

**Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision, dated January 25, 2024 (the “Reconsideration Decision”) of the Ministry of Social Development and Poverty Reduction (the “Ministry”). The Ministry determined that the Appellant was not eligible for a dietary supplement because the Ministry had not received written confirmation from a medical practitioner, nurse practitioner, or dietician that the supplement was required by the Appellant, as set out in section 66(2) of the Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”).

**Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Regulation*- sections 61.01 and 66, Schedule A- section 8 and Schedule C- section 6

A full text of the above-noted legislation appears at the end of Part F of this decision.

**Part E – Summary of Facts**

The Appellant is eligible for disability assistance but is receiving medical services only.

At the time of the Reconsideration Decision, the information before the Ministry included the following:

- 11 pages of clinical records from the Appellant’s doctor, covering the period from July 21, 2017 to August 11, 2023, which:
  - reference that the Appellant is being treated for diabetes and while there are references to the Appellant’s diet (“avoid all soft drinks and juices” and “drinks 3 cans of Coke daily. Also some juice” in the September 22, 2022 entry and “he has been eating much better but he has not been exercising” in the September 8, 2020 entry); and
  - make no specific recommendations regarding diet or indicate that the Appellant requires a dietary supplement in order to assist him with eating foods that will keep his blood sugar down (the “Clinical Records”).
- a one page undated patient drug profile, listing the medications that the Appellant was taking between September 17, 2018 and August 11, 2023 (the “Medications Profile”);
- a letter from the Ministry to the Appellant, dated December 14, 2023, denying the Appellant’s request for a dietary supplement on the basis that, although the Appellant’s doctor had confirmed a diagnosis of diabetes, it had not been confirmed in writing that the Appellant required a dietary supplement; and
- the Appellant’s undated Request for Reconsideration, which included a typed note, setting out the following:
  - that the Appellant had submitted a requisition from the doctor confirming his diabetes;
  - that the Appellant was in dire need of a certain diet to keep blood sugar levels down;
  - that the Appellant had been advised that if he did not change his diet, he would be put on insulin;
  - that most of that the Appellant consumed was not sugar free due to cost; and

- that a supplement would help the Appellant get back on track and prevent the need for insulin.

The Appellant's Notice of Appeal was filed on February 14, 2024 but the Notice of Appeal did not contain any new information in it.

### ***The Hearing***

At the hearing of the appeal, the panel heard from the Appellant's wife as a witness, the Appellant, and a representative of the Ministry.

### **The Appellant**

At the hearing of the appeal, the Appellant's wife described the Appellant as being in bad health and suffering from diabetes. The Appellant was very restricted in his activities and had difficulty moving around. The Appellant was described as being forgetful and prone to losing consciousness at times.

The Appellant's wife also described taking him to doctors often as the Appellant cannot drive.

The Appellant subsequently described his background as a journalist who worked a lot and came to Canada as a refugee. The Appellant stated that he was asking for his rights as a refugee and that their immigration documents, identifying them as workers, are not correct

Presently, the Appellant spends most of his time at home reading as he can't go out much.

The Appellant confirmed that he has a family doctor who verbally recommended that he apply for a dietary supplement but that the doctor did not put that into a note for him. The Appellant stated that the doctor has, in fact, made recommendations for specific dietary items such as juices and almond flour.

### **The Ministry**

The Ministry relied on the Reconsideration Decision at the hearing of the appeal. The Ministry's position is that while it was satisfied that the Appellant was diabetic, there was no written confirmation from any of the categories of professionals specifically referenced in the Regulation that the Appellant needed a dietary supplement. The Ministry advised that, generally, a note from the Appellant's doctor, if it otherwise satisfied the requirements of the Regulation, would be sufficient as written confirmation.

### **Admissibility of Evidence**

No new documentary evidence was submitted by the Appellant after the Reconsideration Decision and the panel finds that the oral evidence given by the Appellant and his wife is admissible, pursuant to section 22(4) of the *Employment and Assistance Act* as being reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

**Part F – Reasons for Panel Decision****The Issue**

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant was not eligible for a dietary supplement because it had not received written confirmation from a medical practitioner, nurse practitioner, or dietician that the supplement was required by the Appellant, as set out in section 66(2) of the Regulation.

**Appellant's Position**

The Appellant's position is that he should be eligible for a diet supplement because he has diabetes which was diagnosed by his doctor.

**Ministry's Position**

The Ministry's position is that the Appellant is not eligible for a diet supplement because it has not been confirmed in writing that the Appellant needs a diet supplement.

**Panel Decision**

Eligibility for a diet supplement is governed by section 66 of the Regulation.

Section 66(1) of the Regulation sets out that the Ministry may provide a dietary supplement to the following categories of recipients of assistance:

- those described in section 6 (1) of Schedule C, and
- those not described in section 8 (2) (b) [people in special care] of Schedule A.

Section 8(2)(b) of Schedule C to the Regulation refers to persons in special care. The evidence of the Appellant is that he lives at home and does not live in a special care facility. In the result, the Appellant satisfies the requirements of section 66(1) of the Regulation.

The Appellant is a person described in section 6(1) of Schedule C, which provides for the following types of dietary supplements in the following amounts:

- (a) \$15 for each calendar month for a person who requires a restricted sodium diet;
- (b) \$60 for each calendar month for a person who has diabetes;
- (c) \$50 for each calendar month for a person who requires kidney dialysis;
- (d) \$65 for each calendar month for a person who requires a high protein diet;

- (e) \$65 for each calendar month for a person who requires a gluten-free diet;
- (f) \$65 for each calendar month for a person who has dysphagia;
- (g) \$80 for each calendar month for a person who has cystic fibrosis;
- (h) \$65 for each calendar month for which a person requires a ketogenic diet; and
- (i) \$65 for each calendar month for which a person requires a low phenylalanine diet.

The Ministry has accepted that the Appellant has diabetes and the clinical notes provided by the Appellant appear to confirm that diagnosis. As such, he is a person specifically described in section 6(1)(b) of Schedule C to the Regulation.

However, section 66(2) of the Regulation also requires that an applicant must not be receiving another nutrition-related supplement and that the need for the special diet be confirmed in writing by a medical practitioner, nurse practitioner or dietitian.

While there was no evidence that the Appellant is receiving another nutrition-related supplement and the Ministry did not take the position that the Appellant was receiving such a supplement, neither the Clinical Records nor the Medications Profile specifically confirm the need for any nutrition related supplement, including a diet supplement. At most, the Clinical Records make reference to some of the Appellant's dietary habits and make recommendations about the Appellant's diet. This falls short of being written confirmation that the Appellant requires a diet supplement.

### **Conclusion**

The panel finds that the Ministry was reasonable in its determination that the Appellant's need for a diet supplement has not been confirmed in writing by a medical practitioner, nurse practitioner or a dietitian, as required by the legislation.

The Appellant is not successful in the appeal.

### **Relevant Legislation**

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

#### **Definitions**

**61.01** In this Division:

**"continuation date",**

- (a) in relation to a person who is a main continued person under section 61.1 (1) [*access to medical services only*] as a result of having been part of a family unit on the date the family unit ceased to be eligible for disability assistance, means that date, and
- (b) in relation to a dependent continued person under section 61.1 (2) of a main continued person, means the continuation date of the main continued person;

**"continued person"** means

- (a) a main continued person under section 61.1 (1), or
- (b) a dependent continued person under section 61.1 (2);

**"maintenance", "maintenance agreement" and "maintenance order"** have the same meanings as in section 16;

**"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;

**"qualifying federal benefit"** means a supplement under Part II or an allowance under Part III of the *Old Age Security Act* (Canada).

#### **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 (2) (b) [*people in 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.

*Employment and Assistance for Persons with Disabilities Regulation, 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) \$15 for each calendar month for a person who requires a restricted sodium diet;
- (b) \$60 for each calendar month for a person who has diabetes;
- (c) \$50 for each calendar month for a person who requires kidney dialysis;
- (d) \$65 for each calendar month for a person who requires a high protein diet;
- (e) \$65 for each calendar month for a person who requires a gluten-free diet;
- (f) \$65 for each calendar month for a person who has dysphagia;
- (g) \$80 for each calendar month for a person who has cystic fibrosis;
- (h) \$65 for each calendar month for which a person requires a ketogenic diet;
- (i) \$65 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 \$50 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.

### **People in special care or otherwise living away**

**8** (1) In this section, "**person in special care**" and "**specified person**" have the same meanings as in section 70.5 [*definitions — housing stability supplement*] of this regulation.

(2) For a family unit that includes one or more specified persons, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the amount that would be calculated under this Schedule if the specified persons were not part of the family unit, and

(b) for each specified person who is a person in special care,

(i) the actual cost, if any, to the person of the accommodation and care at the rate approved by the minister for the type of the facility, and

(ii) a comforts allowance in the following amount:

(A) if the person is a person with disabilities, \$222;

(B) if the person is not a person with disabilities, \$115.

(3) For certainty, this section applies in relation to a family unit that includes only one or more persons in special care and, in that case, the amount referred to in subsection (2) (a) is to be considered to be zero.

2024-0063

**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)

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

**Part H – Signatures**

Print Name

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2024/03/06

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2024/03/06

Print Name

Kevin Ash

Signature of Member

Date (Year/Month/Day)

2024/03/06