

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development (ministry)'s reconsideration decision dated August 14, 2019, finding the appellant is not eligible to receive the diabetic diet supplement under section 66 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) as the appellant does not meet the legislated requirements in Schedule "C" section 6(4) of the EAPWDR.

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**Summary of key dates**

- July 2, 2019- The ministry received the appellant's application for the diabetic diet supplement
- July 11, 2019- The appellant's application was denied.
- July 31, 2019- The appellant requested a reconsideration of the decision.
- August 1, 2019- The appellant submitted a signed request for reconsideration.
- August 14, 2019- In its Reconsideration Decision the ministry found the appellant was not eligible to receive the diabetic diet supplement.

Evidence before the ministry at the time of reconsideration:

- A letter written by the appellant's doctor(1) dated July 2, 2019 which states:
 - The appellant has laboratory evidence of elevated hemoglobin A1C and would benefit from a diabetic diet.
 - The expected duration of need is ongoing.
- A letter written by the appellant's doctor(2) dated July 23, 2019 which stated:
 - The appellant needs to increase his diet allowance. The appellant has multiple chronic medical conditions including Hepatitis C, hypertension, glucose intolerance, hyperlipidemia, osteoarthritis and a weakened immune system.
- A letter written by the appellant's doctor(2) dated July 30, 2019 which stated:
 - The appellant has hypertension, diet controlled diabetes, obesity and hepatitis C.
 - The appellant is eligible for a diet supplement totalling \$85 per month under section 66 because the appellant requires a restricted sodium diet, a diabetic diet and a ketogenic diet to better control his medical conditions.
- On August 8, 2019 the ministry approved the appellant for the Ketogenic diet supplement in the amount of \$40 per month.

Additional Information

- In the Notice of Appeal dated August 20, 2019 the appellant wrote:
 - Vegetables and fruit are expensive, especially in the cold times.
 - He was not sure of the list in section 6(1) for the need to supplement.
- At the hearing, the appellant stated:
 - He has changed his diet and has lost 20 pounds.
 - His changed diet is expensive and with winter coming will be even more

expensive.

- The ministry can save his life if they give him the additional funds.
 - Some people need extra, he needs extra.
 - He only needs the extra for four months.
- At the hearing the ministry rep stated:
 - They recognized the appellant had multiple conditions which were supported by his doctor.
 - The doctor listed all supplement amounts totalling \$85 but did not consider the appellant is only eligible for one only, the highest being \$40.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's determination that the appellant did not meet the eligibility requirements for a diabetic diet supplement was a reasonable application of the legislation.

The ministry upon review determined the appellant was not eligible for a diabetic diet supplement as he was already receiving the ketogenic diet supplement. EAPWD Regulation, Schedule C, subsection 6(4) sets out that 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 the person is eligible.

The appellant's doctor believes the appellant requires diet supplements for a restricted sodium diet at \$10 per month, a diabetic diet at \$35 per month and a ketogenic diet at \$40 per month.

As the appellant is currently receiving the ketogenic supplement and it is the highest diet supplement, subsection 6(4) would mandate the appellant is not eligible for the additional supplements identified by his doctor.

Relevant 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 dietitian 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;
- (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, nurse practitioner or dietitian 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 the person is eligible.

Appellant's Position

With the high cost of living, when considering supplements, the ministry should approach each client as an individual. In his case, the appellant believes that, because he suffers from a number of medical conditions, he should be given the additional funding for the supplements his doctor has noted as he requires them to be healthy.

Ministry's Position

The appellant has more than one of the medical conditions set out in Section 6(1) of Schedule C of the EAPWDR. As the appellant is only entitled to receive the amount of the highest diet supplement for which he is eligible, this being the ketogenic diet @ \$40 per month, all other medical conditions would not be eligible for a diet supplement.

Panel Decision

The legislation under section 66 of the EAPWDR in Schedule "C" section 6(4) states, "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 the person is eligible." The legislation does not provide for any deviation from this clause. As the appellant does have more than one of the medical condition set out in subsection (1) and is currently receiving the highest diet supplement for which he is eligible, the panel finds the ministry's determination the appellant was not eligible for additional supplements was a reasonable application of the relevant legislation.

Conclusion

The panel finds the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's reconsideration decision. The appellant is not successful in his appeal.

APPEAL NUMBER

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

Charles Schellinck

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/09/12

PRINT NAME

Wes Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/12

PRINT NAME

Melissa McLean

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/12