

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated March 27, 2015 that determined that the appellant was not eligible for a diet supplement because the appellant did not meet the requirements of sections 66 and Schedule C section 6 of the Employment Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically, the ministry found that:

1. the appellant’s doctor has not confirmed that the appellant is a person who requires a restricted sodium diet, high protein diet, gluten-free diet, ketogenic diet, or low phenylalanine diet; or is a person who has diabetes, dysphagia or cystic fibrosis; or is a person who requires kidney dialysis and is not eligible for services by Ministry of Health.
2. The appellant’s doctor has not confirmed that the appellant requires a special diet for any of the following medical conditions: cancer, chronic inflammatory bowel disease, Crohn’s disease, ulcerative colitis, HIV positive diagnosis, AIDS, chronic bacterial infection, tuberculosis, hyperthyroidism, osteoporosis, hepatitis B or C.

PART D – Relevant Legislation

EAPWDR section 66
EAPWDR Schedule C section 6

PART E – Summary of Facts

With the consent of both parties the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* (EAA).

The documentary evidence before the ministry at reconsideration included the following:

1. A note from the appellant's physician dated May 27, 2010 which reads: "*This is to confirm that (the appellant) has irritable bowel syndrome and controls her symptoms with diet such as bottled water, hormone free meat and organic foods.*"
2. A note from the appellant's physician dated April 3, 2012 which reads: "*I have advised (the appellant) to stay on her diet of hormone free meat and bottled water to help control her irritable bowel syndrome symptoms.*"
3. A note from the appellant's physician dated April 14, 2014 that reads: "*Due to irritable bowel syndrome (the appellant) continues to require a special diet.*"
4. A note from the appellant's physician dated April 26, 2014 that reads: "*Due to chronic irritable bowel syndrome/disease (the appellant) requires a special diet.*"
5. A letter from the ministry to the appellant dated February 2, 2015 requesting a note from her doctor that includes the appellant's diagnosis, and confirmation of her continued need for a special diet and for how long she will need the diet.
6. A note from another physician (physician #2) dated March 2, 2015 that reads: "*(the appellant) requires a modified diet due to chronic gastrointestinal issues.*"
7. A letter from the ministry to the appellant dated March 5, 2015 advising her that her request for a special diet has been denied because the medical profession has not indicated that she has been diagnosed with one of the legislatively specified medical conditions and has not recommended one of the legislatively specified diet supplements.
8. The appellant's *Request for Reconsideration* signed and dated by the appellant on March 23, 2015. The appellant states the "*The first medical note from (the appellant's physician) is missing from this package; only the follow-up note from (another physician) has been included by the ministry.*" The appellant includes a letter dated March 13, 2015 which explains that she suffers from a chronic gastrointestinal condition which she has had for many years. She has been receiving the diet supplement for that entire period in order to manage the side effects of her condition. Her diagnosis has not changed and is not expected to change. Her doctor has submitted the same medical request in the past so the appellant and her physician do not understand why her eligibility for the diet supplement is now in question. She finds this matter very stressful and stress is something she needs to minimize so as to avoid a flare-up of her condition. She argues that the cost of medical treatment that she will require if denied the diet supplement will exceed the cost of providing the diet supplement.

The appellant's Notice of Appeal was signed and dated on April 2, 2015 and lists the following as the reason for the appeal: "*My condition has not changed, and will not change for the foreseeable future.*" She also includes a letter dated April 3, 2015 which states that the March 2, 2015 note from physician #2 was not included in the Reconsideration Decision package. She asks why the medical note is not sufficient, and asks if a substitute wording she has drafted would solve the issue.

The appellant's submission consists of a letter from her family physician dated April 20, 2015 that reads: "*I'm the family physician of (the appellant). (The appellant) has been diagnosed with irritable bowel syndrome. She finds her symptoms are better controlled if she maintains a diet free of hormones and chemicals. She has found this diet costly. Assistance in maintaining her diet would be*

of great benefit to her." The panel admitted this evidence under section 22(4) of the EAA as it confirms the doctor's diagnosis and supports the appellant's claim in the *Request for Reconsideration* that she may be unable to afford the diet recommended by her doctor if she does not receive the diet supplement.

The ministry provided a response dated November 4, 2014 which advised that the ministry would not provide a written submission as it is relying upon the reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision that determined that the appellant was not eligible for a diet supplement because the appellant did not meet the requirements of sections 66 and Schedule C section 6 of the Employment Assistance for Persons with Disabilities Regulation (EAPWDR) was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the doctor's information does not satisfy the legislated criteria in that:

1. the appellant's doctor has not confirmed that the appellant is a person who requires a restricted sodium diet, high protein diet, gluten-free diet, ketogenic diet, or low phenylalanine diet; or is a person who has diabetes, dysphagia or cystic fibrosis; or is a person who requires kidney dialysis and is not eligible for services by Ministry of Health.
2. The appellant's doctor has not confirmed that the appellant requires a special diet for any of the following medical conditions: cancer, chronic inflammatory bowel disease, Crohn's disease, ulcerative colitis, HIV positive diagnosis, AIDS, chronic bacterial infection, tuberculosis, hyperthyroidism, osteoporosis, hepatitis B or C.

The relevant legislation is as follows:

From the EAPWDR:

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 C

Health Supplements

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.

Appellant's Position

The appellant argues that she suffers from a severe gastrointestinal condition and consequently has been receiving the diet supplement from the ministry for many years. Since her condition has not changed and will not change, she states that she and her physician do not understand why the ministry now claims that she is not eligible to receive it. She argues that the cost of medical treatment that she will require if denied the diet supplement will exceed the cost of providing the diet supplement.

Ministry's Position

The ministry argues that the appellant's doctor has diagnosed the appellant with **irritable bowel syndrome**. The legislation however lists **chronic inflammatory bowel disease**. The ministry states that these two conditions are not the same and therefore the appellant's condition does not satisfy the legislated criteria. In addition, section 6(1) of Schedule C lists specific diets associated with particular medical conditions. The appellant's doctor has recommended that the appellant be on a diet of hormone free meat, organic food and bottled water. This diet is not among those listed in this section of the legislation. Accordingly, the ministry concludes that the appellant does not satisfy the legislated

criteria. The Reconsideration Decision explains that the appellant has been receiving the diet supplement because the ministry did so in error but the ministry must abide by the legislation and cannot continue to provide a benefit for which the appellant is not eligible.

Panel Decision

The panel appreciates the appellant's confusion over the ministry's decision to deny the diet supplement when it has been available to the appellant for a number of years and there has been no change in her condition. Nonetheless, the panel notes that the diet recommended by the appellant's family physician is not included amongst those listed in the legislation. It is not a restricted sodium diet, nor a high protein diet, nor a gluten-free diet, nor a ketogenic diet, nor a low phenylalanine diet. In addition, the appellant does not have diabetes, does not require kidney dialysis, does not have dysphagia or cystic fibrosis. Accordingly, the panel concludes that the ministry reasonably determined that the appellant does not satisfy the legislative requirements of section 66 and Schedule C section 6(1) of the EAPWDR insofar as the diet recommended by the appellant's physicians.

The panel has carefully reviewed the information provided by the appellant's family physician and physician #2. The *Reconsideration Decision* does refer to the note from physician #2 although it lists the date as March 3 rather than March 2. It also refers to doctor's notes from June 2010, April 2012 and April 2014. The panel assumes that the June 2010 reference is for the May 2010 note from the appellant's physician.

The information provided by the appellant's physician and physician #2 state that the appellant's diagnoses are as follows: "*chronic gastrointestinal issues*", "*irritable bowel syndrome*" and "*irritable bowel syndrome/disease*". None of these diagnoses match those listed in section 6(2) of Schedule C of the EAPWDR. They are not cancer, nor chronic inflammatory bowel disease, nor Crohn's disease, nor ulcerative colitis, nor HIV positive diagnosis, nor AIDS, nor chronic bacterial infection, nor tuberculosis, nor hyperthyroidism, nor osteoporosis, nor hepatitis B or C. In particular, the panel accepts that the diagnoses provided by the appellant's physicians are not the same as chronic inflammatory bowel disease. Accordingly, the panel concludes that the ministry reasonably determined that the appellant does not satisfy the legislative requirements of section 66 and Schedule C section 6(1) of the EAPWDR insofar as the physicians' diagnoses of the appellant's condition.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for a diet supplement was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry decision.