

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated January 11, 2013 which denied the appellant's request for a supplement to cover the cost of dental implants:

- 1) as not being included in the "basic dental service" pursuant to Section 4 or "emergency dental service" under Section 5 or as a "crown and bridgework" supplement under Section 4.1 of Schedule C to the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), that is provided by a dentist or by a denturist and set out in the appropriate Schedule of Fee Allowances;
- 2) as not being an item included in Sections 62 [general health supplements], 63 [dental supplement], 64 [emergency dental and denture supplement], 65 [orthodontic supplement] or Sections 2, 2.1, 2.2, 3 through 3.11, 6, 7, 8 or 9 of Schedule C to the EAPWDR; and,
- 3) as not meeting the criteria as a health supplement for a person facing a direct and imminent life threatening health need, pursuant to Section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 62, 63, 63.1, 64, 65, 69 and Schedule C, Sections 1, 2, 2.1, 2.2, 3 through 3.11, 4, 4.1, 5, 6, 7, 8, and 9.

Schedule of Fee Allowances- Dentist, Schedule of Fee Allowances- Denturist, Schedule of Fee Allowances- Emergency Dental- Dentist, Schedule of Fee Allowances- Emergency Dental- Denturist, and Schedule of Fee Allowances- Crown and Bridgework.

PART E – Summary of Facts

With the consent of the parties this appeal was conducted in writing in accordance with s. 22(3)(b) of the Employment and Assistance Act (EAA).

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Letter scanned December 14, 2012 from a denture clinic 'To Whom It May Concern' stating in part that, as advised by Pacific Blue Cross/ Ministry of Social Services, dental implants are not an eligible procedure under the ministry fee guide; and,
- 2) Request for Reconsideration- Reasons.

Prior to the hearing, the appellant provided a written submission; the ministry advised that it relies on its reconsideration summary and did not raise an objection to the admissibility of the appellant's submission. The panel reviewed the appellant's written submission which included further detail of his need for dental implants and admitted it as being in support of the information before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act (EAA).

In his Request for Reconsideration, the appellant stated that he has been told by his denturist that he has no ridges and his dentures will not be stable unless he gets implants. The appellant wrote that he has been wearing dentures for some time now and he is not able to eat because his dentures move around in his mouth. According to his denturist, the only solution for him is that he gets two implants on the lower arch.

In his Notice of Appeal, the appellant stated that he disagrees with the ministry's reconsideration decision. He wrote that the reason he needs lower implants is that he does not have very much bone or gums. He has to not wear his dentures and eat a soft diet. He is not able to eat properly as his dentures move all around. This is causing sores on his gums if he wears them. The appellant stated that he is losing weight because he cannot eat properly.

In his written submission on the appeal, the appellant stated that he has been having trouble with his dentures fitting properly ever since he got them. When he eats, his dentures move around and food gets caught under his plate. The appellant wrote that he went back 4 or 5 times to the denturist who made the dentures and he would file them down trying to adjust the fit but it only got worse. The appellant is in contact with a new denturist who told him he would keep having problems because he has hardly any bone or gums under his lower dental plate. He is on a softer food diet that causes weight loss. If he tries eating a normal meal of meat and vegetables, his bottom denture moves so much that he gets sores on his gums. The appellant stated that he needs lower denture implants to keep his dental plate from moving around. When he talks, his dentures move around so much that they start coming out. He requested the dental implants for the lower plate to provide him with the ability to have a normal lifestyle.

The ministry relied on the facts as set out in the reconsideration decision that the appellant is a PWD and is eligible to receive health supplements set out in Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR). The appellant requested dental implants on the advice of his dentist. On December 14, 2012, the ministry received a letter from a denture clinic that the clinic was advised by Pacific Blue Cross/ Ministry of Social Services that dental implants were not an eligible procedure under the ministry fee guide.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of dental implants as not being an included item and not meeting the criteria as a health supplement for a person facing a direct and imminent life threatening health need, pursuant to Section 69 of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

General health supplements

62 (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] 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 disability assistance . . .

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*] . . .

Crown and bridgework supplement

63.1 (1) Subject to subsections (1.1) and (1.2), the minister may provide a crown and bridgework supplement under section 4.1 of Schedule C to any of the following persons:

(a) a recipient of disability assistance ...

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*] . . .

Orthodontic supplement

65 (1) Subject to subsection (2.1), the minister may provide orthodontic supplements to or for a family unit if the orthodontic supplements are provided to or for a person in the family unit who meets the conditions under subsection (2) and who is

(a) a person with disabilities who is eligible for health supplements under

(i) section 62 (1) (a) or (b) (iii) . . .

Section 4 of Schedule C of the EAPWDR specifies that the health supplements to be paid for under Section 63 are "basic dental services."

Section 1 of Schedule C further defines "basic dental service" as follows:

"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, . . .

Schedule C of the EAPWDR also provides:

Crown and bridgework supplement

4.1 (1) In this section, "crown and bridgework" means a dental service

- (a) that is provided by a dentist,
- (b) that is set out in the Schedule of Fee Allowances – Crown and Bridgework, that is effective April 1, 2010 and is on file with the office of the deputy minister,
- (c) that is provided at the rate set out for the service in that Schedule, and
- (d) for which a person has received the pre-authorization of the minister.

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.

Section 1 of Schedule C further defines "emergency dental service" as follows:

"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 . . .

At issue is whether the requested dental implants are an eligible item under Schedule C of the EAPWDR, including:

Section 2 (1)(a) provides that the following items are health supplements if the other criteria of the section are met: medical or surgical supplies that are, at the minister's discretion, either disposable or reusable.

Section 2(1)(c) provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physiotherapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 67.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

Section 3 of Schedule C provides that the following items are health supplements if all of the other criteria of the section are met: the medical equipment and devices described in sections 3.1 to 3.11 of the Schedule.

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a pressure relief mattress.

Section 3.8 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a floor or ceiling lift device.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a positive airway pressure device, an accessory that is required to operate a positive airway pressure device, a supply that is required to operate a positive airway pressure device.

Section 3.10 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made foot orthotic, custom-made footwear, a permanent modification to footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace.

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing aid.

Section 6 of the Schedule provides that the amount of a diet supplement that may be provided under section 66 [diet supplements] is set out for various conditions, if the other criteria of the section are met.

Section 7 of the Schedule provides as follows:

- 7 The amount of a nutritional supplement that may be provided under section 67 [nutritional supplement] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):
- (a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;
 - (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
 - (c) for vitamins and minerals, up to \$40 each month.

Section 8 of the Schedule provides that the amount of a natal supplement that may be provided under section 68 [natal supplements] is set out, if the other criteria of the section are met.

Section 9 of the Schedule provides that the minister may provide infant formula under section 67.1 of the EAPWDR if the other criteria of the section are met.

Section 69 of the EAPWDR sets out:

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).

The ministry has determined that the appellant is a PWD and is, therefore, eligible to receive health supplements set out in Schedule C of the EAPWDR. The ministry's position is that dental implants are not "basic dental service" set out in Section 4 of Schedule C of the EAPWDR, or "emergency dental services" as set out in Section 5 of Schedule C, or part of "crown and bridgework" as set out in Section 4.1 of Schedule C as dental implants are not included in any of the ministry's Schedule of Fee Allowances, for Dentist, Denturist, Emergency Dental, Emergency Denturist, or Crown and Bridgework.

The appellant argues that he has been told by his denturist that he has no ridges and his dentures will not be stable unless he gets implants. The appellant argues that he has been wearing dentures for some time now and he is not able to eat because his dentures move around in his mouth, and he is losing weight because he cannot eat properly. The appellant points out that, according to his denturist, the only solution for him is that he gets two implants on the lower arch. The appellant argues that the reason he needs lower implants is that he does not have very much bone or gums. The appellant argues that he went back 4 or 5 times to the denturist who made the dentures and he would file them down trying to adjust the fit but it only got worse. The appellant argues that when he talks, his dentures move around so much that they start coming out and he requested the dental implants for the lower plate to provide him with the ability to have a normal lifestyle.

The ministry has determined that the appellant is a PWD and that the appellant is, therefore, eligible to receive health supplements set out in Schedule C, pursuant to Section 62 of the EAPWDR ("general health supplements"). Section 63 of the EAPWDR stipulates that dental supplements may be provided to a family unit who is eligible for health supplements under Section 62 as a recipient of disability assistance, and the appellant is, therefore, eligible for dental supplements. Section 4 of Schedule C of the EAPWDR specifies that the health supplements to be paid for under Section 63 are "basic dental services." Section 1 of Schedule C further defines "basic dental service" to mean a dental service that, if provided by a dentist, is set out in the Schedule of Fee Allowances – Dentist and if provided by a denturist, is set out in the Schedule of Fee Allowances-Denturist. The ministry stated that the appellant requested dental implants on the advice of his dentist, but that a letter was also received from a denture clinic, and the appellant referred to advice received from a denturist. However, upon review of both the Schedule of Fee Allowances- Dentist and the Schedule of Fee Allowances- Denturist, the panel finds that the ministry reasonably concluded that dental implants are not included in the list of services under either Schedule. The appellant stated that some efforts had been made to repair his existing dentures and the panel notes that there are other services included for dentures in these Schedules, including replacement dentures, relines and rebases and repairs, however requests for these services were not the subject of this appeal.

Section 64 of the EAPWDR stipulates that emergency dental and denture supplements may be provided to a family unit who is eligible for health supplements under Section 62 as a recipient of disability assistance, and the appellant is, therefore, eligible for emergency dental and dental supplements. Section 5 of Schedule C of the EAPWDR specifies that the health supplements to be paid for under Section 64 are "emergency dental services." Section 1 of Schedule C further defines "emergency dental service" to mean a 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 and is provided at the rate set out in that Schedule and, if provided by a denturist, is set out in the Schedule of Fee Allowances – Emergency Dental – Denturist and is provided at the rate set out in that Schedule. Upon review of both the Schedule of Fee Allowances- Emergency Dental- Dentist and the Schedule of Fee Allowances- Emergency Dental- Denturist, the panel finds that the ministry reasonably concluded that dental implants are not included in the list of services under either Schedule.

Section 63.1 of the EAPWDR stipulates that a crown and bridgework supplement may be provided under section 4.1 of Schedule C to a recipient of disability assistance and the appellant is, therefore, eligible for a crown and bridgework supplement. Section 4.1 of Schedule C of the EAPWDR specifies that "crown and bridgework" means a dental service that is provided by a dentist, that is set out in the Schedule of Fee Allowances – Crown and Bridgework, that is provided at the rate set out for the service in that Schedule, and for which a person has received the pre-authorization of the minister. Upon review of the Schedule of Fee Allowances- Crown and Bridgework, the panel finds that the ministry reasonably concluded that dental implants are also not included in the list of services under the Schedule of Fee Allowances- Crown and Bridgework.

In the reconsideration decision, the ministry's position is that the appellant's request for a supplement to cover the cost of dental implants does not meet the criteria of the other sections of Schedule C of the EAPWDR, including sections 2, 2.1, 2.2, 3, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 6, 7, 8 and 9, since dental implants are not any of the items covered, namely: a medical or surgical supply that are either disposable or reusable, a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physiotherapy; optical supplements; eye examination supplements; a cane, a crutch or a walker; a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair; a wheelchair seating system, an accessory to a wheelchair seating system; a scooter, an upgraded component of a scooter, an accessory attached to a scooter; a bathing or toileting aid; a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed; a pressure relief mattress; a floor or ceiling lift device; a positive airway pressure device, an accessory that is required to operate a positive airway pressure device, a supply that is required to operate a positive airway pressure device; a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace, a foot abduction orthosis, a toe orthosis; a hearing instrument; diet supplements; monthly nutritional supplements; natal supplements; or infant formula. The appellant does not take a position as to whether the requirements of the other sections of Schedule C of the EAPWDR have been met. The panel finds that the ministry's decision, which concluded that the dental implants are not an item listed in the other Sections of Schedule C of the EAPWDR, was reasonable.

With respect to Section 69 of the EAPWDR, the ministry's position in the reconsideration decision is that there is not sufficient information to establish that the appellant is facing a direct and imminent life-threatening need for these supplements and also that the dental implants are not set out under Schedule C, Section 2(1)(a) [medical supplies] or Section 2(1)(f) [medical transportation]. The appellant does not take a position as to whether the requirements of Section 69 of the EAPWDR have been met but points out that he has not been able to eat a normal diet and has been losing weight because he cannot effectively use his existing dentures.

The panel finds that the ministry determined that the appellant is eligible, as a recipient of disability assistance, for health supplements under Section 62 of the EAPWDR, whereas Section 69 applies to provide a health supplement to a person in the family unit who is otherwise not eligible for the health supplement under the

EAPWDR. The panel also finds that the ministry reasonably determined that the requirements of Section 69(d) are not met as dental implants are not set out under Schedule C, Section 2(1)(a) as medical or surgical supplies or under Section 2(1)(f) as a mode of medical transportation, or under Sections 3 to 3.11, as detailed above. While the appellant stated that he has been losing weight since he cannot eat a proper diet with his existing dentures, the panel finds that there was not sufficient evidence currently provided to establish that the appellant faces a direct and imminent life threatening need. Therefore, the panel finds that the ministry's decision, which concluded that Section 69 of the EAPWDR does not apply to the appellant's circumstances, was reasonable.

In conclusion, the panel finds that the ministry's decision to deny the appellant's request for a supplement to cover the cost of dental implants as not being included in the "basic dental service" pursuant to Section 4 or "emergency dental service" under Section 5 or as a "crown and bridgework" supplement under Section 4.1 of Schedule C to the EAPWDR and set out in the appropriate Schedule of Fee Allowances, and not meeting the legislated criteria of Schedule C, Sections 2, 2.1, 2.2, 3, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 6, 7, 8 and 9, or Section 69 of the EAPWDR, was reasonably supported by the evidence, and confirms the decision.