



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 October 3, 2016, which held that the appellant did not qualify for a diet supplement for her medical condition because her dietary supplement is not required for one of the 9 conditions listed in the *Employment and Assistance for Persons With Disabilities Regulation*, Schedule C, Section 6(1), and the Appellant did not qualify for a supplement for a high protein diet because the Appellant does not have one of the 12 medical conditions listed in the *Employment and Assistance for Persons With Disabilities Regulation*, Schedule C, Section 6(2).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 66

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Schedule C, Section 6

PART E – Summary of Facts

NATURE OF THE APPELLANT'S APPLICATION

The Appellant applied for a high protein diet supplement said to be necessary because of liver disease. Her application was denied, and she asked for a reconsideration, which also denied her the supplement.

DOCUMENTS AND EVIDENCE BEFORE THE MINISTRY AT TIME OF RECONSIDERATION

The evidence before the ministry at the time of the reconsideration decision included

1. A letter from a health care clinic, undated, advising the Appellant:
 - Requires financial support for certain conditions which are:
 - Has a liver disease diagnosed in July 2016
 - Currently shows no sign of liver inflammation but states the diagnosis can progress to necroinflammatory changes which can lead to fibrosis of the liver
 - is currently being treated on a standard of care which involves life style changes, achieved, among other things, with health diet habits and vitamin supplements.
2. A 2nd letter from the same primary health care clinic as in (1) above, undated, about a client with the same first name as the Appellant but giving a different last name, and appearing otherwise to be the same as the letter in (1) above.
3. A 3rd letter from the same primary health care clinic, undated, advising the Appellant needs a diet stipend for her liver disease, with a diet rich in fruit, vegetables and protein and the need for which will be ongoing and a follow up will be done in the months following.
4. A letter from an advocacy group dated September 21, 2016 attaching another letter dated September 19, 2016 explaining the Appellant's liver condition which includes a letter from the Appellant setting out her requirements as to vitamins, proteins, vegetables and sugar replacement.
5. A request for reconsideration dated September 19, 2016 in which it was related that:
 - On August 17, 2016 the Appellant requested a high protein diet supplement
 - The Appellant had it explained to her what the eligibility criteria were, including requiring written confirmation from a doctor, type of diet required, and expected duration of the diet
 - Ministry policy restricts the provision of a diet supplement to one diet supplement per month, and that diet supplement is the one with the highest dollar value if an applicant is otherwise entitled to more than one diet supplement.
6. A letter from the ministry to the Appellant dated August 30, 2016 explaining that the Appellant was not eligible for a diet supplement as she currently receives another diet supplement, stating that she may only receive the amount for the highest diet supplement for which she is eligible.
7. Health Supplement info sheet entitled "Diet Supplements".
8. The fact that the Appellant already receives a gluten-free diet supplement of \$40 per month.

**APPELLANT'S EVIDENCE AT APPEAL**

At the appeal the Appellant gave her age, said she needs more money, that she is pre-diabetic, has received chemotherapy in the past but is not now receiving it, has fatty liver disease, has a low immune system, is a cancer survivor but has no active cancer at this time, her health is going downhill, needs preventative measures, and that she is anticipating finger surgery in the near future.

The panel finds pursuant to the *Employment and Assistance Act*, section 22(4) that the foregoing evidence, except for the evidence of future finger surgery, is admissible because it is oral testimony in support of information and records that were before the minister when the decision being appealed was made.

The panel finds pursuant to the *Employment and Assistance Act*, section 22(4) that the evidence of future finger surgery is not admissible because it is not oral testimony in support of information and records that were before the minister when the decision being appealed was made.

MINISTRY'S EVIDENCE AT APPEAL

The ministry relied upon the evidence that was before the minister at reconsideration and did not submit any further evidence.

PART F – Reasons for Panel Decision

ISSUE ON APPEAL

The decision on appeal is whether the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated October 3, 2016, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that that the appellant did not qualify for a diet supplement for her medical condition because her dietary supplement is not required for one of the 9 conditions listed in the *Employment and Assistance for Persons With Disabilities Regulation (EAPWDR)*, Schedule C, Section 6(1), and the Appellant did not qualify for a supplement for a high protein diet because the Appellant does not have one of the 12 medical conditions listed in the *Employment and Assistance for Persons With Disabilities Regulation (EAPWDR)*, Schedule C, Section 6(2),

RELEVANT LEGISLATION

Employment and Assistance For Persons With Disabilities Regulation, section 66

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.

Employment and Assistance For Persons With Disabilities Regulation, Schedule C, section 6

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.

GENERAL SCHEME OF THE LEGISLATION

The general scheme of the legislation is to allow a dietary supplement for someone who requires it for any one of nine listed conditions, and a medical practitioner, nurse practitioner, or dietitian confirms in writing that the special diet is needed, and in addition, where a high protein diet is required, it may only be provided if a medical practitioner or nurse practitioner confirms it is necessary for one of another 12 medical conditions, so long as the Applicant is not in a special care facility, and the Applicant is not already receiving another nutrition-related supplement.

ANALYSIS

***EAPWDR*, Section 66(1)(a) – Diet Supplement Generally**

The minister may pay for a diet supplement for someone in receipt of disability assistance if it is for someone described in Schedule C, Section 6 *EAPWDR*. In order to qualify for a diet supplement, an applicant must require it for at least 1 of 9 listed conditions of Schedule C, Section 6(1), confirmed in writing to exist by a medical or nurse practitioner or dietician. Under Section 66(2)(a) *EAPWDR* an applicant may receive only one supplement.

Disability Assistance

The ministry found at reconsideration that the Appellant is in receipt of disability assistance, and therefore this criterion is met.

Appellant's Position

The Appellant's position was that the money she receives is not sufficient for her needs, and without more money for food and vitamins her health will continue to decline. She agreed when asked by the Ministry representative that she does not fit the criteria but argued that she is fed up with the system and it is terrible.

The Appellant's advocate argued that the appeal in part is to create awareness that poverty results in poor outcomes for individuals and by participating in the appeal she and the Appellant are advocating for all people on disability, and that the list of medical conditions which are medical conditions qualifying an Applicant for a dietary supplement is too limited.

Ministry's Position

While the Appellant does have hepatic steatosis (fatty liver disease), she does not have any of the listed conditions set out in Schedule C, Section 6(1) *EAPWDR*, except for requiring a gluten-free diet. Those conditions are that an applicant must require a restricted sodium diet, have diabetes, require kidney dialysis not paid for by the Ministry of Health, require a high protein diet, require a gluten-free diet, have dysphagia, have cystic fibrosis or require a ketogenic diet. The Appellant already receives a gluten-free diet supplement as allowed for under Schedule C, Section 6(1)(e) *EAPWDR*, and therefore does not qualify for another diet supplement, because Section 66(2)(a) *EAPWDR* limits a person to only one nutrition-related supplement.

Panel Finding

The panel finds that there is no evidence that the Appellant requires a diet supplement for any of the 9 listed conditions of Schedule C, Section 6(1) *EAPWDR*, except for a gluten-free diet, for which she already receives a supplement. The panel finds that under Section 66(2)(a) *EAPWDR* that the Appellant is not entitled to receive a second supplement.

The panel therefore finds that the Ministry's determination at reconsideration that the Appellant was not entitled to a diet supplement was a reasonable application of the *EAPWDR* in the circumstances of the Appellant and was reasonably supported by the evidence.

Someone Described in Schedule C, Section 6(2) – High Protein Diet

Under Schedule C, Section 6(2) *EAPWDR*, in order to qualify for a high protein diet, an applicant must have any of the following 12 conditions: cancer requiring nutritional support on account of a further 4 circumstances, chronic inflammatory bowel disease, Crohn's disease, uncreative colitis, HIV positive diagnosis, AIDS, chronic bacterial infection, tuberculosis, hyperthyroidism, osteoporosis, hepatitis B or hepatitis C. The condition must be confirmed by a medical practitioner or nurse practitioner.

Appellant's Position

The Appellant had applied for a high protein diet supplement. Her argument at appeal did not specifically address a high protein diet, although her entitlement to one was dealt with at reconsideration.

Ministry's Position

The ministry representative did address a high protein diet. She argued that in order to qualify for a high protein diet, an applicant must have any of 12 conditions, specifically: cancer requiring nutritional support on account of a further 4 circumstances, chronic inflammatory bowel disease, Crohn's disease, uncreative colitis, HIV positive diagnosis, AIDS, chronic bacterial infection, tuberculosis, hyperthyroidism, osteoporosis, hepatitis B or Hepatitis C.

The ministry representative argued that there was no evidence that the Appellant suffered from any of the 12 listed conditions, and that therefore the Appellant did not qualify for a high protein diet.

Panel Finding

There is no evidence the Appellant has any of the conditions listed in Schedule C, Section 6(2) *EAPWDR*. The panel therefore finds that the Ministry's determination at reconsideration that the

Appellant was not entitled to a high protein diet was a reasonable application of the *EAPWDR* in the circumstances of the Appellant and was reasonably supported by the evidence.

Conclusion

The panel finds that the Ministry's decision in denying the Appellant a diet supplement, including denying her a high protein diet supplement, was a reasonable application of the evidence in the circumstances of the Appellant and was reasonably supported by the evidence.

The panel confirms the Ministry decision and the Appellant is not successful in her appeal.