

24 August 2020

Mary Hawkins
Director Strategic Initiatives
Provider & Market Relations
National Disability Insurance Agency

By email: mary.hawkins@ndis.gov.au

Dear Mary

CALL TO REVISE WORDING ON THE NDIS WEBSITE

We write to request a revision of the changes made to the NDIS webpage 'Disability-related health supports', dated 24 July 2020. Below we summarise three key changes to the NDIS website and our requested revisions.

Costs in excess of PBS funding

We request that the wording 'if cost is in excess of PBS funding' is removed from the following HEN formula/nutritional supplements support item.

HEN formula/nutritional supplements (to meet participant's nutritional needs) if cost is in excess of PBS funding and more than usual cost of food

We understand that the NDIS does not fund products covered by the Pharmaceutical Benefits Scheme. However, the majority of standard nutrition support products are not covered by the PBS. There are a small number of highly specialised products which can be prescribed by a doctor or specialist on the PBS but this accounts for a fraction of the products available and are only occasionally used.

This wording serves to create confusion for NDIS participants, planners and dietitians and red-tape around the process of purchasing nutrition support products. Our members report needing to take extra time to explain and justify decisions regarding the purchase of disability related health supports. This wording is redundant and once again, prohibitive of people accessing the nutrition supports they need in a timely manner.

More than usual cost of food

We request that the words 'more than usual cost of food' are removed from the same HEN formula/nutritional supplements support item.

HEN formula/nutritional supplements (to meet participant's nutritional needs) if cost is in excess of PBS funding and more than usual cost of food

We understand that the NDIS does not fund products that are 'not related to a participant's support needs' or day to day living costs, such as groceries, and we expect that this is what the NDIA is attempting to communicate. However, this particular wording is not a clear translation of NDIA Act and Rules and may be interpreted in several ways. We have experienced an influx of queries and complaints from dietitians regarding the wording and its interpretation.

Issues raised by our members are as follows:

- The wording is inconsistent with the description of these items in the June 28th 2019 Disability Reform Council communique regarding disability related health supports (COAG, 2019), the NDIS Rules and official NDIA documentation (NDIS, 2020) (see table below). Clarity and consistency of wording is essential for clear communication, interpretation and application of the NDIS Act and Rules.
- Disability related health supports should be funded if they meet reasonable and necessary criteria under the National Disability Insurance Scheme Act 2013 (NDIS Act) and relate to a person's disability (COAG, 2019). We refer to the Administrative Appeals Tribunal of Australia (AATA) case of Colin Burchell (AATA, 2019). In this landmark case, the AATA determined that Colin's disability related nutritional supports should be funded by the NDIS. Normal food costs were not funded but his disability related costs were fully covered by the NDIS. This case serves as a reference to the interpretation of the relevant legislation and policy and we urge the NDIA to take an approach consistent with this.
- All dietitians take a food-first approach, which means wherever possible, they will encourage and support intake of normal foods as opposed to specialised nutrition products. However, for many people with disability, this is not the most appropriate or safe option, and this is when enteral feeding formula and oral nutrition supplements are prescribed. These products are used only when a person's disability impacts on their eating and drinking enough to alter their functional capacity or nutrition requirements.
- There is no policy stating that funding for reasonable and necessary disability related health supports should be adjusted to account for the usual cost of food and there is no guidance to assist planners, participants or dietitians to calculate and adjust for the usual cost of food when purchasing these supports.
- Accounting for the 'usual cost of food' when purchasing enteral feeding formula and oral nutrition supplements is problematic. Many disabilities result in highly individualised food, fluid and nutritional requirements which make it difficult to discern 'usual' from 'additional' costs of food, fluids and nutrition. There is also significant variability in access and cost to food across Australia and no standard measure for determining usual cost. All of this makes accounting for the usual cost of food impractical and prohibitive of access to appropriate nutrition support for people with disability. Dietitians are best placed to make these determinations based on the participant's disability and nutrition needs, and make these recommendations to the NDIS.

In the absence of legislation, policy and clear guidance to calculate usual food costs, we request that NDIA remove this wording from the website. We feel this contravenes current legislation and policy, particularly when considering the AATA case of Colin Burchell as a reference point.

For clarity and consistency with relevant policy and NDIA communications, we request the wording is changed to:

Enteral feeding formula and oral nutrition supplements (to meet participant's nutritional needs)

Dietitian consultations

We request that the wording of the following item is changed to better reflect the role of dietitians who work with NDIS participants, as recommended made by the Disability Interest Group Leadership team, for the revision of the Price Guide (see box).

Please note, dietitians do more than review nutritional meal plans and the current wording presents a very limited picture of dietitians' role.

We further request that 'Accredited Practising Dietitian' is included in the statement rather than 'NDIS-funded suitably qualified and competent clinician'. The item begins with a reference to dietitians and should end with the same. This provides greater clarity regarding who can deliver this support item.

'Dietetic consultations and the development and periodic review of a nutritional meal plan by an NDIS-funded suitably qualified and competent clinician'

Recommended description of dietetics items developed by Leadership Team of Disability Interest Group and communicated to Mary Hawkins via email on 15th May 2020

Dietetics

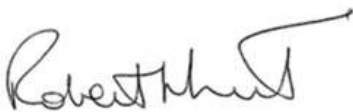
Dietary assessment, diagnosis, intervention and monitoring by a dietitian to improve nutritional health and wellbeing and reduce the impact of disability

Individual - Assess and provide advice, therapy and education to participant and carers on food, fluid and nutrition requirements to improve health, wellbeing and capability, and reduce impact of disability.

Group – Advice, therapy and education to participants on food, fluid and nutrition requirements to improve health, wellbeing and capability, and reduce impact of disability, delivered in a group setting. Participants are to be assisted to attain independence in understanding and implementing their nutritional requirements to improve and maintain good health.

We understand that these matters are complex. The current legislation and policy environment make it challenging for all to interpret and apply in practice. We would like to work with the NDIA to solve some of these issues.

Yours sincerely



Robert Hunt
Chief Executive Officer
Dietitians Australia

NDIS Policy - disability-related health supports

Policy extract	Reference
<p><i>Health (excluding mental health)</i></p> <p>7.4 The NDIS will be responsible for supports related to a person’s ongoing functional impairment and that enable the person to undertake activities of daily living, including maintenance supports delivered or supervised by clinically trained or qualified health practitioners where these are directly related to a functional impairment and integrally linked to the care and support a person requires to live in the community and participate in education and employment.</p> <p>7.5 The NDIS will not be responsible for:</p> <p>(a) the diagnosis and clinical treatment of health conditions, including ongoing or chronic health conditions; or</p> <p>(b) other activities that aim to improve the health status of Australians, including general practitioner services, medical specialist services, dental care, nursing, allied health services (including acute and post-acute services), preventive health, care in public and private hospitals and pharmaceuticals or other universal entitlements; or</p> <p>(c) funding time-limited, goal-oriented services and therapies:</p> <p>(i) where the predominant purpose is treatment directly related to the person’s health status; or</p> <p>(ii) provided after a recent medical or surgical event, with the aim of improving the person’s functional status, including rehabilitation or post-acute care; or</p> <p>(d) palliative care.</p>	<p>National Disability Insurance Scheme (Supports for Participants) Rules 2013; cited:</p> <p>https://www.legislation.gov.au/Details/F2013L01063/Html/Text#_Toc358793044</p>
<p>Table 1: List of NDIS funded disability-related health supports</p> <p>Nutrition Supports</p> <ul style="list-style-type: none"> • Percutaneous Endoscopic Gastrostomy (PEG) and HEN equipment (or similar) and consumables, excluding Food Formula • Thickeners and nutritional supplements • PEG stoma changes • Dietetic consultations • Development of nutritional meal plans • Development of meal time management plans <p>In determining whether disability-related health supports will be included in a participant’s plan, a practical approach to each participant’s individual circumstances will be taken. This will include consideration of, for example, where there are thin markets (i.e in remote, rural and regional locations). Health supports that will NOT be provided by the NDIS Health-related services and supports that will not be provided or funded through the NDIS include:</p> <ul style="list-style-type: none"> • Items and services provided as part of diagnosis, early intervention and treatment of health conditions, including ongoing or chronic health conditions, and which are not part of the everyday life of the NDIS participant • Medically prescribed care, treatment or surgery for an acute illness or injury including post-acute care, convalescent care and rehabilitation 	<p>Council of Australian Governments (2019). How the National Disability Insurance Scheme (NDIS) and health services will work together; cited:</p> <p>https://www.dss.gov.au/disability-and-carers-programs-services-government-international-disability-reform-council/communique-28-june-2019</p>

<ul style="list-style-type: none"> ○ Sub-acute care including palliative care, end of life care and geriatric care (with the exception of supports that are already provided for in a participant’s plan – refer Palliative Care) • Items and services covered by the Medicare Benefits Schedule (MBS) and Pharmaceutical Benefits Scheme (PBS) • Treatment, services or supports delivered by a doctor or medical specialist, including diagnosis and assessment of a health condition. 	
<p>Nutrition supports</p> <ul style="list-style-type: none"> • Dietetic consultations and the development and periodic review of a nutritional meal plan by an NDIS-funded suitably qualified and competent clinician. • Implementation of a nutritional meal plan by an NDIS-funded suitably qualified and competent worker. • Training of an NDIS-funded suitably qualified and competent worker to implement the nutritional meal plan. • Percutaneous Endoscopic Gastrostomy (PEG) Stoma Changes (to assist feeding) by a suitably qualified and competent clinician. • Provision of PEG maintenance and care by a suitably qualified and competent worker. • Training of an NDIS-funded suitably qualified and competent worker to provide PEG maintenance and care. • Home Enteral Nutrition (HEN) and (PEG) and equipment and consumables excluding food. • HEN formula/nutritional supplements (to meet participant’s nutritional needs) if cost is in excess of PBS funding. 	<p>Disability related health supports Information for NDIS participants, Version 2 – June 2020 (available: https://www.ndis.gov.au/understanding/supports-funded-ndis/disability-related-health-supports/disability-related-health-supports-participants)</p> <p>Disability related health supports Information for NDIS providers, Version 2 – June 2020 (available: https://www.ndis.gov.au/understanding/supports-funded-ndis/disability-related-health-supports-providers)</p>
<p>Some people need help to eat.</p> <p>Supports for eating include:</p> <ul style="list-style-type: none"> • help from an expert to decide what you need to eat and help you to make a meal plan • equipment to help you eat if this is what you need • formula and supplements if this is what you need. 	<p>Health supports for people with disability Easy English version (available: file:///C:/Users/sdalton/Downloads/FS%20ER%20Disability-related%20health%20supports%20participants%20PDF.pdf)</p>