



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of March 23, 2016, which denied the appellant’s request for a diet supplement on the basis that the appellant did not meet the criteria set out in section 73 and Schedule C, section 8(1) of the *Employment and Assistance Regulation* (“EAR”). In particular, the ministry determined that the appellant is not eligible for a high protein diet as the information provided indicates that she does not have one of the medical conditions specified in Schedule C section 8(2) of the EAR.

PART D – Relevant Legislation

EAR, section 73 and Schedule C section 8

PART E – Summary of Facts

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

- Health Supplement Info Sheet 11 – Diet Supplement completed by the appellant’s physician dated March 7, 2016 indicating that the appellant requires a high protein diet due to primary biliary cirrhosis not secondary to Hepatitis B or Hepatitis C
- The appellant’s Request for Reconsideration dated March 21, 2016

Additional information provided

The appellant provided a further Request for Reconsideration form dated April 15, 2016 (“RFR 2”) in which she requests that the ministry reconsider its decision so that she can get on the road to recovery. The appellant states that she needs the extra money from the diet supplement to help her get more protein and fresh vegetables to help keep her going each day. The appellant states that without the diet supplement her day is cut short as she runs out of energy quite easily. The appellant also provided a letter from her physician dated April 14, 2016 stating that she requires a high protein diet due to liver cirrhosis caused by primary biliary cirrhosis to help her maintain enough energy to complete her usual activities of daily living.

In her Notice of Appeal dated April 15, 2016 the appellant states that if the ministry reconsiders its decision she will be able to live each day on getting better.

Prior to the hearing the appellant provided a letter dated May 2, 2016 (the “Submission”) stating that she has a liver disease causing lack of protein so she does not have enough energy for her day-to-day activities. The appellant states that Hepatitis B and Hepatitis C affects the liver with inflammation and scarring, as does her medical condition. The appellant states that with the prices of fresh fruit, vegetables and meat on the rise she is only able to buy enough for 10-14 days out of the month. The appellant states that she is asking for the diet supplement so she can begin a road of good health and be able to return back to work as soon as she is able. The appellant provided a note from another physician dated April 25, 2016 indicating that the appellant has primary biliary cirrhosis, which is a rare autoimmune disease that causes inflammation and scarring of the liver, as do Hepatitis B and Hepatitis C. The physician indicates that the appellant is recommended to be on a high protein diet and a low-sodium diet.

The ministry also provided a written submission dated May 12, 2016 responding to the appellant’s argument that her medical condition is similar to Hepatitis B and C so it ought to be included. This submission clarified that the legislation is very specific in terms of which medical conditions qualify for a nutritional supplement, and biliary cirrhosis is not included.

Admissibility of New Information

The panel has admitted the evidence in the RFR 2, the letter from the physician dated April 14, 2016, Notice of Appeal, and the Submission as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information relates to the appellant’s medical condition, impact on her daily activities and basis for her request for the diet supplement.

The panel also admits the letter from the physician dated April 25, 2016 with respect to the information regarding the appellant's medical condition and request for a high protein diet as it is also evidence in support of information and records that were before the ministry at the time of reconsideration. However, the panel has not admitted the information from the physician requesting that the appellant be considered for a low-sodium diet too as there was no information regarding a request for a low sodium diet before the ministry at the time of reconsideration.

The panel finds that the letter from the ministry does not contain new evidence and is a submission only.

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*.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant funding for a high protein diet supplement on the basis that she did not meet the criteria set out in Section 73 and Schedule C, section 8(1) of the EAR on the basis that does not have a medical condition described in Schedule C, section 8(2) was reasonable.

The relevant legislation is as follows:

EAR- Diet Supplement

Diet supplement

73 (1) Subject to subsection (2), the minister may pay for a diet supplement in accordance with section 8 [*diet supplements*] of Schedule C that is provided to or for a family unit in receipt of income assistance, if the supplement is provided to or for a person in the family unit who

(a) is described in section 8 (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 for 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.

[en. B.C. Reg. 145/2015, Sch. 1, s. 10.]

Diet supplements

8 (1) The amount of a diet supplement that may be provided under section 73 [*diet supplement*] 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 be provided only 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 appellant's position is that her medical condition of primary biliary cirrhosis causes inflammation and scarring to her liver just like Hepatitis B and Hepatitis C, which are medical conditions eligible for a diet supplement. The appellant's position is that although her medical condition is not specifically listed in Schedule C, section 8(2) of the EAR, as the impact of it is similar to Hepatitis B and Hepatitis C, the ministry ought to provide her with the high protein diet she is requesting so that she can have more energy to perform her daily activities.

The ministry's position is that although the appellant's physician has confirmed that she requires a high protein diet, her medical condition of primary biliary cirrhosis is not one of the listed medical conditions set out in EAR Schedule C, Section 8(2). In particular the ministry notes that the appellant's physician indicated, on the Health Supplement Info Sheet 11 – Diet Supplements that the appellant's cirrhosis is not secondary to Hepatitis B or Hepatitis C.

The panel finds that although the appellant's physician has indicated that the appellant requires a high protein diet due to primary biliary cirrhosis, the ministry was reasonable in determining that the appellant is not eligible for the diet supplement as primary biliary cirrhosis is not one of the specified medical conditions set out in EAR Schedule C section 8(2) that is necessary to be eligible for the diet supplement.

The panel appreciates that the impact of the appellant's primary biliary cirrhosis may be similar to that of Hepatitis B and Hepatitis C as the physician has confirmed that all three conditions cause inflammation and scarring to the liver. However, the legislation is very specific and if the legislators had intended to include other liver diseases besides Hepatitis B and Hepatitis C, they could have included a category that included all liver diseases rather than specifically stating Hepatitis B and Hepatitis C. As the legislation is very specific, the panel finds that the ministry was reasonable in determining that the appellant is not eligible for the diet supplement for a high protein diet as she does not have one of the medical conditions specified in EAR Schedule C section 8(2).

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision finding the appellant ineligible for a diet supplement of a high protein diet as the legislative criteria of EAR Schedule C, Section 8(2) was not met was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.