

APPEAL NUMBER  
2021-0079

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision which denied the appellant's request for a diet supplement because the request for a person diagnosed with hyperlipidemia does not meet the eligibility requirements of Schedule C, section 6(1) of the Employment and Assistance for Persons with Disabilities Regulation.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 5.  
Employment and assistance for Persons with Disabilities Regulation (EAPWDR), 66 and Schedule C, section 6.

## **PART E – SUMMARY OF FACTS**

Evidence before the ministry at reconsideration consisted of the following:

- The appellant is a sole recipient of disability assistance.
- On January 26, 2021, the appellant advised the ministry they had been referred to a dietician by their doctor and that they were diabetic. The ministry informed the appellant that they may be entitled to a diet supplement.
- The ministry was provided with a letter from the doctor on February 25, 2021, which stated:
  - “The appellant was diagnosed with hyperlipidemia on February 5, 2021. The appellant was assessed by a nutritionist who identified irregular and maladaptive eating habits. The appellant has been trying to improve diet choices and to start exercising. The appellant is requesting financial assistance for diet supplements and support.”
- The ministry informed the appellant on March 10, 2021 that they were not eligible for a diet supplement and on the same date confirmed in a letter that a diagnosis of hyperlipidemia and irregular and maladaptive eating habits did not meet the criteria for approval of a health supplement.
- On April 7, 2021 the appellant submitted a Request for Reconsideration in which was stated:
  - *“I have been diagnosed with functional neurological disorder for over a year which requires a lot of medications daily. Unfortunately, these medications come with terrible side effects such as constipation, problems with bowel movement, high liver enzyme, high cholesterol, extreme weight gain along with skin problems. Therefore, my doctor restricted my diet to whole grain foods, vegetables, sodium and gluten free and lastly high protein diet. This journey has been unbearable for me as the cost of such a diet is high and I cannot afford it. I would appreciate a reconsideration as it would be a huge assistance to me and my condition.”*

### **Reconsideration Decision**

The appellant signed the Request for Reconsideration on April 6, 2021 with commentary as noted above.

### **Notice of Appeal**

On April 20, 2021, the appellant signed a Notice of Appeal which contained the following under reasons:

- *“Due to my condition I don’t have enough money to get the healthy food that I need my medical condition.”*

On the same date, the appellant provided an E-Mail which stated:

- *“Hello to whom it may concern,  
My name is (appellant’s name) and the attached is my letter for appeal. Due to my medical condition I don’t have enough money for the diet I required to have.”*

### **Admissibility**

The appellant has provided no information after the date of reconsideration, apart from the Notice of appeal which contained no new information. The panel finds there is no basis to require an admissibility ruling under section 22(4) of the Employment and Assistance Act.

### **Hearing**

The panel conducted a telephone hearing on May 10, 2021. Attending the hearing were the panel, the appellant and the ministry representative.

The appellant summarized for the panel their medical condition and that the diagnosis of functional neurological disorder requires a lot of medications that carry with them terrible side effects such as constipation, problems with bowel movement, high liver enzyme, high cholesterol and extreme weight gain along with skin problems. The appellant understands that high cholesterol itself is a problem but that this is a result of the functional neurological disorder. After consulting a web site concerned with this disorder, the appellant feels the request is justified by that site’s recommendation for special high protein, sodium and gluten free diets which she cannot afford.

The ministry presentation consisted of a summary of the reconsideration decision to deny the request. This decision is based essentially on the fact that the diagnosis of the appellant’s doctor for hyperlipidemia does not specify a specific diet that is listed in the legislation. In response to questions, the ministry representative agreed that there is no reason the appellant cannot file another appeal if the appellant should obtain a written confirmation from a professional listed in the legislation that specifies a supplement that is covered.

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Further, the ministry representative confirmed it is possible that a diagnosis of hyperlipidemia could also specify, for example, a glucose free or sodium free diet. However, a high protein diet is reserved for specific listed medical conditions.

## **PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the ministry reconsideration decision which denied the appellant's request for a diet supplement for a person diagnosed with hyperlipidemia does not meet the legislated eligibility requirements, was reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

### **Ministry Position**

Under the heading of basic eligibility, the ministry notes that section 66(1) of the EAPWDR allows the ministry to provide a diet supplement that is described under Schedule C, section 6 to a family in receipt of disability assistance if the supplement is provided to a person in the family unit who is described in section 6(1) of Schedule C, and is not described in section 8(1) (people receiving special care) of Schedule A. The ministry notes the appellant meets these criteria.

The ministry then reviews the specific diet supplements that the ministry may provide under EAPWDR, Schedule C, section 6(1):

- \$10 for each calendar month for a person who requires a restricted sodium diet;
- \$35 for each calendar month for a person who has diabetes;
- \$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;
- \$40 for each calendar month for a person who requires a high protein diet;
- \$40 for each calendar month for a person who requires a gluten free diet;
- \$40 for each calendar month for a person who has dysphagia;
- \$50 for each calendar month for a person who has cystic fibrosis;
- \$40 for each calendar month for which a person requires a ketogenic diet;
- \$40 for each calendar month for which a person requires a low phenylalanine diet;

The ministry notes that the diagnosis provided by the appellant's doctor confirms the appellant has hyperlipidemia and that the nutritionist has identified irregular and maladaptive eating habits. Based on this information, the ministry is unable to determine a need for one of the specific diet supplements listed in the legislation.

The ministry then notes that the appellant's written submissions indicate the appellant has diabetes and is required to eat a low sodium, gluten free and high protein diet. The ministry notes that EAPWDR, Schedule C, section 6 (2) requires that a medical practitioner, nurse practitioner or dietician must confirm in writing the need for any of these specific diets and these are not in evidence. Further, the ministry notes that EAPWDR, Schedule C, section 6(2) requires for a high protein diet that a medical practitioner, nurse practitioner or dietician must confirm in writing the need for a high protein diet because the appellant has one of the following medical conditions:

- cancer that requires nutritional support during radiation therapy, chemotherapy, surgical therapy, or ongoing medical treatment;
- chronic inflammatory bowel disease;
- Crohn's disease;
- Ulcerative colitis;
- HIV positive diagnosis;
- AIDS;
- Chronic bacterial infection;
- Tuberculosis;
- Hyperthyroidism;
- Osteoporosis;
- Hepatitis B;
- Hepatitis C.

The ministry notes the appellant has not provided evidence in the noted form as required by the legislation.

The ministry concludes the appellant's request for a diet supplement does not meet the eligibility requirements of the legislation in EAPWDR, Schedule C, section 6(1) and denied the request.

### **Appellants Position**

In the Request for Reconsideration, the appellant asserts without additional evidence that they have been diagnosed with a functional neurological disorder which requires medication with side effects such as constipation, problems with bowel movement, high liver enzyme, high cholesterol, extreme weight gain along with skin problems. The appellant's diet has been restricted by the doctor to whole grain foods, vegetables, sodium and gluten free as well as a high protein diet; the cost of this diet is beyond the appellant's ability to afford. At the hearing, the appellant clarified that in consulting a specific web site concerned with individuals having functional neurological disorders, the appellant noted the recommendation for high protein, glucose free and sodium free diets to effectively deal with this condition. The appellant asserts that many people suffer from this disorder which is very hard to deal with and the required diets are beyond the appellant's ability to afford.

### **Panel Decision**

The panel notes and agrees with the ministry's partial overview of the legislative framework under which the request was considered.

- EAPWDA, section 5 authorizes the ministry to provide disability assistance or a supplement to an eligible family unit, subject to the regulations. EAPWDR section 61.01 defines the "nutrition-related supplements" that may be provided.
- The list includes "a supplement under section 66 (diet supplement)" which is the basis of the appellant's request under the EAPWDR.
- Section 66(1) provides that the ministry may pay for a diet supplement in accordance with EAPWDR, Schedule C, section 6 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 is described in Schedule C, section 6(1) and is not described in Schedule A, section 8(1) (a person receiving special care).
- Finally, EAPWDR, Schedule C, section 66(2) states that a person is not eligible unless the person is not receiving another nutrition-related supplement and a medical practitioner, nurse practitioner or dietician confirms in writing the need for the special diet. The ministry has determined that the appellant has satisfied the terms of "basic eligibility."

The panel agrees that the appellant receives disability assistance, is not a person receiving special care and is eligible for a diet supplement and, if the appellant's need for a special diet under the specific list in EAPWDR, Schedule C, section 6(1) is shown, a medical practitioner, nurse practitioner or dietician must confirm the need for that special diet, in writing.

The ministry reconsideration decision has declined the appellant's request and determined that hyperlipidemia is not a medical condition that is listed and/or for which a monthly supplement amount for a specific diet has been confirmed. The panel agrees and notes that the diagnosis of hyperlipidemia by itself is not in the list of conditions in section 6(1). The appellant's doctor did not diagnosis diabetes, dysphagia or cystic fibrosis. The doctor did not indicate the appellant required kidney dialysis, a restricted sodium diet, a ketogenic diet or a low phenylalanine diet. The panel agrees that there is no evidence that the appellant is eligible for any of the listed diet supplements based on the diagnosis alone. Therefore, the panel agrees that the ministry reconsideration decision was a reasonable application of the legislation in the circumstances of the appellant.

Finally, the panel notes the ministry has indicated that in respect of a high protein diet, EAPWDR, Schedule C, section 6(2) requires that a request for a high protein diet must be confirmed by an approved professional with a diagnosis in writing for a specific list of medical conditions (cancer, chronic inflammatory bowel disease, Crohn's disease, ulcerative colitis, HIV, Aids, chronic bacterial infection, tuberculosis, hyperthyroidism, osteoporosis, hepatitis B and C.); none of which are hyperlipidemia. Neither has the doctor confirmed in writing the need for a sodium restricted, gluten free or ketogenic diet based on a diagnosis of hyperlipidemia.

The panel agrees with the ministry that none of these diets contain the necessary condition for approval of a supplement of having a written confirmation of a medical practitioner, nurse practitioner or dietician of the need for that supplement. The appellant's doctor has diagnosed hyperlipidemia and the dietician's assessment has identified irregular or maladaptive eating habits. The panel is sympathetic with the appellant's situation and notes that the appellant points to a web site concerned with functional neurological disorders. It is the recommendation of this organization that the appellant is basing need and request for a special diet. The high cost of such a diet

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requires a supplement because the appellant cannot afford it. However, the legislation requires a medical practitioner, nurse practitioner or dietician to confirm in writing the need for the special diet.

**Conclusion**

The panel confirms the ministry reconsideration decision as it was a reasonable application of the legislation in the appellant's circumstances. The appellant is not successful upon appeal.

## **Employment and Assistance for Persons with Disabilities Act**

### **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.

## **Employment and Assistance for Persons with Disabilities Regulation**

### **Definitions**

61.01 In this Division:

"nutrition-related supplement" means any of the following supplements:

- (a) a supplement under section 66 [diet supplement];
- (b) a supplement under section 67 [nutritional supplement — monthly], other than a supplement for vitamins and minerals;
- (c) a supplement under section 67.001 [nutritional supplement — short-term];
- (d) a supplement under section 67.01 [tube feed nutritional supplement];
- (e) a supplement under section 2 (3) of Schedule C that is related to nutrition;

### **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**

#### **Health Supplements**

##### **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.



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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

Keith Lacroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/05/10

PRINT NAME

Margarita Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/12

PRINT NAME

Mike Skinner

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/10