

PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision dated May 28, 2012 in which the Ministry of Social Development (the “ministry”) held that, while the appellant was eligible for the replacement of his dentures pursuant to section 63 of the *Employment and Assistance for Persons with Disabilities Regulation*, the ministry could not pay for the type of dentures that the appellant’s denturist proposed to provide for him as the ministry, pursuant to section 4 of Schedule C of the *Regulation*, could pay for only the type set out in that regulation and that was not the type proposed by the denturist.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), subs. 62(1), 63(1), subs. 64(1) and Schedule C, ss. 1 and 4.

PART E – Summary of Facts

The parties agreed to have an appeal in writing. Accordingly, neither the appellant nor the ministry attended the hearing. The hearing was conducted by the panel by teleconference.

It was not clear from the appeal record what constituted the written submission of the appellant but the record included several documents that appear to have come into existence subsequent to the date of the reconsideration decision. The panel treated these documents as the appellant's written submission. They were comprised of:

1. a one-page handwritten note in which the appellant advised that he wished to change the [Denturist Fee Schedule] code from 31130 to 31331;
2. a one-page handwritten note dated June 29, 2012 in which the appellant describes the broken, ill-fitting condition of his present dentures and the deleterious effect this had on his ability to eat, his diet and his health;
3. a letter dated July 4, 2012 from one of the appellant's doctors describing his need for new dentures and the serious health consequence of not having properly fitting dentures; and
4. a letter dated July 5, 2012 from another of the appellant's doctors describing new dentures as a medical necessity.

The ministry made no written submission, indicating that it would rely upon the reconsideration decision.

The evidence that was before the ministry on reconsideration consisted of:

1. a one-page letter dated March 12, 2012 from the appellant's denturist setting out the cost of new dentures for the appellant and the reason they are required;
2. a one-page telephone log dated May 24, 2012 transcribing the appellant's denturist's responses to questions from the ministry regarding the relevant fee codes for the proposed dentures and the condition of the existing dentures; the fee codes cited were 10010 (initial exam) and 31130 (replacement precision dentures);
3. a one-page letter dated February 29, 2012 from the appellant's doctor describing the appellant's serious medical conditions and the effect that his broken dentures have on his nutrition and, in consequence, his health;
4. two pages setting out the appellant's Blue Cross claims history in 2010 and 2011; and
5. the appellant's handwritten comments in Section 3 of the Employment and Assistance Request for Reconsideration.

There was no conflict between the ministry and the appellant in regard to the evidence relied upon on by the ministry on reconsideration. Nor did the ministry object to the admission of any of the additional documents listed in the second paragraph, above. However, the panel admitted only the second through fourth of those additional documents into evidence under subs. 22(4) of the *Employment and Assistance Act* as being in support of the evidence that was before the ministry on reconsideration. The first document essentially stated that the appellant wished to change a fee code. The panel was of the view that this was not evidence. The fee code was provided by his denturist and the appellant did not have the capacity or authority to change it. If it needed to be changed that would have had to be done by the denturist, not the appellant.

After a review of the evidence, the panel found as facts the following:

1. The appellant suffered from HIV and Hepatitis C and as a result had a seriously compromised immune system.
2. The appellant's dentures were ill-fitting and broken.
3. The lower dentures cut into the appellant's gums, causing infection.
4. Further, the dentures made chewing difficult and painful and, in consequence, the appellant's diet was restricted and nutritionally inadequate.
5. These factors combined to create health issues that were life threatening.
6. The appellant's existing upper dentures were more than 20 years old, the lower 3 years old.
7. Despite having been repaired a number of times, the lower dentures were unusable.
8. The ministry had designated the appellant as a person with disabilities and that designation had been made more than 2 years previously.
9. As of the date of the reconsideration decision the appellant had remaining \$942.07 of his basic dental services entitlement for 2012.
10. The denturist proposed to make upper and lower dentures for the appellant at a cost of \$3,060.00. The denturist described these dentures as precision dentures and would be billed to the ministry under fee code 31130.
11. The *Schedule of Fee Allowance – Denturist*, which sets out denturist services for which the ministry will pay, does not include fee code 31130.

PART F – Reasons for Panel Decision

In its May 28, 2012 reconsideration decision the ministry held that it could not pay any amount towards the cost of the new dentures which the appellant's denturist said that he required because, although he met the eligibility requirements for new dentures, the ministry was not authorized to provide coverage for the particular type of dentures prescribed by the appellant's denturist, that is dentures that would be billed under fee code 31130. Accordingly, the issue on this appeal is whether the reconsideration decision declaring the appellant ineligible for a health supplement to pay all or part of the cost of the proposed new dentures was reasonably supported by the evidence or was a reasonable application of the applicable regulations in the circumstances of the appellant.

The relevant legislation is as follows:

EAPWDR

62 (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is

(a) a recipient of disability assistance,

63 (1) Subject to subsections (2) and (3), the minister may provide any health supplement set out in section 4 [*dental supplements*] of Schedule C that is provided to or for a family unit if the health supplement is provided to or for a person in the family unit who is eligible for health supplements under

(a) section 62 (1) (a), (b) (iii), (d) or (e) [*general health supplements*],

64 (1) Subject to subsections (2) and (3), the minister may provide any health supplements set out in section 5 of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is eligible for health supplements under

(a) section 62 (1) (a), (b) (iii), (d) or (e) [*general health supplements*],

Schedule C

1 In this Schedule:

"basic dental service" means a dental service that

(a) if provided by a dentist,

(i) is set out in the Schedule of Fee Allowances – Dentist that is effective April 1, 2010 and is on file with the office of the deputy minister,

(ii) is provided at the rate set out for the service in that Schedule,

(b) if provided by a denturist,

(i) is set out in the Schedule of Fee Allowances – Denturist that is effective April 1, 2010 and is on file with the office of the deputy minister, and

(ii) is provided at the rate set out for the service in that Schedule, and

"dentist" means a dentist registered with the College of Dental Surgeons of British Columbia continued under the *Health Professions Act*;

"denturist" means a denturist registered with the College of Denturists of British Columbia established under the *Health Professions Act*;

"emergency dental service" means a dental service necessary for the immediate relief of pain that,

- (a) if provided by a dentist,
 - (i) is set out in the Schedule of Fee Allowances – Emergency Dental – Dentist, that is effective April 1, 2010 and is on file with the office of the deputy minister, and
 - (ii) is provided at the rate set out in that Schedule, and
- (b) if provided by a denturist,
 - (i) is set out in the Schedule of Fee Allowances – Emergency Dental – Denturist, that is effective April 1, 2010 and is on file with the office of the deputy minister, and
 - (ii) is provided at the rate set out in that Schedule;

4 (1) In this section, **"period"** means

- (a) in respect of a dependent child, a 2 year period beginning on January 1, 2009, and on each subsequent January 1 in an odd numbered year, and
- (b) in respect of a person not referred to in paragraph (a), a 2 year period beginning on January 1, 2003 and on each subsequent January 1 in an odd numbered year.

(1.1) The health supplements that may be paid under section 63 [*dental supplements*] of this regulation are basic dental services to a maximum of

- (a) \$1400 each period, if provided to a dependent child, and
- (b) \$1 000 each period, if provided to a person not referred to in paragraph (a).
- (c) Repealed. [B.C. Reg. 163/2005, s. (b).]

(2) Dentures may be provided as a basic dental service only to a person

- (a) who has never worn dentures, or
- (b) whose dentures are more than 5 years old.

(3) The limits under subsection (1.1) may be exceeded by an amount necessary to provide dentures, taking into account the amount remaining to the person under those limits at the time the dentures are to be provided, if

- (a) a person requires a full upper denture, a full lower denture or both because of extractions made in the previous 6 months to relieve pain,
- (b) a person requires a partial denture to replace at least 3 contiguous missing teeth on the same arch, at least one of which was extracted in the previous 6 months to relieve pain, or
- (c) a person who has been a recipient of disability assistance or income

assistance for at least 2 years or a dependant of that person requires replacement dentures.

(4) Subsection (2) (b) does not apply with respect to a person described in subsection (3) (a) who has previously had a partial denture.

(5) The dental supplements that may be provided to a person described in subsection (3) (b), or to a person described in subsection (3) (c) who requires a partial denture, are limited to services under

(a) fee numbers 52101 to 52402 in the Schedule of Fee Allowances — Dentist referred to in paragraph (a) of the definition "basic dental service" in section 1 of this Schedule, or

(b) fee numbers 41610, 41612, 41620 and 41622 in the Schedule of Fee Allowances — Denturist referred to in paragraph (b) of the definition "basic dental service" in section 1 of this Schedule.

(6) The dental supplements that may be provided to a person described in subsection (3) (c) who requires the replacement of a full upper, a full lower denture or both are limited to services under

(a) fee numbers 51101 and 51102 in the Schedule of Fee Allowances — Dentist referred to in paragraph (a) of the definition "basic dental service" in section 1 of this Schedule, or

(b) fee numbers 31310, 31320 or 31330 in the Schedule of Fee Allowances — Denturist referred to in paragraph (b) of the definition "basic dental service" in section 1 of this Schedule.

(7) A reline or a rebase of dentures may be provided as a basic dental service only to a person who has not had a reline or rebase of dentures for at least 2 years.

In reviewing the appeal record the panel noted that the original decision of the ministry, contained in its letter dated March 20, 2012, was to deny the appellant's request for new dentures on the grounds that the cost quoted by the denturist, \$3,060.00, was "over and above" the fee set out in *Schedule of Fee Allowances – Denturist*. However, the reconsideration decision, while arriving at the same result - that is to deny the request - held that the reason for the denial was not the matter of the total cost but, rather, was that the particular service, namely that associated with fee code 31130, was not specifically referenced in EAPWD, Schedule 3, section 4(1)(b) and, in consequence, could not be paid by the ministry.

The panel points out the inconsistency between the two decisions for the limited purpose of bringing to the attention of the ministry that a person such as the appellant is not treated fairly if he is not properly apprised of the ground on which the ministry has made its decision. He thinks he must meet one case only to find out later that it was another case. Were it not for the further opportunity provided to the appellant to appeal the reconsideration decision - which gave him the opportunity to address the new issue - that inconsistency could render the reconsideration decision unreasonable.

On reconsideration the ministry thoroughly canvassed the relevant regulations and the ministry's policies in an effort, or so it seemed to the panel, to find a way in which it

could assist the appellant in what was clearly an urgent need to obtain new dentures with financial assistance from the ministry. As a person with disabilities, the appellant was entitled to health supplements including basic dental services to a maximum of \$1,000.00 for each two-year period, the present period ending on December, 31, 2012. The ministry noted that he had \$942.07 of that supplement still available. That amount could have been applied to the cost of new dentures had he never previously worn dentures or were his dentures more than five years old. In the appellant's circumstances, the appellant would have been able to use those funds to replace his upper dentures, but not his lower. Unfortunately, that half solution would not have benefited the appellant. New upper dentures with his existing lower dentures would not have helped him.

The ministry also reviewed its policies relevant to the provision of dentures and observed that in the appellant's unique circumstances, primarily because his existing dentures caused significant pain and presented serious threat to his health, those policies would have rendered him eligible for replacement dentures "at the rates set out in the *Schedule of Fee Allowances - Denturist*." Moreover, again in the appellant's unique circumstances, applying the provisions of EAPWDR, Schedule C, s. 4(3), the monetary limits set out in subs. 4(1) could have been exceeded so as to have covered the entire cost of the replacement dentures.

However, what appeared at first to be a way of resolving the appellant's dilemma had to deal with the barrier created by EAPWDR, Schedule C, s. 4(6). That section provides as follows:

The dental supplements that may be provided to a person described in subsection (3) (c) who requires the replacement of a full upper, a full lower denture or both are limited to services under ... fee numbers 31310, 31320 or 31330 in the Schedule of Fee Allowances — Denturist referred to in paragraph (b) of the definition "basic dental service" in section 1 of this Schedule.

As the foregoing discussion makes clear, the problem the appellant confronted, and was unable to overcome, was not the question of cost of the new dentures. Rather, it was the particular service, that is the particular type of dentures, to be provided. The fee numbers set out in the s. 4(6) are for complete dentures – 31330 is the code for the dentures the appellant required, that is both maxillary and mandibular dentures - but none of the three numbers refer to the "precision" dentures that the dentist prescribed. And the regulation clearly states that the ministry is "limited to services ... 31330". The ministry held in the reconsideration decision that it had no discretion in this matter. The panel agreed with this conclusion.

It occurred to the panel that the dentist may have inadvertently advised the ministry during the May 24, 2012 telephone call that the fee number was 31130 – and the fact that no such number appears in the *Schedule of Fee Allowances - Denturist* also raises the question as to whether or not such a fee number exists – but the panel had no grounds for so concluding. Accordingly, the panel proceeded on the basis that the dentist meant fee number 31130 and that, even though the ministry schedule does

not include it, it exists on a schedule used by denturists and is used to refer to a type of denture described, using the denturist's word, as "precision".

The ministry also considered whether the appellant's dentures would qualify as a health supplement under EAPWDR, s. 69. This section provides a rather brief list of supplements that may be provided for a person facing a direct and imminent life threatening health need. The ministry agreed that the appellant was indeed such a person but the section does not apply to dental services. The panel considered the ministry's interpretation of this section and concluded that it was correct.

Given the mandatory language of EAPWDR, Schedule C. subs. 4(6), it is clear that the ministry has no discretion to provide financial assistance for any type of dentures other than those described by the fee numbers set out in that subsection. Dentures described under a different fee number, such as the number specified by the appellant's denturist, may not be paid for by the ministry. If the appellant wishes financial assistance from the ministry, it is, it seems to the panel, for the appellant to bring himself within the framework of the relevant legislation.

Accordingly, the panel has concluded that the decision of the ministry - that the appellant was ineligible for financial assistance for the precision dentures prescribed by his denturist - was a reasonable application of the relevant legislation in the circumstances of the appellant. The ministry decision is confirmed.