

PART C – Decision under Appeal

On August 23, 2012 the Ministry's decision on Reconsideration was to deny the Appellant coverage for the balance between the amount to be charged by his dentist for a complete lower denture and the ministry rate for this service pursuant to sections 63, 69 and Schedule C of the Employment and Assistance for Persons with Disabilities Regulation and the Schedule of Fee Allowances – Denturist.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 63, 69 and Schedule C.  
Schedule of Fee Allowance – Denturist

## PART E – Summary of Facts

The evidence before the Ministry on Reconsideration included the following:

- Letter from Denturist to Appellant dated July 19, 2012
- Request for Reconsideration dated August 14, 2012
- Schedule of Fee Allowance – Denturist April 1, 2010
- Ministry E-mail Log between Reconsideration Officer and Denturist dated August 23, 2012
- Ministry E-mail Log between Reconsideration Officer and Pacific Blue Cross (PBC) dated August 22, 2012 confirming that nothing has been claimed from the Appellant's \$1000 limit.
- Dental Benefit Eligibility form for Appellant dated August 21, 2012
- Notice of Appeal dated September 4, 2012

At the hearing the Appellant submitted the following evidence to which no objection was taken by the Ministry:

- Print out from Ministry website entitled "Dental Program", 3 pages, dated July 16, 2010 and printed September 25, 2012
- Prescription from Appellant's Physician for Ensure dated August 27, 2012

The panel accepted this new evidence as written testimony in support of the information and records that were before the Ministry pursuant to section 22(4) of the EAA.

The Appellant's evidence is as follows

- He called the Ministry's Dental Program in early July 2012 and was told that he was entitled to \$1000 in dental services. He was not told that he was only entitled to "up to" \$1000 nor was he told about the Dental Fee Guide or any limits in there. He advised the Ministry that he was planning to attend a free dental clinic to have a tooth extracted and then he planned to get a partial lower denture. The Appellant agreed that he was advised to find a Denturist and have the Denturist get preauthorization from the Ministry and to give him a letter to submit to the Ministry to explain the costs.
- The Appellant attended the free dental clinic for x-rays before the extraction and was told that the dentist would likely recommend that all four remaining lower teeth be extracted, not just one.
- The Appellant called all the denturists in town and finally found one who would provide a full lower denture for \$900. The Appellant advised that he was not concerned about pre-authorization because this fee was less than the \$1000 limit for dental services. This was on July 16, 2012
- The Appellant attended the free dental clinic on July 17, 2012 and had all four remaining lower teeth extracted.
- The Appellant next called the Denturist to advise that he was ready for the lower denture and was then advised that the Ministry would only pay \$581.25 leaving a balance of \$318.75 that the Appellant would have to cover. The Appellant said that this happened on July 19, 2012 and was the first time he was advised that the Ministry would only pay \$581.25. He referred to a notebook in which he had recorded the dates, times and details concerning his dental work. He advised that he had made the notes in real time and not from memory to prepare for this appeal.

- The Appellant advised that he would not have had the additional three teeth extracted in July if he had known that the Ministry would not pay the whole \$900 for the lower denture. Those teeth were not causing him any pain and he would still be able to chew.
- The Appellant advised that since he has no lower teeth and no denture he cannot chew solid food. He has lost weight and his doctor has prescribed Ensure, a meal replacement drink. The Appellant produced a prescription from his physician for Ensure dated August 27, 2012. He has submitted a claim to the Ministry for this nutritional supplement.
- The Appellant's evidence is that he is facing a life threatening situation; that he has lost 18 pounds since his teeth were extracted; that he has severe COPD and that a lung infection could kill him; that his physician strongly recommends dentures; and, that he cannot afford to purchase Ensure.

The Ministry's evidence is that the Appellant was advised on July 12, 2012 by his Denturist's office that the Ministry would only pay \$581.25 for the complete lower denture. This evidence was set out in an E-mail log dated August 23, 2012 directed to the Denturist's office and signed by the Reconsideration Officer which states as follows:

"Points for Clarification – We understand that [Appellant] came into your office on July 12, 2012 and you called PBC for eligibility. Did you tell [Appellant] that PBC would pay \$581.25 then?"

Reply: Yes, [Appellant] came in that day and we called PBC for eligibility. We received a Pre-Authorization Remittance Statement from PBC on the same day. I called [Appellant] on either July 12 or July 13 to tell him that PBC would pay \$581.25."

A second E-mail log dated August 22, 2012 directed to PBC and signed by the Reconsideration Officer states as follows:

"Points for Clarification – The client's claims history indicates that no dental services have been provided for 2011/2012. Do you have a recent claim that has not been processed yet?"

Reply: Nothing has been claimed from the client's \$1000.00 limit. There is a pre-authorization that came in for a denture which shows that a complete lower denture in the amount of \$581.25 was pre-approved."

There is no date given for the pre-authorization. The Pre-Authorization Remittance Statement was not in evidence before the Ministry on Reconsideration and was not produced on appeal. The Dental Benefit Eligibility Statement shows that \$1000 remains available for basic and major services for the period January 1, 2011 to December 31, 2012. This form does not show a request for pre-authorization.

The Ministry's evidence is that on July 23, 2012 the Appellant attended the Ministry office with the letter from the Denturist indicating that the cost of the lower denture would be \$900 of which \$581.25 would be paid by the Ministry and the Appellant was requesting assistance to pay the balance. This request was denied on August 7, 2012.

**PART F – Reasons for Panel Decision**

The issue on appeal is the reasonableness of the Ministry's decision to deny the Appellant's application for excess funding to cover the difference between the amount charged by the Denturist for a complete lower denture and the Ministry rate for this service as set out in the Schedule of Fee Allowances - Denturist. The Denturist estimated \$900.00 for this service and the Ministry approved \$581.25 leaving a difference of \$318.75.

The Ministry does not dispute that the Appellant needs a lower denture or that he qualifies for Ministry funding for a lower denture. The only issue is whether the Appellant qualifies for funding in excess of the \$581.25 set out in The Schedule of Fee Allowances - Denturist Fee No 31320 Complete Mandibular Denture.

The Appellant claims that he relied on the information he was given by the Ministry in early July that he had \$1000 to spend on dental services. He was aware that pre-authorization was required but since his Denturist had quoted \$900 for a lower denture and this amount was less than \$1000 he was not concerned. He agreed to have all four remaining lower teeth extracted at a free dental clinic in the belief that he would be able to get a lower denture immediately. He claims he only learned after the teeth were extracted that the Ministry would only pay \$581.25. The Ministry's evidence is that the Appellant was advised by his Denturist's office several days before the extractions that the Ministry would only pay \$581.25.

The panel accepts the Appellant's evidence that he was not advised until after his teeth had been extracted that the Ministry would only pay \$581.25 for the lower denture. The Appellant's evidence was consistent on this point and corroborated by the careful notes he had taken at the time. The Appellant explained that he had been involved in a similar claim years ago and knew the importance of taking notes as the events were happening. The Appellant's evidence is also supported by his evidence that he would not have had his last three lower teeth extracted in July if he had not been sure that he could obtain a full lower denture. The evidence from the Ministry is less reliable because it is in the form of a note which appears to be summarizing an email communication with the Denturist's office; the individual who wrote the note did not give evidence on appeal; the note does not identify the person with whom the Reconsideration Officer was communicating; it does not identify the dental service; it is not corroborated by the Pre-Authorization Remittance Statement allegedly received on July 12; it is not corroborated with a date in the E-mail exchange with PBC; and, it is not supported by any reference on the Dental Benefit Eligibility form. As well, the letter from the Denturist, which is signed and dated July 19, 2012 states that the Denturist sent a Pre-Authorization to Social Services but they have indicated to him by phone that the amount they will pay for the denture is lower than the cost. The evidence that the Denturist was advised by phone is different from the evidence in the email exchange that the Denturist's office had been advised by receipt of a Pre-Authorization Remittance Statement. It is also clear from the Denturist's letter that he has begun work on the denture which would not make sense if he knew the Appellant could not pay the difference.

The panel does not make a finding that the Appellant was given wrong information by the Ministry on the phone in early July. There is insufficient evidence of what was said in that conversation to make such a finding. The panel does accept that the Appellant is truthful when he says his understanding

was that he had \$1000 to spend on dental services. The panel notes that the Appellant was aware that he was supposed to obtain pre-authorization and that he went ahead with the four extractions assuming that the \$900 cost of the lower denture would not be a problem because it was less than the \$1000 limit for dental services. If the Appellant had waited for the pre-authorization it is likely he would have learned that while he did have up to \$1000 available for dental services the Ministry would only pay \$581.25 for a complete lower denture.

The Appellant has been designated as a person with disabilities and is eligible for dental supplements under section 63 and Schedule C, section 4 of the EAPWDR which states 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

(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,

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

(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.

(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.

(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.

Schedule C of the EAPWDR sets out the following relevant sections:

**"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

The Ministry agrees that the Appellant is eligible but argues that the maximum amount of funding available is \$581.25. The Ministry argues that there is no exception in their policy for coverage of fees in excess of the rates set out in the Schedule of Fee Allowances – Denturist.

The problem for the Appellant is not his two year limit of \$1000 but the fact that "dental services" are defined as those set out in the Schedule of Fee Allowances and at the rate set out in the Schedule. The panel finds that the Ministry's decision to deny the Appellant funds in excess of the rate set out in the Schedule of Fee Allowances – Denturist for item #31320 was reasonable.

This panel has no jurisdiction to give the Appellant funds in excess of the amounts set out in the Schedule of Fee Allowances even if the Appellant was given wrong or confusing information by the Ministry.

The Appellant argues that he is entitled to funding for the lower denture as a health supplement required for a life threatening need. The prescription for Ensure from his Physician does not contain any information as to why it has been prescribed. The Appellant's evidence is that he is losing weight because he cannot chew solid food. The letter from the Denturist dated July 19, 2012 does state that the Appellant is unable to chew properly and is in a lot of pain. The Appellant argues that funds for life threatening needs are provided under section 69 of the EAPWDR which provides health supplements for persons facing a direct and imminent life threatening need.

The Ministry argues that section 69 is restricted to health supplements set out in Schedule C section 2 which does not include dental and denture supplements.

Section 69 of the EAPWDR states:

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

**69** 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).

[en. B.C. Reg. 61/2010, s. 4.]

The only health supplements which can be provided under this section are those set out in sections 2(1)(a) and (f) and section 3 of schedule C. Those sections refer only to medical or surgical supplies, medical transportation and medical equipment and devices. Dental supplements are covered under section 4 and are not supplements that can be provided for life threatening needs. There is no evidence that the Appellant is facing a life threatening need either. The Ministry's decision not to provide excess funding for a lower denture as a life threatening need was reasonable in view of the wording of the legislation.

The panel finds that the Ministry's decision to deny the Appellant funds in excess of the amounts provided in the Schedule of Fee Allowances – Denturist or as a health supplement to meet a life threatening need was a reasonable application of the applicable enactments in the circumstances of the Appellant. Therefore the Ministry's decision is confirmed.