

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") reconsideration decision dated August 19, 2019 which denied the appellant's request for a diet supplement by reason that the appellant did not meet the legislative requirements set out in s.66(1)(2) and Schedule C, section 6 of the Employment and Assistance for Persons With Disabilities Regulation ("EAPWDR") to qualify for the supplement.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act ("EAA")
Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR")

PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration was:

- The appellant was in receipt of a diet supplement from May 16, 2007 until June 4, 2019 at which time the appellant's eligibility for the diet supplement was reviewed by the Ministry.
- Previously the Ministry provided the appellant a diet supplement because they relied on information from the appellant's various physicians that the appellant was at risk of diabetes. This information includes:
 - o A May 16, 2007 letter from a physician stating that the appellant would benefit from a diabetes diet and should receive a diabetes diet allowance for 12 months;
 - o A May 11, 2009 letter from the same physician stating that the appellant would benefit from a diabetes diet and should receive a diabetes diet allowance for 12 months;
 - o A May 5, 2011 letter from a second physician stating the appellant requires continuation of her diet supplement as she is at risk of hypercholesterolemia and diabetes due to her antipsychotic medications. She will require the diet on an ongoing basis.
 - o A May 7, 2013 letter from a second physician stating that the appellant has been diagnosed with Schizoaffective Disorder, Asthma, Focal Segmental Glomerulosclerosis and Hypercholesterolemia and she requires a special diet for her multiple health issues on an indefinite basis.
- On June 4, 2019 the Ministry asked the appellant to provide them with information from a medical practitioner confirming that the appellant still required the diet supplement.
- On June 10, 2019 the Ministry received a note from the appellant's physician which stated: "needs high protein diet supplement".
- The Ministry requested a diagnosis from the appellant's physician.
- On June 26, 2019 the Ministry received a fax from a specialist (the "Specialist") stating: "the appellant has been under my care for 10 years for kidney disease (focal segmental glomerulosclerosis). She has requested my help with a letter stating her diagnosis in order to renew her meal allowance supplements. Note that her kidney disease does not necessitate any specific dietary restrictions or supplements.
- On July 16, 2019 the Ministry denied the appellant's request for a renewal of her diet supplement. The Ministry relied on the opinion of the Specialist.
- The appellant's request for reconsideration provided:
 - o She has been receiving the diet allowance since about 1999;
 - o She leaks a lot of protein in her urine. The disease is called Focal Sclerosis; and
 - o She is also applying for the nutritional supplement because the disease is lifelong.

The Notice of appeal states: "it is not diabetes. Its renal. I leak protein in my urine. Disease called focal sclerosis".

Prior to the hearing the appellant provided new evidence from a doctor which was a prescription pad indicating "the appellant required a diabetic diet for diabetes. 2 years repeats". The Ministry representative did not object to the entry of the new evidence. The additional prescription is in support of prior medical information indicating that the appellant was at risk of diabetes. The panel determined the additional documentary evidence was admissible pursuant to s.22(4) of the EAA as it was in support of the medical records before the minister at reconsideration.

At the hearing, the appellant provided the following evidence that:

- She has been on the diet allowance for over 20 years;
- Her medication leads to diabetes; and
- She needs a high protein diets because she leaks protein in her urine. The kidney specialist doesn't think she requires it.

At the hearing, the appellant provided the following new evidence:

- She orders from a meal company so she needs financial help from the meals.
- The physician that indicated that she has diabetes has been her family doctor for 20 years. She switched to her in 2001. Her family doctor determined that the appellant was diabetic 3 weeks ago.

- The Specialist does not test her for diabetes. He tracks other things for the Kidneys.

The panel finds that the appellant's oral testimony is in support of prior medical information indicating that the appellant was at risk of diabetes. The panel determined the additional documentary evidence was admissible pursuant to s.22(4) of the EAA as it was in support of the medical records before the minister at reconsideration.

At the hearing the Ministry relied on their reconsideration decision and confirmed that the additional information the appellant originally supplied from the Specialist stated that she didn't need require a special diet. The Ministry indicated that based on the new information of September 12, 2019 the Ministry will be able to support and provide for the diet supplement going forward.

PART F – REASONS FOR PANEL DECISION**Issue on appeal:**

The issue on appeal is whether the Ministry's decision to deny the appellant's request for a diet supplement is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides:

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 dietitian confirms in writing the need for the special diet.

[en. B.C. Reg. 145/2015, Sch. 2, s. 6; am. B.C. Reg. 123/2019, App. 2, s. 2.]

For these reasons, the panel finds the Ministry's decision was (or was not) reasonably supported by the evidence (or a reasonable application of the applicable enactment in the circumstances of the appellant) and confirms (or rescinds) the decision.

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.

SCHEDULE A - 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.]

EAA s.22(4)

Panels of the tribunal to conduct appeals

22 (1) If a person commences an appeal in accordance with section 21 (1), the chair must appoint a panel consisting of up to 3 members of the tribunal to hear and determine the appeal.

(2) If a panel consists of more than one member, the chair must designate a chair of the panel from among the members of the panel, and if a panel consists of one member, that member is the chair of the panel.

(3) A panel must conduct a hearing into the decision being appealed within the prescribed period either

(a) orally, or

(b) with the consent of the parties, in writing.

(4) In a hearing referred to in subsection (3), a panel may admit as evidence only

(a) the information and records that were before the minister when the decision being appealed was made, and

(b) oral or written testimony in support of the information and records referred to in paragraph (a).

(5) Evidence referred to in subsection (4) may be admitted whether or not it would be admissible as evidence in a court of law.

(6) The panel chair is responsible for deciding any question of practice or procedure that arises during a hearing and is not provided for in the regulations or in the practices and procedures of the chair under section 20 (2) (a) [powers and duties of the chair].

The panel finds:

The panel finds that at the time the reconsideration decision was made the Ministry relied on the medical information before them, which was information from the appellant's physician indicating "needs high protein diet supplements" and from the Specialist indicating that "kidney disease does not necessitate any specific dietary restriction or supplements". As such the panel finds that it was reasonable for the Ministry to conclude that the appellant did not qualify for a diet supplement because the appellant did not have a diagnosis of diabetes or fit within any of the other criteria in Schedule C, section 6(1) EAPWDR.

The new information of September 12, 2019 is accepted by the panel. The new information that the appellant is diabetic is dated as of September 12, 2019. That diagnosis was never made from any of the appellant's previous physicians. According to the records before the Ministry and the new evidence, the earliest diagnosis of diabetes is September 12, 2019. The appellant's evidence set out in her notice of appeal is also that "it is not diabetes". The panel therefore finds that the additional prescription from the physician on September 12, 2019 can only be relied on as of September 12, 2019 and that the confirmation of diabetes, while accepted as evidence, is after the date that the appellant was denied the diet supplement.

The panel finds it reasonable for the Ministry to determine that a requirement of the legislation is that there must be a diagnosis of diabetes. This is set out in Schedule C, section 6(1)(b). The appellant did not submit that any of her other conditions applied to entitle her to the diet supplement. The panel also finds it reasonable that the Ministry was not able to provide the diet supplement under any of the other categories in Schedule C, section 6(1) of EAPWDR as of August 19, 2019.

The panel therefore finds on the previous evidence before the Ministry and also on the new evidence of September 12, 2019, the Ministry decision is reasonably supported by the evidence, and a reasonable application of the applicable enactment in the circumstances of the appellant.

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The Ministry decision is therefore confirmed.

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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

MEGHAN WALLACE

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/09/18

PRINT NAME

LINDA SMERYCHYNSKI

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/18

PRINT NAME

KENT ASHBY

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/18