

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 September 6, 2016 which held that the appellant is not eligible for a diet supplement under section 6 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because he has not met the requirement established under section 66 of the EAPWDR that he be a recipient of disability assistance.

The ministry also determined that the appellant was not eligible for the requested diet supplement under section 69 of the EAPWDR which only applies to medical supplies, medical transportation and medical equipment and devices, not diet supplements under section 6 of Schedule C.

PART D – Relevant Legislation

EAPWDR – sections 66, 69, and section 6 of Schedule C

PART E – Summary of Facts

With the consent of the appellant's representative, his sister, two ministry staff members were in attendance as observers.

The appellant has been designated as a Person with Disabilities and is a one-person family unit. When the appellant turned 65 years of age he was transitioned to Medical Services Only as he was in receipt of pension income in excess of the amount of disability assistance.

The appellant submitted a Diet Allowance Request dated June 30, 2016 completed by a physician who diagnoses the appellant with advanced Parkinson's disease and requests a diet supplement for dysphagia.

No additional information was provided at reconsideration.

In the Notice of Appeal, the appellant's representative writes that the appellant continues to lose weight due to his advanced Parkinson's disease and that nutritional supplements are critical to maintain his weight.

On appeal, the appellant's representative submitted a September 21, 2016 letter from a gastroenterologist, an October 6, 2016 letter from a registered dietician, and an October 24, 2016 letter from the appellant's general practitioner. The ministry did not object to the admission of these documents into evidence. As the documents provided information respecting the appellant's difficulties swallowing and need for nutritional supplementation consistent with, and therefore in support of, the information before the ministry at reconsideration, they were admitted pursuant to section 22(4) of the Employment and Assistance Act.

At the hearing, the appellant's representative stated that difficulty swallowing and tongue thrusting are the side-effects of the appellant's medications for Parkinson's disease which have resulted in the appellant being barely able to maintain his weight at 115-116 pounds. The only way the appellant can get the needed protein and nutritional intake is through liquid supplementation.

At the hearing, the ministry acknowledged that the appellant would benefit from the supplement but stood by its decision that it was without legislative authority to provide the diet supplement.

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 diet supplement under section 66 and Schedule C, section 6, of the EAPWDR because he has not met the requirement of section 66(1) that he be a recipient of disability assistance, was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Relevant Legislation

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.

Health supplement for persons facing direct and imminent life threatening health need

69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and

(d) the requirements specified in the following provisions of Schedule C, as applicable, are met:

- (i) paragraph (a) or (f) of section (2) (1);
- (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

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;
- (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;

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- (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 representative argues that the appellant should be eligible for the requested diet supplement because the information provided by the physician and dietician establishes that the appellant has a life-threatening need for the diet supplement.

Ministry's position

The ministry's position is that the appellant is not eligible for a diet supplement under section 6 of Schedule C of the EAPWDR because he has not met the initial requirement of section 66 that he be a recipient of disability assistance. Additionally, the appellant is not eligible for the diet supplement under section 69 because even if a life-threatening need for the supplement is established, diet supplements are not included in the health supplements that may be provided under section 69.

Panel Decision

Eligibility under section 66 of the EAPWDR

Section 66 of the EAPWDR sets out who may receive a diet supplement described in section 6 of Schedule C. The first requirement is that the family unit must be in receipt of disability assistance.

That the appellant is the only person in his family unit and is not in receipt of disability assistance is not in dispute. Consequently, the panel finds that the ministry reasonably determined that the appellant is not eligible to receive a diet supplement set out under section 6 of Schedule C because he has not met the requirement of section 66 that he be a recipient of disability assistance.

Eligibility under section 69 of the EAPWDR

Section 69 allows for the provision of certain health supplements set out in Schedule C to meet a life-threatening health need for applicants who are otherwise not eligible to receive health supplements under the EAPWDR, which would include the appellant as he is not eligible under section 66. However, the health supplements that may be provided under section 69 are only those described in sections 2(1)(a) and (f) and 3 of Schedule C. Consequently, diet supplements, which are described under section 6 of Schedule C, may not be provided under section 69. Accordingly, the panel finds that the ministry has reasonably determined that even if a life-threatening health need were established, the appellant is not eligible for the requested diet supplement under section 69 of the EAPWDR.

Conclusion

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 and the appellant is not successful on appeal.