

PART C – Decision under Appeal

The decision under appeal is the reasonableness of the Ministry's reconsideration decision dated August 28, 2012 which held that the Appellant is not eligible to receive funding to cover certain dental procedures because some of the procedures are not listed in the *Schedules of Fee Allowances – Dentist, Emergency Dental-Dentist and Denturist* and others were charged in excess of the rates listed in those Schedules.

PART D – Relevant Legislation

The relevant legislation is sections 63 and 64 of the Employment and Assistance for Persons with a Disability Regulation (EAPWDR), section 1, 4 and 5 of Schedule C to the EAPWDR and the *Schedules of Fee Allowances – Dentist, Emergency Dental-Dentist and Denturist*.

PART E – Summary of Facts

The Ministry was not in attendance at the hearing. After confirming that the Ministry was notified, the hearing proceeded under s. 86(b) of the EAR.

As part of her Appeal Package, the Appellant submitted an undated letter to Premier Clarke outlining her issues and asking for the opportunity to speak to someone about them. The Panel considered this letter and determined that it does not introduce a new issue and is in support of the information and records before the Minister at the time of reconsideration. In accordance with section 22(4)(b) of the Employment and Assistance Act the Panel admits this evidence.

The evidence before the Ministry at reconsideration consisted of a three-page submission from the Appellant dated August 10, 2012; Section 2 of the Reconsideration Form containing the summary of facts as recorded by the Ministry Worker dated August 10th, 2012; a considerable number of Pacific Blue Cross (PBC) claims forms detailing the claims made by or on behalf of the Appellant for dental work carried out in the months leading up to the reconsideration decision; and a fax dated August 23, 2012 from a 'legal advocate' representing the Appellant to the Ministry containing one page with certain portions of the Ministry's Denture Policy underlined and a Consent to Disclosure of Information form completed by the Appellant.

In her three-page submission to the Ministry the Appellant sets out the history of her issues as follows:

"My problems began in 1991 when a drunk driver rear ended my car I acquired an affliction know as peripheral neuropathy, which is a major and continuous pain in my feet and legs Consequently, I live on the strongest pain killers But the side effects are many – such as a major degeneration of my teeth."

The Appellant then describes how over a number of years she suffered many dental treatments, most of which appear not to have gone well but costing a considerable amount. Fortunately, the Appellant was on a dental plan with PBC so that much, though not all, of the costs of these procedures was covered by the Appellant's insurance.

At some point the Appellant engaged with a community resource in order to retrain for work. She completed this retraining and began to look for work, but informed the community resource that she needed dental work before she could start work and could not afford the portion of the costs not covered by PBC. The work required consisted of removing all of her bottom teeth and preparing a full bottom denture and removing most of her upper teeth and preparing a partial denture. The community resource told her that it would be able to cover her portion of the costs of this work.

The Appellant then attended at a dentist in order to have this work done. However, the dentist informed her that none of her upper teeth was saveable. The Appellant had all of her teeth removed and full dentures fitted for both her upper and lower jaw. The dentist billed PBC accordingly. The Appellant contacted the community resource to confirm that they would cover the remaining amount but was informed that they were no longer in operation and that she would need to contact their succeeding community resource. On inquiring with this new community resource, the Appellant was informed that it did not have funding for her request.

The Appellant then sought assistance from a community advocate who contacted the Ministry in order to ascertain whether the Ministry would cover the costs of the dental work not covered by PBC. The advocate was apparently told that the Ministry would cover the costs under an emergency dental and denture policy. However, it appears that this is not the case and that the Ministry actually declined to cover the costs.

At the Hearing, the Appellant testified that she currently wears the dentures but they have not been properly fitted so that she has great difficulty eating and does not feel confident to look for work. She does not feel that she can go back to the denturist to be properly fitted as she owes the denturist money.

In the Request for Reconsideration form dated August 28th, 2012 the Ministry sets out its position in a five-page decision. It describes the immediate history of the Appellant's claims as follows:

"On November 29, 2011, your denturist provided you with an upper partial denture (fee code 41114), for which he claimed \$787.50, which is the rate set out in the Schedule of Fee Allowances-Denturist. The claim was received on November 30, 2011. The claim was rejected by PBC because you received an upper partial denture on May 20, 2008. The Schedule of Fee Allowances-Dental sets out that partial dentures are an eligible item *once every five years*. Therefore, you would not be eligible for another partial upper denture until May 20, 2013. You have submitted an invoice from your denturist indicating that you owe \$400.00 for this service.

On February 6, 2012, a number of extractions were performed. The cost of these extractions was partially covered by another service provider (BTS). The claim was received by PBC on March 19, 2012. You have submitted a bill from your dentist indicating that you owe \$1,318.39 for these services. This represents the amount not paid by BTS and PBC, your service providers.

On February 6, 2012, you were provided with Immediate Complete Upper and Lower Dentures (fee code 31331). Your denturist claimed \$1350.00, which is the amount set out in the Schedule of Fees-Denturist. The claim was received by PBC on March 23, 2012. The Ministry was informed that your Denturist charged \$1950.00 for this service. You have submitted an invoice from your Denturist indicating that you owe \$600.00 for this service, which represents the difference between the amount charged by your denturist and the amount paid by the Ministry.

On June 4, 2012, you submitted the invoices from your denturist and a bill from your dentist. You requested payment from the Ministry.

On July 12, 2012, your advocate contacted the Ministry and requested that a reconsideration package be prepared for your completion.

On July 17, 2012, the Ministry contacted your dentist's office, which confirmed that you had been advised of the portion of your account for which you would be responsible. You had advised that there was a third party willing to pay your portion.

On July 23, 2012, the Ministry contacted your denturist's office and was advised that you had agreed to pay your portion, which was \$400.00; however, they had since written off that debt because you did not take delivery of the partial denture. It had been determined that you required Immediate

APPEAL:

Complete Upper and Lower Dentures. The denturist had subsequently provided these dentures, and your portion of the cost was \$600.00."

The Panel finds that there are three amounts under consideration in this Appeal. The first is the amount of \$400.00 for the partial denture and associated dental work. The second is the amount of \$1318.39, which is the amount claimed by the Appellant from the Ministry that is the difference between the amount covered by BTS and PBC and the amount charged by the Appellant's denturist for the extractions carried out on February 6, 2012. The third amount is \$600.00, which is the amount claimed by the Appellant from the Ministry that is the difference between the amount covered by PBC and the amount charged by the Appellant's denturist for the full upper and lower dentures work also carried out on February 6, 2012.

The Panel finds that the Appellant was made aware by the dentist and the denturist offices at the time these services were rendered that she would be required to pay these amounts as they would not be completely covered by PBC and BTS. However, the Appellant considered that they would be covered by the community resource or, perhaps, the Ministry and so agreed to the services.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's reconsideration decision dated August 28, 2012 which held that the Appellant is not eligible to receive funding under sections 63 or 64 of the EAPWDR to cover:

- (i) the amount of \$400.00, which is the amount claimed by the Appellant from the Ministry for the partial denture and associated dental work;
- (ii) the amount of \$1318.39, which is the amount claimed by the Appellant from the Ministry that is the difference between the amount covered by BTS and PBC and the amount charged by the Appellant's dentist for the extractions carried out on February 6, 2012; and
- (ii) the amount of \$600.00, which is the amount claimed by the Appellant from the Ministry that is the difference between the amount covered by PBC and the amount charged by the Appellant's dentist for the full upper and lower dentures work also carried out on February 6, 2012.

The relevant legislation is sections 63 and 64 of the EAPWDR:

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.

Emergency dental and denture supplement

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],

(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.

And certain definitions in section 1 and sections 4, 4.1 and 5 of Appendix "C" of the EAPDWR:

Schedule C

Health Supplements

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,
 - (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
- (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;

...

"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;

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.

(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.

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 position of the Appellant is that the Ministry should cover the costs because she was told by the community resource that the Ministry had told it that the Ministry would cover these costs. She would not have had the services done if this had not been the case.

The position of the Ministry is that:

- (i) In regards to the outstanding \$400.00 for the partial bridge and associated dental work, the Appellant's dentist has written off the amount, and, in any case, the Appellant had a partial bridge fitted in May 2008 which means that she is not eligible to receive payment for this partial bridge as the legislation provides for this coverage once every 5 years only.

- (ii) In regards to the costs of the extractions, the Appellant's dentist charged fees in excess of the rates set out in the Schedule of Fee Allowances-Dentist and Emergency Dentist and also charged for services that are not set out in that Schedule; and
- (iii) In regards to the costs of the dentures, the Appellant's denturist charged fees in excess of the rates set out in the Schedule of Fee Allowances-Denturist.

The Panel finds that:

- (i) The amount of \$400.00 outstanding for the partial bridge and associated dental work has been written off by the dentist and is no longer owing. If it were still owing, it would not be covered by the Ministry because this benefit is payable by the Ministry only once every 5 years and the Appellant received a partial denture in May 2008.
- (ii) The Appellant's dentist charged \$3,831.60 for the extractions carried out on February 6, 2012. The Ministry rates for the total of that work is \$1,538.21. Therefore, the Appellant is required to pay the difference of \$1318.39. The Panel finds that there are no provisions on the legislation which would allow the Ministry to cover this amount.
- (iii) The Appellant's denturist charged \$1950.00 for the full upper and lower dentures prepared on February 6, 2012. The Ministry rate for the dentures is \$1350.00. Therefore the Appellant is required to pay for the difference of \$600.00. The Panel finds that there are no provisions on the legislation which would allow the Ministry to cover this amount.

As regards to the outstanding \$400.00, the Panel finds that, whether or not the amount remains owing, it is not payable by the Ministry as the Appellant received a partial denture within the past 5 years and the Ministry is only permitted to provide payment for this service once every five years.

As regards to the costs of the extractions, the Panel finds that the Appellant's dentist charged in excess of Ministry rates set out in the Schedule of Fee Allowances-Dentist and Emergency Dentist. Under the legislation, the Ministry is not permitted to cover costs that are in excess of the legislated rates. As well, the dentist charged for services that are not listed in the Schedule of Fee Allowances-Dentist and Emergency Dentist. The Ministry is not permitted to cover costs that are not listed in the legislation.

As regards the cost of the dentures, the Panel finds that the Appellant's denturist charged fees in excess of the rates set out in the Schedule of Fee Allowances-Denturist. Under the legislation, the Ministry is not permitted to cover costs that are in excess of the legislated rates.

The Panel finds that the Ministry's determination that the Appellant is not eligible to receive funding under sections 63 or 64 of the EAPWDR to cover either the extractions or the dentures was a reasonable application of the applicable enactment in the circumstances of the Appellant as the Panel found that the amounts charged were in excess of the Ministry rates and in some cases not included in the list of included services.

Accordingly, the Panel confirms the Ministry's decision.