

PART C – Decision under Appeal

The decision under appeal is the December 17, 2013 reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”), in which the ministry determined that the appellant was not eligible for a diet supplement for a high protein diet in October 2013 as provided in Section 5 of the Employment and Assistance for Persons with Disabilities Act (the “EAPWDA”) and Section 23 (2) of the Employment and Assistance for Persons with Disabilities Regulation (the “EAPWDR”). In particular, the ministry found that the appellant’s application, completed by a registered dietitian, was not received until November 12, 2013, therefore under Section 23(2) the appellant was not eligible until that date.

PART D – Relevant Legislation

EAPWDA Section 5;
EAPWDR Section 23 (2)

PART E – Summary of Facts

The appellant is designated as a person with disabilities, and is a recipient of disability assistance since 2006. She has been receiving a diet supplement for a high protein diet since 2006, which was discontinued in September 2013, until eligibility could be confirmed. The appellant submitted a note to the ministry on October 21, 2013 from an acupuncturist, which indicated her continued need for a high protein diet. The ministry indicated that the letter of confirmation must be from a medical practitioner or nurse practitioner and not a Chinese medicine practitioner. On November 7, 2013 the ministry received a fax from a hospital based clinical dietitian stating the appellant's need for a high protein diet. On November 12, 2013 the ministry added the high protein diet supplement to the appellant's file and a cheque for \$40 was issued to the appellant for the month of November.

On November 22, 2013 the appellant was advised by the ministry that she was not eligible to receive the diet supplement for October as the required documentation was not received until November. The appellant requested a reconsideration of that decision.

The information before the ministry at the time of reconsideration included the following:

- A note from the appellant's acupuncturist, undated, but stamped 'received' by the ministry office October 16, 2013, stating "Breast Cancer Special Diet Allowance/Extra Protein".
- A letter from a hospital based registered dietitian dated November 6, 2013, requesting that the appellant's diet allowance funding be reinstated.
- The appellant's Request for Reconsideration (RFR), dated November 26, 2013 and signed by the appellant in which she states that she was not informed that the diet supplement would be discontinued. She further states that she provided a prescription from her acupuncturist, whom she sees regularly, but the request was refused and not explained. The appellant writes that she phoned the ministry to find out which medical professionals would be recognized and has resubmitted accordingly. She adds that she still has cancer, receives regular treatment and still requires extra protein in order to have energy for daily living.

In her Notice of Appeal, dated December 20, 2013, the appellant states that she disagrees with the ministry's decision because she was never required to renew the authorization for her nutrition supplement previously or informed about the need to renew, prior to its discontinuation. She adds that her medical condition and need persist and her health is adversely affected by a lack of protein in her diet. She states that she missed supplement payments on September 25 (for the month of October) and October 23 (for the month of November) and only received a single payment of \$40 on November 18 (for the month of November). She would like to receive the supplement for the missing month.

The appellant's oral evidence on appeal included the following information:

The appellant stated that she was diagnosed with cancer in 2005, stopped working in 2006

and began receiving assistance in 2006, which included supplements for a high protein diet, originally recommended by her General Practitioner.

The appellant stated that her October assistance cheque (received at the end of September) was smaller than expected and when she contacted the ministry office to enquire about it, she was informed that her diet supplement for a high protein diet had been terminated until she provided written confirmation by a medical practitioner that a high protein diet was still required. She added that since 2006 she had been receiving this supplement and had never been informed of the need for further documentation at any time over the past 7 years or that the supplement had an expiry date.

The appellant told the panel that she requested a note from her acupuncturist in October, as she has not attended her General Practitioner in a long time because she was told that there was nothing further that could be done for her. When the acupuncturist's note was forwarded to the ministry, the appellant was informed that the acupuncturist did not meet the ministry's definition of a medical practitioner. The appellant stated that she then contacted the registered dietitian for the regional health authority, but because of her rural location, the dietitian was not available in her area until November, at which time she received the required documentation and forwarded it to the ministry.

The appellant adds that, had she been informed that the supplement would be discontinued on a specific date, she would have requested the required documentation earlier, and had she been informed which types of medical practitioners would be recognized, she would have accessed the registered dietitian sooner as well.

The ministry relied primarily on its reconsideration decision and provided clarification to the panel with regards to the ministry policy on administration of diet supplements.

The ministry confirmed that the appellant had been issued diet supplements for a high protein diet since 2006 and although reviews of an applicant's eligibility typically occur every 24 months for people with chronic conditions, in the case of the appellant, review occurred in November 2009, September 2011 and September 2013. The ministry noted that at the times these reviews were conducted, the diet allowance for the appellant was appraised to confirm a continuing need and reinstated, however there were no supporting documents, such as medical practitioner recommendations, on file.

The ministry stated that it is usually the responsibility of the ministry, when the supplement is approved, to inform the person receiving the assistance of the time period it has been approved for, and when it will expire; however, there is no evidence that this information was provided to this appellant. The ministry added that the only notification that a person may receive that their supplement has been discontinued would be the reduced amount of their assistance payment.

The ministry confirmed that there was an error in the Summary of Facts on the RFR, which stated that the appellant received a cheque for \$40 on September 30, when in fact she had

not. She received the diet supplement for September at the end of August, a cheque for \$40 on November 12, and then the diet supplement was re-instated with the appellant's usual benefits for the month of December, with the payment November 20.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's December 17, 2013 reconsideration decision in which the ministry determined that the appellant was not eligible for a diet supplement for a high protein diet in October 2013 as provided in Section 5 of the Employment and Assistance for Persons with Disabilities Act (the "EAPWDA") and Section 23 (2) of the Employment and Assistance for Persons with Disabilities Regulation (the "EAPWDR") because the appellant's application, completed by a registered dietitian, was not received until November 12, 2013, and therefore under Section 23(2) the appellant was not eligible until that date.

The relevant legislation is as follows:

EAPWDA

Section 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.

EAPWDR

Section 23 – Effective date of eligibility

- (1) Subject to subsection (1.1), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance
- (a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities, and
 - (b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month's shelter costs that remains unpaid on that date.
- (1.1) A family unit of an applicant who applies for disability assistance while the applicant is 17 years of age and who the minister has determined will be designated as a person with disabilities on his or her 18th birthday
- (a) is eligible for disability assistance on that 18th birthday, and
 - (b) on that date, is eligible under section 4 and 5 of Schedule A for that portion of the month's shelter costs that remains unpaid on that date.
- (1.2) A family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for
- (a) a support allowance under sections 2 and 3 of Schedule A on the date of the applicant's submission of the application for disability assistance (part 2) form,
 - (b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for disability assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and
 - (c) for disability assistance under section 6 to 9 of Schedule A on the date of the applicant's application for disability assistance (part 2) form.
- (2) 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.
- (3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement from the date of the minister's decision on the applicant's request under section 16 (1) of the Act

[reconsideration and appeal rights] in relation to the supplement.

(3.2) If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person with disabilities, the person's family unit is eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the date of the minister's decision on the applicant's request under section 16 (1) of the Act *[reconsideration and appeal rights]* in relation to the designation. (B.C. Reg. 340/2008)

(4) If a family unit that includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:

- (a) the date the family unit became eligible for disability assistance;
- (b) 12 calendar months before the date of payment.

(5) A family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

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.
- (B.C. Reg. 64/2010)

(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.C. Reg. 317/2008)
- (b) a registrant of the College of Dietitians of British Columbia established under the Health Professions Act. (B.C. Reg. 202/2006)

(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]. (B.C. Reg. 288/2003)

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; (B.C. Reg. 60/2007)
- (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;
- (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 the person requires a low phenylalanine diet. (B.C. Reg. 85/2012)

(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: (B.C. Reg. 317/2008)

- (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.

(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.

* * *

Whether the appellant is eligible to receive a Diet Supplement for a High Protein Diet for October 2013, prior to having this supplement re-instated by the ministry in November 2013.

The appellant argues that she had submitted a note from her acupuncturist as soon as she was able, following notification that documentation was required. She adds that when she was told that the acupuncturist's note was insufficient, she contacted the registered dietitian serving the area, but because she resides in a rural community, she was not able to see the dietitian and receive a new note until November. The appellant states that had she been notified of the pending supplement expiry and type of health care professional recognized, she could have met the requirements sooner.

The ministry determined that the appellant submitted the information required to confirm eligibility for a diet supplement for a high protein diet on November 12, 2013. As outlined in Section 23 (2) of the EAPDWR, the appellant is not eligible until the date that eligibility is confirmed. The ministry is sympathetic to the circumstances but notes that they do not have the discretion to backdate eligibility.

The panel finds that although the appellant did make attempts to provide the required documentation to confirm eligibility to the ministry in a timely manner, the note from the registered dietitian was not received by the ministry until November 12, 2013. As Section 23 (2) of the EAPWDR stipulates that a family unit is not eligible for a supplement in respect of a period before the ministry determines eligibility, the appellant's eligibility was reinstated beginning November 1, 2013. Accordingly, the

panel finds that the ministry reasonably determined that the appellant's eligibility was confirmed on November 12 and she was not eligible for the supplement in October.

Conclusion

For the reasons detailed above, the panel finds that the ministry decision was a reasonable application of the legislation in the circumstances of the appellant. Accordingly, the ministry decision is confirmed.