

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of December 19, 2018 (the “Reconsideration Decision”), which denied the Appellant a diet supplement because the Appellant was not eligible by virtue of being a person receiving special care, as defined in section 8(1) of Schedule A to the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”), pursuant to section 66(1)(b) of the EAPWDR.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulations (EAPWDR) Sections 61.01 and 66
Employment and Assistance for Persons with Disabilities Regulations (EAPWDR) Section 8(1) of Schedule A

PART E – SUMMARY OF FACTS

The Appellant is a sole recipient of disability assistance.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- A Health Supplements Info Sheet (the “Info Sheet”), which indicated that the Appellant requires:
 - Restricted Sodium Diet;
 - Gluten-free diet;
 - Ketogenic Diet; and
 - Low Phenylalanine Dietand has:
 - Diabetes;
 - Cystic Fibrosis
 - Cancer, requiring nutritional support during various treatment modalities;
 - chronic inflammatory bowel disease;
 - ulcerative colitis;
 - HIV/AIDS with chronic bacterial infection or tuberculosis;
 - osteoporosis; and
 - hepatitis B or hepatitis C
- A Diet Allowance Request (the “Request”), completed by a physician, indicating that the Appellant requires the following therapeutic diet:
 - High Protein for Hepatitis B or C;
 - Gluten-free;
 - Diabetes;
 - Kidney Dialysis;
 - Restricted Sodium;
 - Dysphagia; and
 - Cystic Fibrosis
- Letter from the Ministry, dated November 21, 2018, denying the Appellant’s request for a diet supplement while he was “residing in an adult care facility.”
- The Appellant’s Request for Reconsideration (“RFR”), dated December 4, 2018, in which the Appellant stated that:
 - He was a resident in a long term health care facility who has multiple health issues including HIV and being underweight;
 - He had complex dietary needs and was paying out of pocket to supplement the diet he was receiving at the care facility in which he resided;
 - He requires the dietary supplement in order to meet his dietary requirements;
 - He has diabetes, Hepatitis B and C, and chronic infections, requiring bottled or distilled drinking water due to being immune compromised; and
 - He takes medications daily for chronic pain, walking pain, and arthritis;

In the Appellant’s Notice of Appeal, filed January 3, 2019, the Appellant stated that he had to “pay out of

pocket for nutritional support that is recommended by my doctor which I cannot afford on comforts.”

The Appellant did not attend at the hearing and, after confirming that the Appellant had been notified of the date and time of the hearing, the appeal proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

At the hearing of the appeal, the representative for the Ministry stated that:

- The residence in which the Appellant lives is one which provides 24-hour nursing care, long-term medically complex care, private suites, meals, and recreation;
- The Appellant’s residence was not a community living residence, as contemplated by the *Community Living Authority Act* (“CLAA”);
- The Appellant’s nutritional and dietary needs were being provided by his residence; and
- The Ministry was covering the full cost of the Appellant’s residence and providing him with a comforts allowance in accordance with section 8(1) of Schedule A to the EAPWDR.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry's Reconsideration Decision, which denied the Appellant a diet supplement, pursuant to section 66(1)(b) of the EAPWDR because the Appellant was a person receiving special care, as defined by section 8(1) of Schedule A to the EAPWDR, was a reasonable application of the relevant legislation or was reasonably supported by the evidence that the Ministry had before it at the time of the Reconsideration Decision.

Relevant Legislation

Section 66 of the EAPWDR authorizes the Ministry to pay for a diet supplement for persons in receipt of disability benefits:

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.

Section 6(1) sets out the various types and amounts of diet supplements available to those persons who meet the criteria in section 66 of the EAPWDR:

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.

Section 8(1) of Schedule A to the EAPWDR prescribes the amounts of disability assistance for which persons receiving special care are eligible:

People receiving special care

8 (1) For a person with disabilities who receives accommodation and care in a special care facility (other than a special care facility described in subsection (3)) or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

- (a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus
- (b) a comforts allowance of \$222 for each person for each calendar month.
- (c) Repealed. [B.C. Reg. 193/2017, s. 12.]

(2) If the special care facility under subsection (1) is an alcohol or drug treatment centre, the minister may, in addition, pay either or both of the following while the applicant or recipient is in the alcohol or drug treatment centre:

- (a) actual shelter costs for the applicant's or recipient's usual place of residence up to the amount under section 4 for a family unit matching the applicant's or recipient's family unit;
- (b) a monthly support allowance for the applicant's or recipient's family unit, equal to the amount calculated under sections 2 and 3 of this Schedule minus the portion of that allowance that would be provided on account of the applicant or recipient.

(3) For a person with disabilities who receives accommodation and care in a special care facility operated by a service provider as defined in section 1 of the *Community Living Authority Act*, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the support allowance that is applicable under sections 2 and 3 of this Schedule for a family unit matching the applicant's or recipient's family unit, plus

(b) the maximum shelter allowance that is applicable under section 4 of this Schedule for a family unit matching the applicant's or recipient's family unit.

Section 1 of the EAPWDR defines a "special care facility" as follows:

"special care facility" means a facility that is a licensed community care facility under the *Community Care and Assisted Living Act* or a specialized adult residential care setting approved by the minister under subsection (3);

...

(3) For the purposes of the definition of "special care facility", the minister may approve as a specialized adult residential care setting a place that provides accommodation and care for adults and for which a licence under the *Community Care and Assisted Living Act* is not required.

Section 1 of the CLAA contains the following definitions:

Definitions

1 In this Act:

...

"authority" means Community Living British Columbia, established under section 2 (1);

...

"service provider" means a person or an organization delivering community living support under an agreement with the authority or a person authorized by the authority;

The Appellant's position, as set out in the RFR and in his Notice of Appeal, is that he requires the diet supplements recommended by his doctor and that his comforts allowance is insufficient for him to meet the nutritional support recommended by his doctor.

Ministry Position

The Ministry position is that, although the Appellant might benefit from the nutritional and diet supplements being recommended by his doctor, the Appellant is ineligible for any diet supplement by the operation of section 66 of the EAPWDR, which precludes the provision of such supplements to disability recipients who are receiving special care, as defined by section 8(1) of Schedule A to the EAPWDR.

Panel Decision

In order to be eligible for a diet supplement, a recipient of disability must meet the criteria set out in section 66 of the EAPWDR.

Section 66(1)(a) of the EAPWDR sets out that persons who meet the criteria in section 6(1) of Schedule C to the EAPWDR are eligible for diet supplements in prescribed amounts.

The Appellant's doctor prescribed the following in the Request:

- High Protein for Hepatitis B;
- Gluten-free;
- Diabetes;
- Kidney Dialysis;
- Restricted sodium;
- Dysphagia; and
- Cystic Fibrosis

In the result, the Appellant is a person described in sections 6(1)(a) through 6(1)(g) of Schedule C to the EAPWDR and accordingly meets the requirements of section 66(1)(a) of the EAPWDR.

Section 66(1)(b) of the EAPWDR, however, sets out that a recipient who "receives accommodation and care in a special care facility" is ineligible for a diet supplement.

The evidence about the Appellant's current living accommodations is that it is a home for people to avoid hospitalization, transition from hospital back into the community and stay to be supported for their long-term needs. It is likewise operated by a charitable foundation and not a "service provider", as defined in section 1 of the CLAA and, as such, is not exempted from the definition of a "special care facility" by section 8(3) of Schedule A to the EAPWDR. In the result, the Appellant is a person receiving special care, as defined in section 8(1) of Schedule A to the EAPWDR, making him ineligible for a diet supplement under section 66(1)(b) of the EAPWDR.

In view of the evidence about the Appellant's current living accommodations, the panel finds that the Ministry reasonably determined that the Appellant is ineligible for a diet supplement by the operation of section 66(1)(b) of the EAPWDR because he is a person who "receives accommodation and care in a special care facility" as set out in section 8(1) of Schedule A to the EAPWDR.

The Appellant is not successful in this appeal.

PART G – 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 checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Adam Shee	
SIGNATURE OF CHAIR .	DATE (YEAR/MONTH/DAY) 2019/01/28

PRINT NAME Sandra Chan	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/28
PRINT NAME Rob Nijjar	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/28