

## PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated August 8, 2012 which found that as a designated Person with Disabilities, the appellant is eligible for dental supplements under sections 63 and 64 and Schedule C, sections 4 and 5 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), but which determined that:

1. The appellant did not meet the eligibility requirements for partial dentures as basic dental services;
  - a) pursuant to Schedule C, section 4(1.1)(b) of the EAPWDR because the cost exceeded the maximum \$1,000.00 limit for each 2 year period; and
  - b) pursuant to Schedule C, section 4(3)(b) of the EAPWDR because the evidence did not establish that one of the three contiguous teeth for which the partial denture was required had been extracted within the previous 6 months.
2. The appellant did not meet the eligibility requirements for partial dentures as emergency services pursuant to Schedule C sections 1 and 5 of the EAPWDR because the requested dentures are not eligible services as set out in the Schedule of Fee Allowances – Emergency Dental-Denturist.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 63 and 64  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, sections 1, 4 and 5  
Schedule of Fee Allowance – Denturist and Emergency Dental-Denturist April 1, 2010

## PART E – Summary of Facts

The evidence before the ministry at the time of the Reconsideration Decision consisted of:

1. The appellant's Request for Reconsideration dated August 3, 2012;
2. A letter from the appellant's advocate dated August 3, 2012;
3. A dental pre-authorization remittance statement dated July 27, 2012 and prepared by the appellant's insurance carrier;
4. The appellant's dental benefit eligibility statement dated August 8, 2012 and prepared by the appellant's insurance carrier;
5. The appellant's dental claims history statement for the period of January 3, 2011 through August 8, 2012 prepared by the appellant's insurance carrier;
6. The appellant's dental claim details statements prepared by the appellant's insurance carrier for July 5, 2011, July 20, 2011, July 20, 2011 #2, September 8, 2011 and January 31, 2012;
7. A "Tooth Map" prepared by the appellant's insurance carrier; and
8. A log dated August 8, 2012 and prepared by the ministry clarifying which of the appellant's missing teeth the requested upper partial denture are intended to replace.

In the appellant's Notice of Appeal, he states that due to an assault, he sustained damage to his upper teeth plate and had some teeth extracted. The appellant notes that he is now living with a brain injury, he finds it extremely difficult to eat, gain employment or volunteer in a public place. The appellant says that he has been struggling with eating properly and that he would pay for the dental work in question himself but he is not having success obtaining employment in which he would be dealing with the public.

At the hearing of this appeal, the ministry relied on the Reconsideration Decision which indicates that the appellant's tooth number 26 was extracted on January 31, 2012 and that the 3 missing contiguous teeth are numbers 21, 22 and 23. In response to a question, the ministry re-stated that the appellant had tooth #26 extracted on January 31, 2012.

At the hearing the appellant argued that he was assaulted approximately 3 years ago and suffered a brain injury and had some teeth knocked out and that he required dentures to repair that damage. He conceded that he should have had his teeth fixed 3 years ago. He stated that he could not eat properly, that it was difficult to talk and smile and that the damaged teeth were in front and on the side. The appellant stated that the injury to his teeth limits his volunteer work and impacts his self-esteem as he says he won't take care of himself properly. In response to a question, the appellant confirmed that he had one tooth pulled sometime in 2012.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's decision which found that as a designated Person with Disabilities, the appellant is eligible for dental supplements under sections 63 and 64 and Schedule C, sections 4 and 5 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), but which determined that:

1. The appellant did not meet the eligibility requirements for partial dentures as basic dental services;
  - a) pursuant to Schedule C, section 4(1.1)(b) of the EAPWDR because the cost exceeded the maximum \$1,000.00 limit for each 2 year period; and
  - b) pursuant to Schedule C, section 4(3)(b) of the EAPWDR because the evidence did not establish that one of the three contiguous teeth for which the partial denture was required had been extracted within the previous 6 months.
  
2. The appellant did not meet the eligibility requirements for partial dentures as emergency services pursuant to Schedule C sections 1 and 5 of the EAPWDR because the requested dentures are not eligible services as set out in the Schedule of Fee Allowances – Emergency Dental-Denturist.

Section 63 of the EAPWDR provides as follows:

### Dental supplement

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 (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

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

(b) section 62 (1) (b) (i), (d.1), (d.3) or (f), if

(i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(c) section 62 (1) (b) (ii), or (d.2), (B.C. Reg. 67/2010)

(B.C. Reg. 114/2010)

(c.1) section 62 (1) (c), or

(d) section 62 (1) (g).

(2) A person eligible to receive a health supplement under section 62 (1) (b) (ii) or (d.2) may receive the supplement

(a) while any person in the family unit is

(i) under age 65 and receiving a pension or other payment under the Canada Pension Plan, or

(ii) aged 65 or more and receiving the federal spouse's allowance or the federal guaranteed income supplement, and

(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services

only.  
(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(3) A person eligible to receive a health supplement under section 62 (1) (c) may receive the supplement  
(a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, and  
(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.  
(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(4) A person who was eligible to receive a health supplement under subsection (1) (b) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.  
(B.C. Reg. 114/2010)

Section 64 of the EAPWDR provides as follows:

**Emergency dental and denture 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 (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

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

(b) section 62 (1) (b) (i), (d.1), (d.3) or (f), if

(i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(c) section 62 (1) (b) (ii) or (d.2),

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(c.1) section 62 (1) (c) or

(B.C. Reg. 114/2010)

(d) section 62 (1) (g).

(2) A person eligible to receive a health supplement under section 62 (1) (b) (ii) or (d.2), may receive the supplement

(a) while any person in the family unit is

(i) under age 65 and receiving a pension or other payment under the Canada Pension Plan, or

(ii) aged 65 or more and receiving the federal spouse's allowance or the federal guaranteed income supplement, and

(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(3) A person eligible to receive a health supplement under section 62 (1) (c) may receive the supplement

(a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed

income supplement, and

(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(B.C. Reg. 114/2010)

(4) A person who was eligible to receive a health supplement under subsection (1) (b) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(B.C. Reg. 114/2010)

Section 1 of Schedule C of the EAPWDR sets out the following definitions:

### **SCHEDULE C Health Supplements**

#### **(A) Definitions**

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, and

(B.C. Reg. 65/2010)

(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

(B.C. Reg. 65/2010)

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

(B.C. Reg. 315/2006)

(c) if provided by a dental hygienist,

(i) is set out in the Schedule of Fee Allowances - Dental Hygienist 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.C. Reg. 65/2010)

**"dentist"** means a dentist registered with the College of Dental Surgeons of British Columbia continued under the *Health Professions Act*; (B.C. Reg. 421/2008)

**"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 (B.C. Reg. 65/2010)

(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 (B.C. Reg. 65/2010)

(ii) is provided at the rate set out in that Schedule;  
(B.C. Reg. 315/2006)

Section 4 of Schedule C of the EAPWDR provides:

**Dental supplements**

**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.

(B.C. Reg. 65/2010)

(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,

(B.C. Reg. 65/2010)

(b) \$1 000 each period, if provided to a person not referred to in paragraph (a), (B.C. Reg. 163/2005)

(c) Repealed (B.C. Reg. 163/2005)

(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 dependent of that person requires replacement dentures. (B.C. Reg. 94/2005)

(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.C. Reg. 94/2005)

(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. (B.C. Reg. 94/2005)

(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 to 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.C. Reg. 94/2005)

(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. (B.C. Reg. 94/2005)

(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.

Section 5 of Schedule C of the EAPWDR provides:

#### Emergency dental supplements

5 The health supplements that may be paid for under section 64 [emergency dental and denture supplements] of this regulation are emergency dental services.

The ministry's position is that the appellant is designated as a Person with Disabilities and therefore eligible for dental supplements up to a maximum of \$1,000.00 for each two year period. At the time of the Reconsideration Decision, the appellant had \$76.23 available for basic dental services and the ministry submits that it is not authorized to provide full coverage for fees for partial dentures in excess of the rates set out in the Schedule of Fee Allowances – Denturist and further, the Appellant is not eligible for full coverage of dentures as a service set out in the Schedule of Fee Allowances – Emergency Dental-Denturist.

The appellant states he suffered injuries to his teeth following an assault and requires partial dentures to repair them.

The Panel finds that the ministry reasonably determined that the appellant is eligible for basic dental services to a maximum of \$1,000.00 between January 1, 2011 and January 1, 2013 pursuant to section 63 and Schedule C, section 4 of the EAPWDR. The Panel finds further that the ministry reasonably applied the prescribed rates for partial dentures as set out in the Schedule of Fee Allowance – Denturist and that it has no discretion to pay an amount that exceeds the prescribed rates based on the definition of basic dental services in section 1 of Schedule C of the EAPWDR. While Schedule C, section 4(3)(b) allows the ministry to exceed the \$1,000.00 bi-annual limit, it may only do so where an applicant requires a partial denture to replace at least 3 contiguous missing teeth on the same arch and where at least one of which was extracted in the previous 6 months to relieve pain. In the present case, the appellant's 3 missing contiguous teeth are numbers 21, 22 and 23 and the appellant had tooth number 26 extracted on January 31, 2012. As such, the tooth that was extracted was not one of the three missing contiguous teeth and the extraction occurred prior to the previous 6 months and as such the Panel finds that the ministry reasonably determined that the appellant did not meet the eligibility requirements under Schedule C, section 4(3)(b) of the EAPWDR.

Further, the Panel finds that as full coverage for partial dentures are not eligible services set out in the Schedule of Fee Allowances – Emergency Dental-Denturist, the ministry reasonably determined that it is not able to provide full coverage for partial dentures to the appellant as emergency dental services pursuant to section 64 and Schedule C, section 5 of the EAPWDR.

The Panel finds that the ministry's Reconsideration Decision was a reasonable application of the legislation in the circumstances and confirms the decision.