

PART C – Decision under Appeal

The decision at appeal is the ministry's decision at reconsideration on July 19, 2012. At that time the ministry denied the appellant's request to provide coverage for a replacement of a lower implant overdenture.

The ministry determined that the dental work for which coverage was requested is not an eligible dental procedure set out in a ministry's Schedule of Fee Allowances or elsewhere in the ministry's legislation, specifically finding that the criteria of Section 4 of Schedule C [dental supplements] and section 69 [life-threatening health need] were not met.

The ministry determined that the Appellant was not eligible for the lower implant overdenture on the basis that he had received a lower implant overdenture as a result of a past Tribunal decision under former legislation, relying on section 31 of the *Employment and Assistance for Persons with Disabilities Act*.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 31
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 62, 63, 63.1, 64, 65, 66, 67, 68, 69 and Schedule C.
Ministry Schedule of Fee Allowances: Dentist, Denturist, Emergency Dental, Emergency Denturist, Crown and Bridgework;
Guaranteed Available Income for Need Regulation Schedule F (repealed in October 1996)
BC Benefits (Income Assistance) Regulation Schedule C [in effect October 1996]

PART E – Summary of Facts

Documents before the ministry at reconsideration included the following:

- copy of one page of a handwritten letter dated September 2, 1998 from the appellant requesting the ministry to FAX forms and other papers which would help to introduce him to a dentist with whom he had an appointment;
- Part D of a Tribunal decision dated February 10, 1997 regarding the appellant;
- B.C. Benefits Reconsideration Request form signed by the appellant on December 18, 1996;
- 2 pages of submissions regarding the appellant's request for reconsideration received by the ministry on December 5, 1996;
- Letter dated April 10, 1996 from a physician/manager to the appellant following an examination of the appellant on March 20, 1996;
- Letter from a physician dated May 16, 1995 regarding the appellant's dental problems;
- A To Whom it May Concern letter from a physician dated April 23, 2012 regarding the appellant's health condition and supporting his application for coverage for a lower implant overdenture;
- A To Whom it May Concern letter dated July 6, 2012 from a physician supporting the appellant's request for the requested dental treatment;
- A Request for Reconsideration form signed by the appellant on July 12, 2012.

When the appellant filed his Appeal, he forwarded a letter dated July 27, 2012 from a physician supporting his appeal and putting forward a suggestion that the cost of the requested procedure be shared 50/50 between the appellant and the ministry. It included more comment on the situation regarding the appellant's dental need. The proposition regarding sharing costs was not before the ministry at reconsideration. However the situation regarding the appellant's need for the over denture was. As such, noting no objection from the representative from the ministry at the hearing, the panel accepted the letter into evidence as provided for in the *Employment and Assistance Act (EAA)* Section 22 (4) (b).

At the hearing the appellant provided the panel with two thoughts in support of his position that the ministry at reconsideration had made a mistake: Firstly, that poverty should not mean a life sentence and secondly, a reported statement by U.S. President Obama that "saying no on health issues was easy, whereas saying yes means work."

He told of a history of medical problems, including dental matters. At one stage all his fillings fell out leading to all his teeth being extracted in the early 1970's which led to his need for dentures. In the mid 1990s, he lost one of the dentures. In 1996 as part of a pilot project at a dental school he was able to get implants in the gum, three pins and a bar. He described the implant overdentures and explained that the methodology used in the 1990's is not longer being followed and the pins used then are longer available. He pointed to his physician's report that the bone in his lower jaw was weak and had been worn down over the years. He pointed to the extremely high cost of dental work.

He said that he could manage a 50/50 sharing of the cost with the ministry through using part of his student loan and pointed out that there had been a similar split in terms of the cost in 1997. He said that in recent weeks the ministry had provided a new upper denture, following on a split in the former upper denture. His present lower denture, he said, dated back to approximately 1997.

Without the requested lower implant overdenture he said he would become totally dependent on Ensure for nutrition because he would be unable to chew. He agreed that he would be able to survive on the nutritional supplement Ensure, but that it would lead to a miserable life and adversely affect his self-regard and his ability to face the world. In response to a question from the ministry's representative as to the time frame in terms of being reduced to obtaining nutrition solely through Ensure, the appellant answered that this is a question that would have to be answered by a doctor.

The representative from the ministry led the panel and appellant through the points made by the ministry in their reconsideration decision.

Based on the documents and on evidence provided at the hearing the panel's finding of facts is as follows:

1. The appellant is designated as a Person with Disabilities
2. The appellant's need for a lower implant overdenture is supported by medical practitioners, his situation being described as "functionally impaired with regards to eating" which has led to "his quality of life suffering.
3. Apart from his dental problems the appellant faces other health challenges.

PART F – Reasons for Panel Decision

The issue to be determined is whether the ministry's decision at reconsideration was a reasonable application of the applicable legislation in the circumstances of the appellant. At reconsideration the ministry denied the appellant's request to provide coverage for a replacement of a lower implant overdenture.

The ministry determined that the dental work for which coverage was requested is not an eligible dental procedure set out in the ministry's Schedule of Fee Allowances or elsewhere in the ministry's legislation.

Specifically, the ministry found that:

- the requested implant overdenture is not a basic dental service as described in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* Section 1 (a);
- the requested Procedure, 51952 is not in the Schedule of Fee Allowances – Dentist, Denturist, Emergency Dental, Emergency Denturist, or Crown and Bridgework;;
- the cost of the implant overdenture exceeds the \$1,000 limit as described at Section 4 of Schedule C of the *EAPWDR* Section 4 (1.1.) (b); and
- the required procedure was not such as could fall under the *EAPWDR* Schedule C 4 (3) (a-c) which describes instances in which the \$1,000 may be exceeded;
- the requested replacement lower implant overdenture (Procedure 51952) is not in the Schedule of Fee Allowances – Dentist or Denturist, and is not one of the fee numbers described in Schedule C, Section 4 (6);
- the requested procedure is not an eligible item set out in any of the remaining relevant sections of the *EAPWDR* - Sections 62, 62.1, 62.2, 66, 67, 67.01, 67.1, 68; nor in Schedule C, sections 2, 2.1, 2.2, 3 – 3.11, 6,7,8,9,10;
- the requested procedure did not meet the requirements governing the provision of a health supplement if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under the *EAPWDR*, and if the minister is satisfied that (a) *the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need, (b) the health supplement is necessary to meet that need, (c) the person's family unit is receiving premium assistance under the Medicare Protection Act, and (d) the requirement specified in the following provisions of Schedule C, as applicable, are met: (i) paragraph (a) or (f) of section (2) (1); (ii) sections 3 to 3.11, other than paragraph (a) of section 3 (1);*

Finally, the ministry considered the appellant's experience in 1996 at which time the ministry denied the appellant's request for a lower implant overdenture, but following a February 1997 tribunal decision to rescind the ministry's decision, the appellant was provided with the requested item. The ministry pointed out that the 1997 tribunal decision does not establish the appellant's current eligibility for a replacement lower implant overdenture,. This is based on the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)* Section 31 (3) (a) and (4) which state: (3) *Despite a final decision of a tribunal, or the BC Benefits Appeal Board, under the BC Benefits (Appeals) Act, the minister may (a) adjust an amount of disability allowance, income assistance, hardship assistance or a benefit. (4) An adjustment or alteration referred to in subsection (3) (a) or (b) may be, as applicable, (a) an increase, a decrease or a discontinuance of an amount, or (b)*

a change in, or a discontinuance or an addition of, a category of disability assistance, hardship assistance or supplements.

The relevant legislation in terms of basic dental service as found in Schedule C 1. reads, *“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, and (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 ..”*

At the hearing the appellant agreed that the requested dental work was not a basic dental service as described in the legislation. The panel has looked through the Schedule of Fee Allowances and finds reasonable the ministry’s decision at reconsideration that the requested procedure, number 51952, is not found in the Schedule of Fee Allowances for dentists and as such is not a basic dental service. Further the panel has looked at the Schedule of Fee Allowances for Emergency Dental, Emergency Denturist, and Crown and Bridgework and finds that the ministry’s decision that the requested procedure, number 51952 is also not found there is reasonable.

The relevant legislation regarding costs is found in Schedule C of the EAPWDR, section 4 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 \$1400 each period, if provided to a dependent child, and (b) \$1000 each period, if provided to a dependent child.”*

The cost of the requested procedure is \$1,650. The panel therefore finds the ministry’s decision at reconsideration that the cost exceeded that allowed by the legislation to be reasonable. There was no proposal before the ministry at reconsideration for cost sharing with the appellant and therefore the panel has no power to make a finding on whether or not this proposal is reasonable or not in the circumstances of the appellant.

The appellant stated that he would like to see the \$1000 limit set aside. The legislation does allow for payments above the legislated amount in particular circumstances as found at section 4 (3) in Schedule C of the EAPWDR. *“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 dependent of that person requires replacement dentures”.*

The circumstances of the appellant clearly do not fit (a) or (b) above, and although he has been in receipt of disability assistance for at least 2 years the procedure which he has requested is not for dentures, but rather for a replacement lower implant overdenture. As such the panel finds that the ministry’s decision on this point was reasonable.

The ministry at reconsideration looked at other supplements allowed through the *EAPWDR* to persons such as the appellant who are in receipt of disability assistance. The ministry found that the requested procedure is not covered there. Section 62.1 deals with Optical supplements, 62.2 with Eye examination supplements, 66 with Diet supplement, 67 with Nutritional supplement, 67.01 with Tube feed nutritional supplement, 67.1 with Infant health supplement, and 68 with Natal supplement. As such, the panel finds that the ministry's decision at reconsideration that the appellant's requested procedure is not allowed under those sections was reasonable.

Section 69 of the *EAPWDR* deals with life-threatening health need and states, "*The minister may provide to a family unit any health supplement set out in sections 2(1) (a) and (f) [general health supplements and 3 [medical equipment and devices] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need, (b) the health supplement is necessary to meet that need, (c) the person's family unit is receiving premium assistance under the medicare Protection Act, and (d) the requirements specified in the following provisions of Schedule C, as applicable are met: (i) paragraph (a) or (f) of section 2 (1); (ii) sections 3 to 3.11, other than paragraph (a) of section 3 (1).*

There was no evidence before the panel that the appellant faces a "direct and imminent life threatening need". The appellant described the phrase as "almost a nonsense phrase." He told of suffering from high blood pressure, depression, anxiety disorder, cataracts, attention deficit disorder, has a thyroid condition and hearing problems. His need at this time for the Lower implant overdenture was not a life threatening need. It was however a real and sensible need. The information gained by the ministry from a hospital Department of Dentistry when they were reconsidering the appellant's request was that a new overdenture would fit into the existing implants. The appellant's evidence was that although they may fit, they would not work properly. Getting the overdenture without doing prior work on the pins and bar would be the equivalent to laying down a carpet when one knows that there are substantial deficits in the floor being covered. There is logic in the arguments put forward by the appellant, but the legislation requires "life threatening need", and based on the evidence the panel finds that the ministry's decision on this factor was reasonable.

Schedule C Section 2 deals with General health supplements, 2.1 with Optical supplements, 2.2 with Eye examination supplements, 3 through 3.11 with Medical equipment and devices, section 6 with diet supplements, 7 with monthly nutritional supplement, 8 with Natal supplement, 9 with Infant formula and 10 with Nutritional supplement for bottled water. The panel finds that the ministry's decision that the appellant's request is not covered by these sections of the legislation is reasonable.

Regarding the history of the appellant's interactions with the ministry and the tribunal in the 1990's the panel finds that the ministry's statement that the legislation clearly does not allow the appellant to be eligible for the requested replacement lower implant overdenture based on a tribunal decision made under previous legislation is reasonable.

The panel cannot find that the ministry has any discretion in applying the legislation in the circumstances of the appellant. Accordingly, and based on the analysis above, the panel finds that the ministry's decision at reconsideration was a reasonable application of the applicable enactment in

the circumstances of the appellant and therefore confirms the ministry's decision.