



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 February 4, 2016 which held that the appellant is not eligible for a high protein diet supplement under section 66 and Schedule C, section 6, of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because the appellant's physician has not confirmed the supplement is needed for one of the prescribed medical conditions set out in section 6(1)(d).

PART D – Relevant Legislation

EAPWDR – section 66 and Schedule C, section 6

PART E – Summary of Facts

The appellant has been a sole recipient of disability assistance since 2009. On January 7, 2016, a physician completed a Request for Diet Supplement form, requesting, among other things, a high protein diet supplement. The form asks the physician to indicate the reason for the diet by checking a box beside a listed medical condition. The physician did not check any of the boxes but wrote “Patient states he is vegetarian and his food costs are higher than his ability to pay for his vegetarian food and supplements.”

In his January 31, 2016 Request for Reconsideration submission, the appellant confirms that he is vegetarian, eating only eggs, cheese, vegetarian food, and organics. He needs extra money to pay for 14-15 vitamins and supplements. It is imperative that he receive the funds for his high protein/vitamin diet, which stops his past drug use.

On appeal, in both his Notice of Appeal and a second Request for Reconsideration form, the appellant affirms the need for the diet supplement to meet the cost of food and supplements. The appellant also describes some of his living conditions, past abuse and mistreatment by family members, and also that half of his family died in the war while others were murdered.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision which held that the appellant is not eligible for a high protein diet supplement under section 66 and Schedule C, section 6, of the EAPWDR because the appellant's physician has not confirmed the supplement is needed for one of the prescribed medical conditions set out in section 6(1)(d), was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Relevant Legislation – Schedule C and section 66 of the EAPWDR

Diet supplement

66 (1) Subject to subsection (2), the minister may pay for a diet supplement in accordance with section 6 [*diet supplements*] of Schedule C that is provided to or for a family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who

(a) is described in section 6 (1) of Schedule C, and

(b) is not described in section 8 (1) [*people receiving special care*] of Schedule A.

(2) A person is not eligible to receive a supplement under subsection (1) unless

(a) the person is not receiving another nutrition-related supplement, and

(b) a medical practitioner, nurse practitioner or registrant of the College of Dietitians of British Columbia established under the Health Professions Act confirms in writing the need for the special diet.

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; (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;

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- (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.

(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.

Appellant's position

The appellant's position is that he requires a high protein diet supplement to cover the costs of his food, vegetarian and organic foods, and supplements, which prevent him from past drug use. He also argues that he should not be denied because he quit using drugs and alcohol, stopped smoking, and half of his family died in the war and others were murdered.

Ministry's position

The ministry's position is that the appellant is not eligible for a high protein diet supplement because his physician does not confirm that it is needed for any of the medical conditions set out in section 6(1)(d) of Schedule C of the EAPWDR, and therefore does not meet the legislated requirements.

Panel Decision

Section 66 of the EAPWDR provides that a diet supplement may be provided in accordance with section 6 of Schedule C if it is provided to or for a family unit in receipt of disability assistance, only if the supplement is provided for a member of the family unit who is described in section 6(1) of Schedule C. Section 6(1) of Schedule C describes categories of persons, including those described in paragraph (d) – a person who requires a high protein diet. Subsection (2) further limits the provision of a high protein diet supplement by requiring a medical or nurse practitioner confirm the diet as being necessary for one of 12 listed medical conditions, including cancer, Crohn's disease, and AIDS. All 12 listed medical conditions are included on the Request for Diet Supplement form submitted by the appellant. However, the physician who completed the form did not indicate that the supplement was required for any of those medical conditions. Rather, the physician identified the need for a high protein diet as relating to the appellant's vegetarian diet and the costs of paying for his food and supplements. Consequently, the panel finds that the ministry reasonably determined that a medical or nurse practitioner has not confirmed that a high protein diet is necessary for any of the medical conditions set out in section 6(1)(d) of Schedule C, and that the appellant is not eligible for the requested supplement.

For the above reasons, the panel finds that the ministry's reconsideration decision was a reasonable application of the legislation in the circumstances of the appellant. The ministry's reconsideration decision is confirmed.