

PART C – Decision under Appeal

The decision under appeal is the Ministry of Housing and Social Development and Innovation (the ministry) Reconsideration Decision of September 11, 2013, in which the ministry determined that as the appellant commenced receiving disability assistance under the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, Schedule A, subsection 8, (People receiving special care), June 26, 2013, she no longer meets the basic eligibility requirements set out in the EAPWD Regulation, section 66(1), and therefore is not eligible to continue receiving a diabetic diet supplement in the amount of \$35.00 per month.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, section 66 and Schedule C, section 6.

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, section 24 and Schedule A, section 8.

PART E – Summary of Facts

Records before the ministry at the time of their reconsideration decision include the following:

- Copy of the appellant's Request for Reconsideration dated August 28, 2013.
- Copy of a form letter of support for the appellant written by the Director of the Special Care Facility in which the appellant resides, dated August 26, 2013.

In section 3 of the appellant's Request for Reconsideration she writes:

1. Was in receipt of a diabetic diet supplement prior to moving to a Special Care Facility.
2. The Special Care Facility does not supply diabetic supplements.
3. Has been ordered by a doctor.
4. See attached.

In the form letter of August 26, 2013, the Director of the appellant's Special Care Facility writes:

- Her facility is a 10 bed dual diagnosis long term transitional housing.
- During the women's stay they are referred to trauma counseling, drug and alcohol programs, mental health supports, GP and dentists. In addition staff supports the residents in obtaining their personal goals which include spiritual, recreational and educational endeavors'.
- Their clients often come from abusive and/or disruptive circumstances where their basic needs were not met (housing, proper nutrition, lack of medical attention, and so on) which has led to many acute/chronic and ongoing issues that may follow them even after they have stabilized at the Special Care Facility.

The letter also provides arguments, which are included in the reasons section of this document, as to why she believes the appellant should be eligible to receive a diabetic diet allowance from the ministry.

Ministry records report that the appellant was admitted to a Special Care Facility June 26, 2013, resulting in discontinuation of her diabetic diet supplement. On August 8, 2013, an advocate from the appellant's Special Care Facility contacted the ministry and requested the appellant's diabetic diet allowance for July and August 2013, and was advised by the ministry that residents in a Special Care Facility are not eligible for a diet supplement. On August 22, 2013, the ministry was advised that the appellant wished reconsideration of this decision, and a reconsideration decision package was sent to the appellant. On August 28, 2013, the ministry received the appellant's Request for Reconsideration.

Ministry records also report that the appellant is receiving disability assistance under EAPWD Regulation section 24, Schedule A, subsection 8 (People receiving special care). The ministry is paying for the appellant's accommodation in a Special Care Facility on a monthly basis at a per diem rate of \$30.90. The ministry also provides the appellant with a comforts allowance of \$95.00 per month.

After the ministry's reconsideration decision, and prior to the hearing, the appellant faxed the following documents to the Tribunal Office:

- A Notice of Appeal dated October 2, 2013. In the Reasons for Appeal section of this document the appellant reports that the place where she resides is a dual diagnosis facility (transition house) - which does not provide for any supports. The appellant reports that she was receiving an allowance prior to moving to her current residence and that it is a doctor's order.
- A release of information form dated October 9, 2013, providing permission for her advocate to attend the hearing and to make decisions on her behalf.

A copy of a letter addressed To Whom It May Concern, dated October 11, 2013, signed by a physician from a Community Health Center. In this letter the physician reports that the appellant has type 2 diabetes and requires good quality fruits and vegetables and foods providing complex carbohydrates such as heavy whole grain breads which are not available at her residence.

At the hearing the advocate presented argument as to why she believed the ministry's reconsideration was not reasonably supported by the evidence or a reasonable application of the legislation stating that the appellant's need for a special diabetic diet has not changed since moving into a Special Care Facility, that she continues to receive disability assistance from the ministry and that the facility she resides in does not provide for any special dietary needs. The ministry stood by the record stating that because the appellant was residing in a Special Care Facility she was no longer eligible to receive the requested benefit.

The panel finds that the new information provided by the appellant in her Notice of Appeal and in the letter submitted to the Tribunal Office addressed To Whom It May Concern, dated October 11, 2013, signed by a physician from a Community Health Center, provided verification of the appellant's medical diagnosis and her need for a special diet and an additional description of the kind of Special Care Facility the appellant resides in. For these reasons the panel finds that the information provided in both documents to be in support of the information and records that were before the ministry at the time of reconsideration and admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

The panel made the following Findings of Fact:

- The appellant has resided in her current residence since June 26, 2013, and receives disability assistance under the EAPWD Regulation, Schedule A, subsection 8, (People receiving special care), at a per diem rate of \$30.90 per day and is also in receipt of a comforts allowance of \$95.00 per month
- The appellant has been diagnosed with type 2 diabetes by a medical practitioner who writes that the appellant has type 2 diabetes and requires good quality fruits and vegetables and foods providing complex carbohydrates such as heavy whole grain breads.
- Prior to moving to a Special Care Facility the appellant was in receipt of disability assistance under the EAPWD Regulation, section 66(1) and was in receipt of a diabetic diet allowance of \$35.00 per month.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision which denied the appellant's request for continuation of her diabetic diet supplement was a reasonable application of the legislation or was reasonably supported by the evidence. The ministry determined that as the appellant commenced receiving disability assistance under the EAPWD Regulation, Schedule A, subsection 8, (People receiving special care), June 26, 2013, she no longer meets the basic eligibility requirements set out in the EAPWD Regulation, section 66(1), and therefore is not eligible to continue receiving a diabetic diet supplement in the amount of \$35.00 per month. In arriving at their reconsideration decision the ministry relied upon the following regulatory requirements.

EAPWD Regulation

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*].

[am. B.C. Regs. 288/2003; 202/2006, s. 2; 317/2008, s. 7; 64/2010, s. 3.]

Schedule C

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 low 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

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Schedule A

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.

The ministry's position is that as the appellant commenced receiving disability assistance under the EAPWD Regulation, Schedule A, subsection 8, (People receiving special care), June 26, 2013, she no longer meets the basic eligibility requirements set out in the EAPWD Regulation, section 66(1), and therefore is not eligible to continue receiving a diabetic diet supplement in the amount of \$35.00 per month.

The appellant's position is that she has been in continuous receipt of disability assistance from the ministry and a physician has previously diagnosed her with type 2 diabetes resulting in her meeting the eligibility criteria for a diabetic diet allowance of \$35.00 per month. Since moving to what the ministry calls a Special Care Facility, her need for a specialized diabetic diet has remained unchanged; however the ministry has ceased to provide her with a diabetic diet allowance of \$35.00 per month which she believes she should be eligible to receive.

At the hearing the advocate argued that while the ministry considers the appellant's residence to be a Special Care Facility, in fact, it is more of a treatment centre and should not be treated as a Special Care Facility by the ministry. The advocate also argued that the residence does not have the funds required to provide for the special dietary needs of the appellant and stated that she was aware of other people residing in the appellant's Special Care Facility, in receipt of disability assistance that were currently receiving a diabetic diet supplement from the ministry. For these reasons the advocate argued that the ministry's Reconsideration Decision was not reasonable.

The ministry argued that regardless of what the appellant's advocate may believe, her current residence is considered to be a Special Care Facility by the ministry, and once she moved in to this facility her disability assistance was no longer covered under the EAPWD Regulation subsection 66(1). People in receipt of disability assistance who reside in a Special Care Facility are funded on a per diem basis under the EAPWD Regulation, Schedule A, subsection 8, (People receiving special care). In the appellant's case the ministry pays a per diem rate of \$30.90 and a monthly comforts allowance of \$95.00, the maximum permitted under the Regulation and this is money which the appellant can use in part to supplement her diet as she sees fit. The ministry argued that as there are no provisions for a diabetic diet allowance under the EAPWD Regulation, Schedule A, subsection 8, (People receiving special care), and as the appellant no longer meets the basic eligibility requirements set out in the EAPWD Regulation subsection 66(1) she is not eligible to continue to receive a diabetic diet supplement in the amount of \$35.00 per month. The ministry further argued that as no documental evidence was presented substantiating that other residents in the Appellant's Special Care Facility were receiving both disability benefits and a diabetic diet allowance, the ministry had no means of considering these allegations. The ministry also noted that other people's eligibility for disability assistance and supports or special allowances were not the subject of their Reconsideration Decision.

The panel's jurisdiction is established by s. 24 (1) of the Employment and Assistance Act that states:

24 (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The panel finds it has no jurisdiction to deal with the fairness or reasonableness of legislation as argued by the appellant but must look at whether the ministry's decision was reasonably supported by the evidence or a reasonable application of the legislation in her circumstances. With this in mind, the panel finds that ministry records do not indicate that the appellant is a Person with Disabilities receiving disability assistance as set out above under the EAPWD Regulation section 66(1) and that she is not receiving disability assistance under section 2 {monthly support allowance}, 4 {monthly shelter allowance}, 6 {people receiving room and board}, or 9 {people in emergency shelters} of Schedule A. For these reasons the panel finds that the ministry reasonably determined that the appellant does not meet the basic eligibility requirements set out above under the EAPWD Regulation section 66(1) and is therefore not eligible to continue to receive the requested benefit.

The panel further finds that ministry records indicate they are currently paying for the agreed upon cost of the appellant's accommodation in a Special Care Facility at a per diem rate of \$30.90 and that she also receives a comforts allowance of \$95.00 per month, the maximum permitted under the EAPWD Regulation, Schedule A, subsection 8 (People receiving special care), listed above. The panel also finds that there is no provision under this section of the Regulation which would permit the ministry to continue to provide the appellant with a diabetic diet allowance and that for these reasons the ministry reasonably determined that it can not continue to provide the appellant with the requested benefit.

With respect to arguments made in the physician's letter of October 11, 2013, the Director of the appellant's Special Care Facility Director's letter of June 26, 2013, and by the advocate at the hearing regarding the Special Care Facility's ability to provide the appellant with an appropriate diet, the panel finds it has no way to determine the adequacy of the foods the appellant is currently receiving. The panel also finds that this is not a matter considered in the ministry Reconsideration Decision or in the applicable legislation and therefore does not fall within the panel's jurisdiction. The panel does however note that the Director of the Special Care Facility in which the appellant resides states in her letter of June 26, 2013, that they provide residents with, "nutritional meals", and also notes that the ministry provided a response to a question from the advocate at the hearing regarding this issue stating that the appellant currently received a \$95.00 a month comforts allowance, the maximum permitted under the Regulation, and this is money which she can use in part to supplement her diet as she sees fit.

With respect to the arguments raised by the Director of the appellant's Special Care Facility in her letter of August 26, 2013, and by her advocate at the hearing, regarding allegations that other residents who are in receipt of disability benefits who also reside in the appellant's Special Care Facility are receiving diabetic diet allowances from the ministry, the panel finds no evidence was presented to substantiate these allegations. The panel also finds that as this issue was not considered in the ministry's Reconsideration Decision and for these reasons the matter does not fall within its jurisdiction. The panel notes however, that when this issue was raised by the advocate at the hearing, the ministry argued that as no documental evidence was presented substantiating that other residents in the Appellant's Special Care Facility were receiving both disability benefits and a diabetic diet allowance, the ministry had no means of considering the advocates allegations. The ministry also noted that other people's eligibility for disability assistance and supports were not the subject of their Reconsideration Decision.

For the reasons listed above the panel finds that based on evidence presented and the regulatory requirements set out above the ministry reasonably determined that the appellant was not eligible to continue to receive a diabetic diet supplement in the amount of \$35.00 per month and confirms the ministry's Reconsideration Decision.