



### 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 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 because the appellant's physician has not confirmed the supplement is needed for one of the prescribed medical conditions set out in Section 6(2).

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 66 and Schedule C, Section 6.

PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with section 22(3)(b) of the Employment and Assistance Act.

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

A Diet Supplement Request dated August 3, 2016 and signed by the appellant's physician noting the appellant has MS and requires a high protein diet to keep strength for 24 months.

A Request for Reconsideration dated September 22, 2016 in which the appellant's physician writes that the "Patient has multiple sclerosis with symptoms of primary MS - related fatigue on a daily basis and increased susceptibility to infections, which have previously been improved with a high protein diet. This diet is part of the non pharmacologic treatment of her condition. Please reconsider the high protein diet supplement request."

An appointment card for the appellant indicating an appointment on October 7 at a local Medical Centre.

The appellant's Notice of Appeal dated October 13, 2016 included an appointment card for the appellant indicating an appointment on October 12 at a local Medical Centre.

No additional evidence was provided by the ministry on appeal.

## PART F – Reasons for Panel Decision

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(2), 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;**
- (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;

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- (h) tuberculosis;
  - (i) hyperthyroidism;
  - (j) osteoporosis;
  - (k) hepatitis B;
  - (l) hepatitis C.

### **Appellant's position**

The appellant's position is that she requires a high protein diet supplement to keep strength for 24 months which has been confirmed and supported by her medical practitioner.

### **Ministry's position**

The ministry's position is that the appellant is not eligible for a high protein diet supplement because her physician does not confirm that it is needed 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 ministry argues that the appellant's diagnosis of Multiple Sclerosis does not fit the aforementioned conditions; and therefore, does not satisfy the criteria under the legislation.

### **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 to confirm the diet as being necessary for one of 12 listed medical conditions, which does not include Multiple Sclerosis. While the appellant has included medical appointment cards for October 7 and October 12, both dates prior to her Notice of Appeal, the appellant has not submitted any additional information for consideration. 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(2) 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 and the appellant is not successful in her appeal.