

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated June 10, 2019, which held that the appellant was not eligible for a diet supplement because it was not required for any of the conditions or dietary needs described in section 6 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 5

EAPWDR, section 66 and section 6 of Schedule C

PART E – SUMMARY OF FACTS

The appellant is a dependent child in a family unit in receipt of disability assistance. The appellant's parent requested a diet supplement on the appellant's behalf and is acting on behalf of the appellant, with the assistance of an advocate, for the appeal hearing.

Information before the ministry at reconsideration

On May 1, 2019, the ministry received a letter dated April 19, 2019, co-authored by a medical practitioner and a registered dietician who provide the following information. The appellant is living with a metabolic disorder called very long chain acyl-CoA dehydrogenase deficiency (VLCAD) which results in an inability of the body to break down certain fats. VLCAD is managed by following a life-long daily diet that is limited in long chain fats and high in medium chain triglyceride oil. Lifelong adherence to the VLCAD diet is necessary to prevent complications such as cardiomyopathy and liver disease. It is necessary for the appellant to follow a low fat, heart healthy diet consisting of fruits and vegetables, grains, and small amounts of lean meat. Low fat alternatives will also be needed. The requirement for infant formula for approximately 6 months is also identified.

On May 9, 2019, the ministry approved the request for infant formula but denied the diet supplement.

On June 5, 2019, reconsideration of the ministry's denial of the diet supplement was requested. In the Request for Reconsideration, the appellant's parent writes that not following the required specific diet could result in long-term hospitalization or death. It is also noted that most heavily processed foods are difficult for the appellant to process, that finding organic low-fat options at the food bank is difficult, and that in 6 months the appellant will require Medium Chain Triglyceride (MCT) oil which, on average, costs \$40 per bottle.

Information and documentation provided on appeal and admissibility

The appellant's Notice of Appeal (NOA), dated June 17, 2019, in which the appellant's medical condition is confirmed and the parent indicates the desire "to appeal to change the list of accepted [medical] conditions."

At the hearing, the appellant's parent explained that VLCAD previously went undiagnosed but is now detectable at birth by a blood test. The condition is pretty rare, with about 4 cases diagnosed each year in BC, and can be fatal. The appellant cannot eat foods with heavy fats, such as egg yolks and avocados, and requires lean meats and other low fat foods as well as an oil supplement to help break down heavy fats into medium chain fats. The advocate added that the appellant is under the regular care of nurse practitioner, with the parent clarifying that a whole medical team supervises the appellant, seeing the appellant every three months with tests conducted at 3 or 6 month intervals (including blood tests, echo scans and eye tests).

At the hearing, the ministry reviewed the reconsideration decision, noting that the ministry is limited to applying the legislation as written. The ministry also noted that some of the appellant's information, such as the need for low sodium foods, may fall within one of the other listed diet supplements but that the information would need to be confirmed by the medical practitioner.

In accordance with section 22(4) of the *Employment and Assistance Act* (EAA), the panel may admit as evidence only (a) information and records that were before the minister when the decision being appealed was made, and

(b) oral or written testimony that is in support of the information and records available at the time of reconsideration.

As the information in the NOA and at hearing reiterated prior submissions, it was admitted as testimony in support of the information at reconsideration.

The arguments of both parties are set out in Part F of this decision.

PART F – REASONS FOR PANEL DECISION**Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant a diet supplement was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the requirement of section 6 of Schedule C of the EAPWDR was not met because the diet supplement is not required for one of the medical conditions or dietary needs listed in that section?

Relevant Legislation**EAPWDA****Disability assistance and supplements**

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

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.

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.

Decision

Positions of the Parties

On behalf of the appellant, the advocate and parent do not argue that the appellant's medical condition is included in those for which a diet supplement may be provided but instead argue that the list of diets and medical conditions for which a diet supplement is provided should be expanded to include VLCAD, which has only been diagnosable fairly recently.

While sympathizing with the appellant's medical condition, the ministry's position is that the appellant's dietary requirements and medical condition are not listed under section 6 of Schedule C and therefore the ministry cannot provide a diet supplement.

Panel Analysis

Section 5 of the EAPWDA allows for the minister to provide supplements for eligible family units as described in section 66 and section 6 of Schedule C of the EAPWDR.

Section 6(1) of Schedule C describes the specific diet supplements as either a type of diet (restricted sodium, high protein, gluten-free, ketogenic, or low phenylalanine) or as a diet related to a medical condition/treatment (diabetes, kidney dialysis, dysphasia or cystic fibrosis). No other bases of eligibility for diet supplements are provided. Subsection (2) sets out an additional requirement for the provision of a diet supplement that is for a high-protein diet: the diet must be confirmed by a medical or nurse practitioner as being necessary for one of the medical conditions listed in that subsection – cancer, chronic inflammatory bowel disease, Crohn's disease, ulcerative colitis, HIV positive diagnosis, AIDS, chronic bacterial infection, tuberculosis, hyperthyroidism, osteoporosis, hepatitis B, or hepatitis C.

In this case, a medical practitioner has identified the need for a specialized VLCAD diet for the appellant. The medical practitioner does not identify any of the other diets or medical conditions described in sections 6(1) and (2) of Schedule C. In the reconsideration submission, the appellant's parent states that "no sodium" is part of the required diet but this is not confirmed by a medical or nurse practitioner, which is a legislated requirement. While acknowledging that the information clearly establishes the appellant's need for a specialized VLCAD diet, given

that this diet is not required for one of the medical conditions or dietary needs set out in section 6 of Schedule C and as none of the other diets/medical conditions for which a diet supplement may be provided are confirmed by a medical or nurse practitioner, the panel concludes that the ministry has reasonably determined that the appellant is not eligible for a diet supplement based on the legislation.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant had not met all requirements set out under section 6 of Schedule C of the EAPWDR for a diet supplement was a reasonable application of the legislation. The ministry's decision is confirmed and the appellant is not successful on appeal.

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PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION 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? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/07/09

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/09

PRINT NAME

Carlos Garcia

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/09