

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated November 3, 2020, in which the ministry found the appellant was not eligible for a diet supplement (*high protein diet*) under subsection 66(1)(a) of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) because a medical practitioner (or other health professional) did not confirm the appellant needs a high protein diet for one of the medical conditions listed in section 6(2) of Schedule C.

The ministry also found that the appellant was not eligible for a diet supplement for diabetes under section 6(1) of EAPWDR Schedule C because a medical practitioner did not confirm that the appellant has diabetes.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 5

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 66, and section 6 of Schedule C

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision stating that:

- The appellant is a sole recipient of disability assistance.
- On September 1, 2020, the ministry received a letter from the appellant's doctor (obesity specialist, "Dr. X") requesting nutritional items (such as *Slimfast* meal replacements) and additional income for the appellant to purchase nutritious foods including food that is high in protein.
- On September 16, 2020, the ministry advised that the appellant was not eligible for a diet supplement because the legislative criteria weren't met.
- On October 21, 2020, the appellant submitted a *Request for Reconsideration* ("RFR") with a letter from an advocate dated October 14, 2020.
- On November 3, 2020, the ministry completed the review of the RFR.

2. A letter from Dr. X dated July 28, 2020. The letter stated that the appellant has severe obesity, impaired fasting glucose, and osteoarthritis. The appellant is receiving care from a medical weight management program and is on weight-promoting medications for mental health which have led to the development of pre-diabetes.

The letter stated that the appellant struggles to prepare meals and eat at times because of obesity, impaired glucose tolerance, and impaired mobility from the osteoarthritis. The appellant would therefore benefit from nutritional supplements/items such as *Slimstyle* meal replacements.

The letter said the appellant would also benefit from additional income to purchase more nutritious and wholesome foods including higher fibre, higher protein, and healthy fats. The letter stated the appellant requires a nutritious diet on an ongoing basis but the appellant's financial situation is a major barrier towards improved health.

3. An RFR signed by the appellant on October 20, 2020, with a letter from the appellant and an advocate dated October 14, 2020. The letter gave the appellant's argument and the letter from Dr. X was enclosed.

The advocate said the appellant is on a "strict dietary regimen" but cannot obtain meal replacements, high fibre and high protein foods; and fresh foods with their current income. The meal replacement costs approximately \$40 per container; the appellant needs 3 to 4 containers of meal replacement per month to meet the required diet regime; and fresh foods, and high protein/high fibre nutrition are also more costly.

Additional information

With the consent of both parties, the appeal was held as a written hearing pursuant to section 22(3)(b) of the Employment and Assistance Act ("EAA"). Subsequent to the reconsideration decision neither party filed any new evidence requiring an admissibility determination in accordance with section 22(4) of the EAA.

The appellant filed a *Notice of Appeal* with a handwritten statement that the panel accepted as argument. The appeal submission also had a letter from the advocate that the panel considered to be argument. In an email to the Tribunal, the ministry stated that the reconsideration summary is the ministry's submission on appeal.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision that found the appellant was not eligible for a diet supplement (*high protein diet* and supplement for diabetes) under subsection 66(1)(a) of the EAPWDR and section 6 of Schedule B was reasonable. Did the ministry reasonably conclude that the legislative requirements were not met because the doctor did not confirm that the appellant needs a high protein diet or diabetes supplement for the medical conditions specified in the Regulation?

The ministry based the reconsideration decision on the following 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 or hardship 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 [...]
- (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.

Analysis and panel's decision

Diet supplement - EAPWDR section 66 - general requirements

Section 66(1) authorizes the ministry to pay for a diet supplement for persons in receipt of disability benefits. In addition, the requirements in subsections 66(1)(a) and 66(1)(b) must also be met as well as additional criteria under section 66(2).

Under subsection 66(1)(a), the person must be described in section 6(1) of Schedule C which means they require one on the special diets set out in that section of the EAPWDR. At the same time, under subsection 66(1)(b) of the EAPWDR, the person cannot not be described in section 8(1) of Schedule A, *people receiving special care*. Section 66(2) sets out further eligibility requirements for the diet supplement such as the requirement to not be receiving another nutrition-related supplement.

The ministry acknowledged that these EAPWDR criteria were met. Specifically, the appellant was in receipt of disability assistance at the time of the application for the diet supplement. The advocate noted that the appellant was designated as a Person with Disabilities approximately 20 years ago.

In addition, the appellant was not residing in a special care facility and a medical practitioner (Dr. X) confirmed in writing that the appellant needs a special diet including meal replacement items, and foods high in protein and fibre. The appellant was also not receiving another nutrition-related supplement. The advocate noted in the appeal submission that the ministry had refused to provide another supplement (*Monthly nutritional supplement*).

High protein diet supplement - EAPWDR - additional requirement, section 6(2) of Schedule C

Although the appellant met many of the requirements for a diet supplement, the ministry argued the appellant was not eligible for the high protein diet described in subsection 6(1)(d) of Schedule C which authorizes the minister to provide \$40 for each calendar month for a person who requires a high protein diet if the additional requirement for a specific medical condition under section 6(2) of Schedule C is met. The ministry argued that requirement was not met because Dr. X. did not specify that the supplement was required for any of the medical conditions listed in clauses (a) to (l).

The panel finds the ministry's application of the legislation was reasonable because section 6(2) of Schedule C sets out an additional requirement for the high protein supplement; i.e., the special diet must be confirmed by a medical practitioner (or other specified health professional) as necessary for one of the medical conditions listed in clauses (a) to (l) including cancer, bowel disease, Crohn's disease, colitis, HIV/AIDS, chronic infection, tuberculosis, hyperthyroidism, osteoporosis, and hepatitis.

The appellant argued they need the high protein diet supplement "to avoid serious medical complications" including "grave risk for diabetes, significant muscle mass loss, and significant deterioration of the liver" if obesity is not controlled. However, Dr. X prescribed the meal replacements and nutritious foods including higher protein to manage the appellant's obesity, pre-diabetes, impaired glucose tolerance, and impaired mobility due to osteoarthritis. These medical conditions are not listed in EAPWDR Schedule C. While osteoporosis is listed in section 6(2)(j) the panel noted that osteoporosis is a different condition than the appellant's diagnosis, osteoarthritis, which is not on the list.

The appellant and Dr. X argued the appellant cannot afford meal replacements and nutritious foods on the current disability income and needs the extra funds "for effective ongoing treatment" moving forward. The panel is sympathetic to the appellant's circumstances but unfortunately financial need is not a consideration for a diet supplement under the EAPWDR. The ministry is required to follow the legislation and is not authorized to provide a diet supplement unless all of the requirements are met. The panel does not have the authority to change what the legislation says.

The appellant was not prescribed a high protein diet for one of the conditions listed in section 6(2) of Schedule C as required by the Regulation. The panel therefore finds that the ministry's decision to deny the high protein diet supplement was a reasonable application of the legislation in the circumstances of the appellant.

Diabetes diet supplement - EAPWDR - subsection 6(1)(b) of Schedule C

The ministry argued the appellant was not eligible for the supplement for diabetes described in Schedule C, \$35 for each calendar month for a person who has diabetes because the appellant was not diagnosed with diabetes. The appellant argued they are at "grave risk for diabetes."

The information from Dr. X confirmed that the appellant has developed “pre-diabetes” and has “impaired glucose tolerance.” The doctor confirmed the appellant’s health is “gravely at risk” without effective ongoing treatment that includes “nutritious and wholesome foods”, higher in fibre, protein, and healthy fats.

Under the Regulation, the ministry is authorized to provide the diabetic supplement only for a person “who has diabetes.” While the evidence indicates the appellant is at high risk for diabetes, the current diagnosis are “pre-diabetes” and “impaired glucose tolerance” which are not eligible conditions under EAPWDR Schedule C. The panel therefore finds that the ministry reasonably applied the legislation in finding the appellant was not eligible for \$35 per month for diabetes.

Conclusion

The panel considered the information in its entirety and finds the ministry’s reconsideration decision that determined the appellant ineligible for a diet supplement (*high protein diet* and supplement for diabetes) was reasonably supported by the evidence and was a reasonable application of the legislation. To be eligible for the high protein supplement, the EAPWDR requires confirmation from a medical professional that the special diet is required for one of the conditions listed in section 6(2) of Schedule C. To be eligible for the diabetic supplement, the person must be diagnosed with diabetes as required under subsection 6(1)(b) of Schedule C. Dr. X did not state the appellant has diabetes or any of the medical conditions listed in the Regulation. The panel confirms the reconsideration decision as a reasonable application of the legislation. The appellant is not successful on appeal.

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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020-12-30

PRINT NAME

Roy Wares

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-12-30

PRINT NAME

Diane O'Connor

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-12-30