

[Redacted]

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated December 20, 2018 which held that the appellant did not meet the legislated criteria in sections 66 and Schedule C, section 6 of the Employment and Assistance for Personnas with Disabilities Regulation (EAPWDR) to receive the benefit she had requested. Specifically, that as the appellant has been diagnosed with pre-diabetes, not type 2 diabetes, she does not qualify for the diabetic diet supplement.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Personnas with Disabilities Regulation, section 66

Employment and Assistance for Personnas with Disabilities Regulation Schedule C, section 6

PART E – SUMMARY OF FACTS

Key dates and information before the Ministry at the time of reconsideration were as follows:

November 13, 2018: appellant's application for the diabetic diet supplement was received by the ministry
November 20, 2018: the application was denied
November 28, 2018: appellant requested reconsideration
December 13, 2018: signed request for reconsideration submitted to the ministry
December 20, 2018: ministry reviewed request for reconsideration and denied benefits

June 2018: appellant was diagnosed with pre-diabetes
September 2018: appellant was diagnosed as being pregnant with a due date of June 11, 2019

At the hearing, the appellant provided the following information:

In their letter dated November 20, 2018, the ministry was incorrect in stating that the appellant has gestational diabetes. She has been diagnosed with pre-diabetes and is managing this condition with diet and medication. She is currently receiving the natal supplement.

Additionally, the appellant stated that she understood the reasons why her application for the diabetic diet supplement was denied; specifically that she does not have diabetes and as per Schedule C, section 6(1) (b) of the EAPWD regulation, this makes her ineligible to receive the diabetic diet supplement. She did inquire as to whether or not she would qualify for the diabetic diet supplement if she is diagnosed with type 2 diabetes in the future. The ministry representative responded that should her diagnosis change, the appellant could re-apply for the supplement with supporting medical documentation.

The ministry relied on the reconsideration decision for the hearing.

PART F – REASONS FOR PANEL DECISION

The issue before the panel is to determine the reasonableness of the Ministry's reconsideration decision dated December 20, 2018 which held that per sections 66 and Schedule C, section 6 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), as the appellant has been diagnosed with pre-diabetes and not type 2 diabetes, she was ineligible for the diabetic diet supplement she had applied for.

Applicable Legislation:

Employment and Assistance for Persons with Disabilities Regulation

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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 6.]

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;
- (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.

During the hearing the appellant stated that she understood and agreed with the ministry's reasons for denial under the current legislation, namely that at present she is afflicted with pre-diabetes, rather than type 2 diabetes and as such she does not meet the criteria to qualify for the diabetes diet supplement.

The ministry representative counselled her that should her pre-diabetes progress to type 2 diabetes, she can re-apply for the diabetic diet supplement.

Conclusion:

The panel finds that the ministry's reconsideration decision, which held that the appellant was not eligible for the diabetic diet supplement under sections 66 and Schedule C, section 6 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) as she does not have diabetes, was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's decision. The appellant is unsuccessful in her appeal.

PARTG--ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION	
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PARTH--SIGNATURES	
PRINTNAME Jan Lingford	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/01/25

PRINTNAME Patrick Cooper	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/25
PRINTNAME Lauren Forsyth	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/25