment;

(b) chronic inflammatory bowel disease;

(c) Crohn's disease;

(d) ulcerative colitis;

(e) HIV positive diagnosis;

(f) AIDS;

(g) chronic bacterial infection;

(h) tuberculosis;

(i) hyperthyroidism;

(j) osteoporosis;

(k) hepatitis B;

(l) hepatitis C.

(3) A person who is eligible for a supplement under subsection (1) (d) or (f) is also eligible for a \$30 payment towards the purchase of a blender.

(4) If a person has more than one of the medical conditions set out in subsection (1), the person may receive only the amount of the highest diet supplement for which he or she is eligible.

The ministry's position is that the appellant is not eligible for a diet supplement in relation to his medical condition - Type 2 Diabetes confirmed in writing by his physician - because he does not receive a monthly support or shelter allowance, room and board or live in an emergency shelter or transition house as required by section 66(1) of the EAPWDR. The ministry submits that the appellant receives special care in a long term care facility as contemplated by Schedule A, section 8 of the EAPWDR.

The Appellant argues that the legislation needs to be changed and updated to be more accommodating. He submits that his \$95.00 per month comfort allowance is not enough welfare money for his diabetic dietary needs. He states that the welfare each month is too little to support one person. He says he needs money for medication and testing.

Section 66(1) of the EAPWDR provides that the minister may pay for a diet supplement in accordance with section 6 of Schedule C for a recipient of income assistance who receives a monthly support or shelter allowance, room and board or where the recipient lives in an emergency shelter or transition house. Section 66(2) of the EAPWDR requires the need for the diet supplement to be confirmed in writing by a medical practitioner, nurse practitioner or registrant of the College of Dietitians of British Columbia. The special diet that may be paid for must meet the requirements of Schedule C, section 6 of the EAPWDR.

In the present case, the appellant is a recipient of assistance and his need for a diet supplement has been confirmed in writing by a medical practitioner. However, the panel finds that the ministry reasonably determined that the appellant does not receive a monthly support or shelter allowance, room and board or live in an emergency shelter or transition house as contemplated under Schedule A of the EAPWDR and as required by Section 66(1) of the EAPWDR.

The panel therefore finds that the ministry's Reconsideration Decision was a reasonable application of the applicable enactment in the circumstances of the appellant and the panel confirms the decision.