

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry")'s Reconsideration Decision dated August 22, 2012 which denied the appellant's request for coverage for replacement complete upper dentures or replacement partial dentures as she did not meet the requirements of the Employment and Assistance (EA) Regulation sections 68, 69, 70 and 76, and Schedule C, sections 1, 4, 5 and 6.

The Ministry found that the appellant did not meet the criteria required in EA Regulation section 68 to qualify for dental supplements as per section 68 and Schedule C, section 4, as she did not meet any of the listed definitions such as a person with persistent multiple barriers to employment or being over the age of 65. The Ministry found that the appellant was not eligible for replacement complete dentures as she had not had tooth extractions performed in the last six months because of pain as required by EA Regulation section 69.

The Ministry found that the appellant is ineligible to receive partial dentures under EA Regulation, Schedule C, section 5 as replacement partial dentures are not covered as denture services as defined by the legislation

The Ministry also found that the appellant is not eligible for emergency dental services pursuant to section 70 of the EA Regulation as dentures are not included covered. The Ministry also found that while the appellant's information indicates that she may face a life-threatening health need for the dentures, section 76 of the EA Regulation only applies to medical supplies, medical transportation and medical equipment and devices and dentures are not covered.

PART D – Relevant Legislation

Employment and Assistance (EA) Regulation sections 68, 69, 70 & 76, Schedule C, sections 1, 4, 5 & 6
Schedule of Fee Allowances - Denturist

PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- 1) Request for Reconsideration dated August 1, 2012 in which the appellant enclosed a picture of herself, a letter from herself and a letter from a denturist dated July 25, 2012;
- 2) The picture of the appellant shows her face and missing teeth;
- 3) The letter from the appellant dated August 1, 2012 states that she has not been able to eat healthy and nutritious foods for quite some time and as a result she is developing headache and severe indigestion among other health issues. The appellant states that she is also asking for reconsideration so that she can eventually get off income assistance. The appellant states that she wants to work but that no one will hire her without teeth.
- 4) The letter from the denturist dated July 25, 2012 states that when the appellant's current denture set was made, the bite registration was recorded inaccurately which means that the teeth do not align in place and the appellant is unable to chew properly. The denturist states that the lower partial denture is ill fitting causing pain on her teeth and gums. The denturist states that no adjustments or modifications can be made to her existing denture to improve its fit and function. The upper denture is too big and thick and causes the appellant to gag when used. The denturist states that the appellant suffers from fatigue, indigestion, neck/shoulder pain, migraines, and irritation on her gums. The denturist states that the appellant's optimal treatment plan is an Equilibrated Precision Complete Upper and Cast Lower Partial Denture, which will enable the appellant to regain her strength and live a healthier lifestyle. The cost for the dentures is \$2,775.

In her Notice of Appeal dated September 1, 2012 the appellant states that she is not able to stay healthy and now has been diagnosed with breast cancer and will be undergoing surgery twice. The appellant states that she will need to eat properly to obtain optimum health. With her Notice of Appeal, the appellant submitted a letter from her physician confirming that the appellant has been diagnosed with breast cancer, is on low income assistance and requesting financial assistance to cover her dentures as they are necessary for her wellbeing and further recovery from her unfortunate diagnosis.

The Ministry had received the physician's letter with the appellant's Notice of Appeal and did not object to appellant's evidence of her breast cancer diagnosis or the letter from her physician as being admitted as new evidence. As the diagnosis of breast cancer relates to the appellant's health and nutritional needs, the panel finds that the new evidence is admissible under section 22(4) of the Employment and Assistance Act as it is in support of the information and records that were before the Ministry when the Reconsideration Decision was made.

The appellant's evidence is that she understood the Ministry's decision but her circumstances have now changed, she was diagnosed with breast cancer on August 27, 2012, underwent a mastectomy on September 14, 2012 and will be undergoing a second surgery within the next month or so. The appellant's evidence is that she cannot eat anything but "mush" and in order to recover she needs proper nutrition.

The Ministry relied on the Reconsideration Decision. The Ministry's evidence is that as a recipient of regular income assistance the appellant is not eligible for dental coverage. The Ministry's evidence is that the requested dental services are only covered if a recipient has either Persons with Persistent Multiple Barriers (PPMB) or Persons With Disability (PWD) designation and meets the legislated criteria. The Ministry's evidence is that even with the new evidence of the appellant's breast cancer diagnosis, the legislation would not provide the denture services as the appellant remains a recipient of regular income assistance.

The Ministry's evidence was that while they recognize that she faces a life-threatening health need and they sympathize with her circumstances, the legislation does not allow the Ministry to authorize payment for the requested denture services. The Ministry encouraged the appellant apply for PWD designation.

Based on the evidence, the panel's finding of facts are as follows:

- The appellant is a recipient of income assistance but does not have either PPMB or PWD designation;
- The appellant has dentures that do not fit properly and make it difficult and painful for her to chew any foods;
- The appellant is in need of Equilibrated Precision Complete Upper and Cast Lower Partial Dentures at a cost of \$2,775;
- The appellant was diagnosed with breast cancer on August 27, 2012 and underwent a mastectomy on September 14, 2012; and

The appellant is awaiting further surgery in relation to her breast cancer.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision which found the appellant ineligible for dentures as she did not meet the requirements of the EA Regulation sections 68, 69, 70 and 76, and Schedule C, sections 1, 4, 5 and 6 was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant sections of the legislation are as follows:

EA Regulation

Dental supplements

68 (1) Subject to subsection (2), 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 (B.C. Reg. 67/2010)

(a) a person referred to in section 67 (1) (a), [*general health supplements*], (B.C. Reg. 170/2008) (B.C. Reg. 67/2010) (B.C. Reg. 79/2010)

(a.1) a person referred to in section 67 (1) (f), (B.C. Reg. 67/2010)

(a.2) a person referred to in section 67 (1) (c) (iv) or (h), 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)

(b) a dependent child of a recipient of income assistance,

(c) a person referred to in section 67 (1) (b) if the person, or an adult dependant of the person, is a person who has persistent multiple barriers to employment, (B.C. Reg. 57/2007)

(d) an adult dependant of a person referred to in section 67 (1) (b) if the adult dependant or the person referred to in that provision is a person who has persistent multiple barriers to employment, or (B.C. Reg. 57/2007)

(e) an adult dependant of a person referred to in section 67 (1) (f).

(2) A person eligible to receive a health supplement under subsection (1) (a.1) or (e) 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)

(3) A person who was eligible to receive a health supplement under subsection (1) (a.2) 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)

Denture supplements

69 The minister may provide any health supplement set out in section 5 [*denture supplements*] of Schedule C to or for a family unit if the health supplement is provided to

- (a) a recipient of income assistance, or
- (b) an adult dependant of a recipient of income assistance,

who is not eligible for a supplement under section 68 [*dental supplements*] if the recipient or dependant has had tooth extractions performed in the last 6 months because of pain and those extractions resulted in the recipient or dependant requiring a full upper denture, a full lower denture or both.

Emergency dental and denture supplements

70 (1) Subject to subsection (2), the minister may provide any health supplements set out in section 6 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 income assistance under Schedule A,
 - (b) a recipient of hardship assistance under Schedule D,
 - (c) a person referred to in section 67 (1) (f) [*general health supplements*],
 - (c.1) a person referred to in section 67 (1) (h), 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)
- (d) a person referred to in section 72 [*dental and optical supplements – healthy kids program*],
 - (e) a dependant of a person referred to in paragraph (a) or (b),
 - (f) a dependant of a person referred to in paragraph (c), or
 - (g) a dependant of a person referred to in paragraph (c.1), if the dependant is a dependant of the person referred to in paragraph (c.1) on the day the person's family unit ceased to be eligible for income assistance, and any person in the family unit
 - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal

guaranteed income supplement.

(B.C. Reg. 114/2010)

(2) A person eligible to receive a health supplement under subsection (1) (c) or (f) 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)

(3) A person who was eligible to receive a health supplement under subsection (1) (c.1) or (g) 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)

Health supplement for persons facing direct and imminent life threatening health need

76 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).

EA Regulation, Schedule C, section 1, 4-6

Definitions

1 In this Schedule:

"denture services" means services and items that

(b) if provided by a dentist

(i) are set out under fee numbers 31310 to 31331 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. 314/2006) (B.C. Reg. 65/2010)

(ii) are provided at the rate set out for the service or item in that Schedule; (B.C. Reg 88/2005)

"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,

(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. 88/2005) (B.C. Reg. 314/2006) (B.C. Reg. 65/2010)

(ii) is provided at the rate set out in that Schedule;

Dental supplements

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

(a) in respect of a dependent child or a child in a home of a relative, 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 68 [*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.C. Reg. 65/2010) (B.C. Reg. 48/2010)

(b) \$1000 each period, if provided to a person not referred to in paragraph (a). (B.C. Reg. 162/2005)

(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, other than a person referred to in section 67 (1) (f) or a dependant of that 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 income assistance or disability assistance for at least 2 years or a dependant of that person requires replacement dentures. (B.C. Reg. 88/2005)

(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. 88/2005)

(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. 88/2005)

(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. 88/2005)

(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. 88/2005)

(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.

Denture supplements

5 The health supplements that may be provided under section 69 [*denture supplements*] of this regulation are denture services.

Emergency dental supplements

6 The health supplements that may be paid for under section 70 [*emergency dental and denture supplements*] of this regulation are emergency dental services.

Eligibility for Replacement Complete Dentures

The appellant argues that she is in pain and cannot eat because she needs dentures and that in order to recover she needs proper nutrition. The appellant argues that the Ministry must have some “leeway” or that there is something they can do to help her given the seriousness of her condition and immediate need for better nutrition.

The Ministry argues that the appellant does not meet the criteria of EA Section 69 and Schedule C section 5 as the appellant does not require replacement complete dentures due to tooth extractions in the last six months that were required due to pain.

As the dentist states that the appellant requires new dentures because her current ones were made incorrectly and her teeth do not align, the panel finds that the Ministry's decision that the appellant does not require dentures due to tooth extractions performed in the last six months because of pain as required by Section 69 of the EA Regulation was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant.

Eligibility for Replacement Partial Dentures

The appellant argues that she is in pain, cannot eat anything except mush but needs dentures so that she can get proper nutrition and recover from her breast cancer. The appellant argues that the Ministry must have some "leeway" or that there is something they can do to help her given the seriousness of her condition and immediate need for better nutrition.

The Ministry's position is that the appellant is eligible to receive denture services under section 69 and Schedule C, section 5 of the EA Regulation which specifies that the health supplements that may be provided under section 69 are "denture services". Schedule C, section 1 (b) of the EA Regulation defines dentures services as items that if provided by a dentist are set out under fee numbers 31310 to 31331 in the Schedule of Fee Allowances-Dentist. The Ministry argues that as the fee codes in Schedule C, section 1 of the EA Regulation only refer to complete dentures, the Ministry is not authorized to provide coverage for partial dentures as "denture services".

The letter from the dentist does not include fee codes but the dentist states that the appellant's optimal treatment plan is an Equilibrated Precision Complete Upper and Cast Lower Partial Denture which will cost \$2,775. As the dentist states that the appellant requires cast lower partial denture and not complete dentures the panel finds that the Ministry's decision that the appellant is ineligible for replacement partial dentures as dentures services as defined under section 69 and Schedule C, sections 1 and 5, was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant.

Eligibility for Complete and Partial Dentures as Emergency Dental Services

The appellant argues that with her recent diagnosis of breast cancer, her recent surgery and the further surgery that is expected, her need for nutrition is an emergency and she needs the new dentures on an urgent basis.

The Ministry argues that the emergency dental services they are authorized to provide under section 70 and Schedule C, section 6, as defined in Schedule C, section 1, which is limited to dental service necessary for the immediate relief of pain that, if provided by a dentist, is set out in the Schedule of Fee Allowances – Emergency Dental Dentist. The Ministry argues that as the Schedule of Fee Allowances – Emergency Dental-Dentist does not include dentures and does not include fee codes 31110 and 42210 for the Precision Complete Upper and Cast Lower Partial Dentures recommended by the appellant's dentist, the Ministry is not authorized to provide the requested dentures.

The appellant's physician states that the appellant's dentures are necessary for her wellbeing and further recovery. The dentist states that the lower partial denture is ill fitting causing pain on her teeth and gums. The dentist states that no adjustments or modifications can be made to her

existing denture to improve its fit and function.

The evidence of the appellant, her physician and the denturist all confirm that the appellant requires the recommended dentures but and while the dental services may be necessary for the immediate relief of pain, dentures do not qualify for emergency dental services as defined in Schedule C, sections 1 and 6. As the dentures recommended for the appellant are not set out in the Schedule of Fee Allowances – Emergency Dental- Denturist as required to meet the criteria set out in Schedule C, Section 1 and 6, the panel finds that the Ministry's decision that the appellant is ineligible for dentures as emergency dental services was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant.

Eligibility for Coverage as a Life-Threatening Need

The appellant argues that she cannot recover without getting proper nutrition and her situation is extremely serious. The appellant argues that as she has not been able to eat healthy food for quite some time due to headaches, severe indigestions, pain and inability to eat solid foods, she has a life-threatening need.

The Ministry argues that EA Regulation section 76 authorizes the Ministry to provide any health supplement set out in Schedule C, sections 2(1)(a) or (f) and 3 to 3.11, other than paragraph (a) of section 3(1), if the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit to meet that need. The Ministry states that the information provided indicates that the appellant may face a life-threatening health need for the services requested but that section 76 only applies to medical supplies, medical transportation and medical equipment and devices, and that dental and denture supplements are not included in these sections.

The denturist states that as the appellant's upper denture is too big and thick, it causes her to gag when used. He states that the appellant suffers from fatigue, indigestion, neck/shoulder pain, migraines and irritation on her gums. The appellant's physician states that the dentures are necessary for the appellant's well-being.

As the requested dentures do not meet the definition of the services provided in EA Regulation section 76 and Schedule C, sections 2(1)(a), (f) and 3, as they are not medical supplies, medical transportation or medical equipment and devices, the Ministry's decision that the appellant was ineligible for dentures pursuant to EA Regulation section 76 and Schedule C was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant.

In conclusion the panel therefore confirms the Ministry's decision.