

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“Ministry”) decision of July 10, 2024 that the Appellant is not eligible for a diet supplement.

The Appellant was denied the request because the Employment and Assistance Regulation Section 73 (1) (b) does not permit a person to receive a diet supplement while they are residing in a special care facility.

Part D – Relevant Legislation

Employment and Assistance Regulation sections 66.1, 73, Schedule A section 8, and Schedule C section 8 (“the Regulation”)

Applicable legislation is found in Appendix A.

Part E – Summary of Facts

The Appellant requested a telephone hearing of this appeal. A telephone appeal hearing took place on July 29, 2024 at 10 am. The Appellant, a Ministry Representative, and all Panel Members were in attendance.

Background

The Appellant is a recipient of income assistance residing in an adult special care facility. While residing in the facility, the Appellant receives a \$115 comforts allowance and any costs for accommodation and care are paid direct to the facility.

On June 5, 2024, the Request for a Diet Supplement was completed by a Medical Practitioner who confirmed the need for a gluten-free diet for the Appellant's medical condition of psoriasis.

On June 13, 2024, the Appellant was denied the request as the Ministry determined a diet supplement is not available to a person while they are in an adult special care facility.

At Reconsideration, the Appellant stated that:

- His doctor told him he needs a gluten-free diet for psoriasis.
- The special care facility where he resides is a non-profit organization, all food is by donation, and the facility cannot accommodate the Appellant's needs. (The Appellant included a letter from the special care facility; the letter writer confirmed that due to financial barriers, the facility is unable to accommodate the Appellant's gluten-free diet.)
- The gluten-free diet supplement will help him buy some gluten-free meals.
- The Appellant's comforts allowance is \$115 and his total cost for food, creams and lotions is about \$330 monthly, so it is not enough, and he is requesting a total of \$330 per month.

The Appellant also included a picture of his legs showing the psoriasis.

Additional Information Submitted after Reconsideration**Appellant**

The Appellant noted on his Notice of Appeal form that "the place I reside is a non profit and they cannot accommodate my gluten-free diet as they've noted and my doctor has noted. I need my gluten-free food and creams."

Hearing

At the hearing, the Appellant explained more about the food services provided at the non-profit society housing where he resides. The facility does not serve breakfast and provides residents with items such as eggs and bread to prepare their own breakfast. Typically, the Appellant is served sandwiches for lunch, and a pasta dish with sauce for supper. The bread and pasta served are not gluten-free. The Appellant said that, if he had a diet supplement from the Ministry, he would be able to purchase gluten-free bread and pasta.

The Appellant has estimated that he needs a total of \$330 each month to supplement the food and meals provided in the special care facility with gluten-free products, and also to purchase creams and lotions for his psoriasis condition. The Appellant acknowledged the Reconsideration Decision focusses on his diet supplement request only and that it was suggested he could contact the Ministry's office to discuss his needs for creams and lotions separately. The Ministry then would determine if any resources may be available to him. The Appellant advised that he would be following up and exploring this with the Ministry.

At the hearing, the Ministry Representative relied on the Ministry's Reconsideration Decision. She noted that although the Appellant meets the eligibility requirement of being a recipient of income assistance and has documentation from a medical doctor attesting that he would benefit from a diet supplement for gluten-free food, Section 73 (1) (b) does not allow for a recipient of income assistance to receive a diet supplement if they reside in a special care facility.

A Panel Member asked if any consideration could be given to the fact that the Appellant is residing in a non-profit special facility that relies upon donated food. The Ministry Representative explained that the relevant legislation does not make any distinction between special facilities operated by non-profit organizations and those operated by other types of organizations. The Ministry does not have any discretion to treat the Appellant's request for a diet supplement differently from what the legislation permits.

Part F – Reasons for Panel Decision

The panel is required to determine if the Ministry's Reconsideration Decision was a) reasonably supported by the evidence, or b) a reasonable application of the applicable enactment.

The Appellant's Position

The Appellant asserts that he needs a diet supplement to purchase gluten-free food to help with his psoriasis condition and this need has been confirmed in writing by a medical practitioner. The special facility where the Appellant lives is operated by a non-profit organization that relies on food donations and cannot accommodate his need for a gluten-free diet. The Appellant's monthly comforts allowance of \$115 is not enough to allow for the purchase of his own gluten-free food items, creams and lotions.

The Ministry's Position

The Ministry asserts that the Appellant does not qualify for a diet supplement because he resides in a special facility, and the legislation specifically excludes recipients of income assistance who live in a special facility from receiving a diet supplement. Instead, the Ministry pays for the Appellant's housing and care at the rate approved by the Minister for the type of facility, and also provides him with a \$115 comforts allowance each month.

Panel's Decision

The Panel is required to determine if the Ministry's Reconsideration Decision to deny the Appellant a diet supplement was supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the Appellant. The Panel does not have any discretion to make a decision that would contradict the applicable legislation.

Legislation

Employment and Assistance Regulation - Diet supplement

73 (1) Subject to subsection (2), the minister may pay for a diet supplement in accordance with section 8 [*diet supplements*] of Schedule C that is provided to or for a family unit in receipt of income assistance or hardship assistance, if the supplement is provided to or for a person in the family unit who

- (a) is described in section 8 (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 for a supplement under subsection (1) unless

- (a) the person is not receiving another nutrition-related supplement, and

(b) a medical practitioner, nurse practitioner or registrant of the College of Dietitians of British Columbia established under the *Health Professions Act* confirms in writing the need for the special diet.

Employment and Assistance Regulation -Schedule A
People receiving special care or otherwise living away

8 (1) For a person who receives accommodation and care in a special care facility or a private hospital or who is admitted to a hospital because the person requires extended care, the amount referred to in section 28 (a) [*amount of income 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 \$115 per person for each calendar month.

Under Section 73 (1) (b) of the Regulation, the Appellant does not qualify for a diet supplement because he is a person who receives income assistance and lives in a special care facility.

Schedule A Section 8 (1) (a) and (b) of the Regulation outlines that, for a person who receives income assistance and lives in a special care facility, the Ministry covers the cost of accommodation and care at a rate approved by the Minister for the type of facility, plus a comforts allowance of \$115 per person per month.

The Panel finds that the Ministry was reasonable in its application of the applicable enactment in the circumstances of the Appellant. While the Appellant meets the eligibility requirements for a diet supplement in Section 73 (2), these requirements do not override Section 73 (1) (b) that exclude a person who is receiving income assistance and living in a special care facility from being eligible to receive a diet supplement. Schedule A Section 8 (1) (a) and (b) of the Regulation outlines what the Appellant is eligible to receive as a person who is receiving income assistance and living in a special care facility; the Ministry provides (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 \$115 per person for each calendar month. The Appellant is already accessing these benefits.

The Panel is empathetic to the Appellant's situation as a resident in a non-profit special facility that relies on food donations and cannot provide him with a gluten-free diet. The Panel is hopeful that the Appellant will follow up with the Ministry to discuss his needs for creams and lotions to treat his psoriasis.

Conclusion

The Panel confirms the Ministry's Reconsideration Decision. The Appellant's request for a diet supplement is denied because he lives in a special care facility and Section 73 (1) (b) of the Regulation does not permit a person who is receiving income assistance and who lives in a special care facility to receive a diet supplement.

The Appellant is not successful in his appeal.

Appendix A**Applicable Legislation**

66.1 In this Division:

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

- (a) a supplement under section 73 [*diet supplement*];
- (b) a supplement under section 74 [*nutritional supplement — short-term*];
- (c) a supplement under section 74.01 [*tube feed nutritional supplement*];
- (d) a supplement under section 2 (3) of Schedule C that is related to nutrition;

Diet supplement

73 (1) Subject to subsection (2), the minister may pay for a diet supplement in accordance with section 8 [*diet supplements*] of Schedule C that is provided to or for a family unit in receipt of income assistance or hardship assistance, if the supplement is provided to or for a person in the family unit who

- (a) is described in section 8 (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 for a supplement under subsection (1) unless

- (a) the person is not receiving another nutrition-related supplement, and
- (b) a medical practitioner, nurse practitioner or registrant of the College of Dietitians of British Columbia established under the *Health Professions Act* confirms in writing the need for the special diet.

Schedule A**People receiving special care**

8 (1) For a person who receives accommodation and care in a special care facility or a private hospital or who is admitted to a hospital because the person requires extended care, the amount referred to in section 28 (a) [*amount of income 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 \$115 per person for each calendar month.

Schedule C**Diet supplements**

8 (1) The amount of a diet supplement that may be provided under section 73 [*diet supplement*] of this regulation is as follows:

(e) \$65 for each calendar month for a person who requires a gluten-free diet;

APPEAL NUMBER 2024-0264

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
Melissa McLean

Signature of Chair

Date (Year/Month/Day)
2024/08/02

Print Name
Katherine Wellburn

Signature of Member

Date (Year/Month/Day)
2024/08/02

Print Name
Richard Franklin

Signature of Member

Date (Year/Month/Day)
2024/08/02