

**Reasons for Decision:**

**Order # AP1516-0323**

The appellant appealed that the appellant's request for a therapeutic diet/nutritional supplement allowance has been denied.

The appellant's advocate provided new information at the hearing to which the Department objected. The Board adjourned then rendered that the new information will not be heard today as per Section 17 of the Social Services Appeal Board Act which states "the appeal board must give each party a reasonable opportunity to examine and copy any information that has been submitted to the board for the purpose of the hearing".

The advocate stated that the appellant has applied for therapeutic diets in the past and has been denied. The last denial was on <date removed> advising that the Department does not provide therapeutic funding for <reference removed> and that there is no evidence of unintentional weight loss/body wasting.

The appellant's request form, completed by the appellant's registered dietitian, completed section 1 of the form for the standard therapeutic diet allowance indicating that the appellant suffers from <reference removed>. The dietitian checked that the appellant is showing evidence of unintentional weight loss/body wasting in the appellant's teeth, muscle and bone density. The dietitian stated that the appellant requires 100 grams or more of protein per day. The dietitian also completed section 2 of the form which is for non-standard therapeutic diets. The justification was due to the appellant's diagnosis of <reference removed>. The medically appropriate diet for this condition was listed as high protein, nutritionally concentrated diet with controlled food. The Department's letter to the appellant advised that the appellant was not eligible for the diet allowance as there is no evidence of unintentional weight loss, when in fact it was listed in section 1 of the form and even provided further information. The justification was outlined in section 2 for other diets not meeting the criteria of the high protein diet allowance.

The advocate summarized that although the appellant doesn't have a condition listed on the form, the form and the policy allows for other conditions to be eligible for other diet allowances. Also the Department stated that they required justification and proof to approve the need, when the form doesn't indicate anywhere that you must provide additional documentation. The form asks that a medical professional complete the form to indicate if there is need and why, which has been done. The dietitian indicated that the appellant needs 100 grams of protein per day, indicated evidence of body wasting, and justification was provided as outlined in Section 2. The advocate stated that at the very least, the appellant should have qualified for the chronic condition diet allowance.

The advocate also referred to various resource pages on <reference removed> including risk factors and complication if left untreated, as well as a doctor's letter dated <date removed> recommending the appellant continue working and following up the with the dietitian's recommendations.

The Department summarized the previous decision on the appellant's denial for the therapeutic diet allowance beginning in <date removed>. On the latest request of <date removed>, the Disability Health Supports Unit (DHSU) advised the appellant that the request was denied as there is no category for a <reference removed> and that EIA doesn't provide therapeutic funding for <reference removed>. On <date removed>, the DHSU supervisor left a voice mail for the dietitian who completed the form. The supervisor indicated body wasting was listed but no evidence was provided to support the request and that the Department requires justification and proof to approve the need. DHSU denied as <reference removed> is not an eligible condition for the therapy diet supports.

Decisions regarding therapeutic diet allowances are currently made by the Disability Health Supports Unit to ensure consistency in decision making. Individual case workers do not have the authority to add special diet allowances to income assistance budgets. The Disability Health Supports Unit reviewed the information and decided that the appellant did not qualify for a high protein diet allowance.

Schedule A Section 4 of The Manitoba Assistance Regulation states that:

If a medical practitioner has prescribed a special diet for a person, the applicable allowance for basic necessities under Table 1,2 or 3 may be exceeded by an amount approved by the minister,

The Employment and Income Assistance Administrative Manual, Section 18.4.2 outlines the amounts approved by the Minister. This section contains a list of specific therapeutic diets for specific medical conditions, and the monthly amount to be added to the income assistance budget when a physician or other medical profession has prescribed the specific therapeutic diet for the treatment of the listed medical conditions.

After carefully reviewing the written and verbal information the Board has determined that the appellant's medical information does not meet the criteria for the standard therapeutic diet allowance in which certain medical conditions must be met, which <reference removed> is not one of them. However the Board finds that the dietitian has provided sufficient information on the non-standard section of the form to be eligible for the chronic condition diet allowance. The criteria is prolonged medical diagnoses requiring enhanced nutritional requirements but without evidence of unintentional weight loss/wasting or protein needs >100 grams or energy needs >3000 calories daily. The appellant is appealing the Department's decision of <date removed>; therefore the Board is varying the decision of the director and ordering the Department to add the chronic condition diet allowance to the appellant's budget effective <date removed>.

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