

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development (“the ministry”) dated April 4, 2013 which held that the appellant was not eligible for full coverage for cast partial upper and lower dentures because he has only \$898.38 remaining of the \$1000 available to him for basic dental services as set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, subsection 4. This amount will cover the cost of a cast partial upper denture and not leave sufficient funds to cover the cost of a cast partial lower denture. Therefore, the partial lower denture will be subject to the limitations set out in EAPWDR, Schedule C, subsection 4(5)(a) and (b) for partial dentures provided in excess of \$1000 which limits the services provided in these circumstances to acrylic dentures only.

The ministry also determined that it is not authorized to provide coverage for partial dentures as emergency dental services because they are not set out in the Schedule of Fee Allowances – Emergency Dental-Denturist.

Also, the ministry noted that coverage for eligibility as a Life-Threatening Health need under Section 69 of the EAPWDR does not include a provision for dental and denture supplements.

The reconsideration decision noted that the appellant was not eligible for reimbursement for fees in excess of the rates set out in the Schedule of Fee Allowance – Dentist and the Dental Supplement- Denturist.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 63, 64 and 69 and Schedule C, sections 1, 4 and 5.

Schedule of Fee Allowance – Dentist, Emergency Dental-Dentist and Dental Supplement- Denturist.

PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with section 22(3)(b) of the Employment and Assistance Act.

The evidence before the ministry at the time of reconsideration comprised:

(A) The appellant's request for consideration dated February 26, 2013 which included the following documents;

1. A 4 page letter from the appellant dated February 21, 2013. (details below)
 2. A letter from an Ear, Nose and Throat Specialist dated November 27, 2012. The specialist gives the appellant's impression as; upper airway dryness, no other abnormalities and possible esophageal lesion. He recommends that the appellant drink more water through the day.
 3. A letter to the appellant from his dentist dated January 16, 2013 which indicates; the procedure codes for upper (53101) and lower (53102) dentures, that the ministry will pay \$800.22 per denture for dentist and lab fees combined and that the ministry will pay a maximum of \$1000 for any dental procedures between January 1, 2013 – December 31, 2014.
 4. An email to the appellant from his dentist's receptionist dated January 25, 2013 indicates that the ministry will not consider an additional payment for cast partial dentures even if the dentist feels that this is the best treatment.
 5. A subsequent email dated January 25, 2013 from his dentist's receptionist with additional information for prosthetic dentistry pre-determinations. The dentist recommends that the appellant receives maxillary and mandibular cast partial dentures to restore his dentition.
 6. A Needs Note Denture requirement dated February 8, 2013 assesses the appellant with depression, notes the problem as Dentofacial Anomalies and suggests the appellant needs upper and lower dentures due to a severe chewing problem.
 7. A letter providing a second dental opinion for the appellant dated February 27, 2013. This dentist notes that the appellant has multiple missing teeth (18,16,15,24,26,27,28,38,36,45,46,47,48), 4 of the teeth being extracted in the last 3 months. Also noted is that there is an option to extract another tooth in order to minimize need to repair [RPD] in the future but with a risk of a less stable prosthesis. The appellant has chosen to keep this tooth to add to the partial denture in the future. Prior to dental fabrication, the appellant will require additional restorations and following this phase 1 treatment, cast partial dentures would ideally be fabricated. The appellant has been informed that; "partials are not a perfect solution and that he will likely experience rocking and mobility of both prostheses, a limitation of removable prostheses that is virtually unavoidable". "His best option is to proceed with fabrication cast partials to allow better function." He will benefit immensely from cast partials.
 8. 2 Pre-Authorization Requests both dated February 28, 2013; one request notes a variety of unidentified procedure charges which total \$531.73 and the other request includes specific dentist and laboratory charges for procedures 53201 and 53202 totaling \$2638.
 9. A letter from the appellant's denturist dated March 5, 2013 indicates that given his number of missing teeth on both arches, proper mastication would be difficult. "Replacing the missing teeth with a removable cast denture would be the best option for him."
 10. A Standard Dental Claim Form dated March 5, 2013 from the Denturist Association of B.C. indicates a total of \$2910 for the denturist's fee and laboratory charges for procedures 41114 and 41124.
1. In the appellant's letter he states that:
 - He has very few remaining teeth.
 - He cannot chew food and is choking on food matter to a point of gasping for air.
 - He believes that partial dentures are necessary to avoid further deterioration of his face, jaw bone, teeth and mouth.
 - He believes his situation is critical and he receives assistance from his sister.

- He has worked since the age of 14, and prior to his disability contributed to the economy, and was responsible.
- In 2012, he was diagnosed with chronic depression, severe anxiety and agoraphobia, which he finds difficult to accept.
- Since 2008 when he began receiving assistance, he has not had the ability to go out in public.
- He has not used any of the allotted dental subsidies until a month ago when 4 teeth had to be extracted, after his mouth became inflamed.
- He has had 13 teeth extracted to date and may possibly need to have another one extracted.
- He believes the cost for the 4 tooth extraction to be \$645 and with having \$1000 allotted every odd year by the ministry; he has a potential cost ceiling of \$4000.
- His needs over the same period, should he have consumed, if emotionally stable, able and not disabled may amount to approximately \$3645, with metal dentures, which is far less than \$4000.
- He has a high regard for personal hygiene and always cared for his teeth, he has often found himself in a dentist's chair.
- He has no ability to pay.
- Partial dentures are necessary to avoid further deterioration of his face, jaw bone, teeth and mouth.

(B) The appellant's dental claims history dated from January 1, 2012 to March 28, 2013 indicates that his current benefit period starts on January 1, 2013 and ends on December 31, 2014, with a remaining amount of \$410.25 out of the total benefit of \$1000 for the noted period.

In a Notice of Appeal dated April 16, 2013, under reasons, the appellant's dentist indicated that the cast lower partial articulating with upper cast is a minimum requirement to meet the appellant's chief concern of swallowing and choking on food. Implants are more ideal but not practical financially.

After reconsideration, but before the hearing, the appellant submitted a letter dated May 4 2013 seeking clarification of the ministry as to certain technical issues relating to the reconsideration decision.

In a letter dated June 3, 2013, the ministry responded to the appellant's request for clarification and reiterated the reasons for their reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision that the appellant was not eligible for full coverage for cast partial upper dentures and lower dentures because he has only \$898.38 remaining of the \$1000 available to him for basic dental services as set out in EAPWDR, Schedule C, subsection 4 was a reasonable application of the legislation in the circumstances of the appellant or reasonably supported by the evidence.

This amount will cover the cost of a cast partial upper denture and not leave sufficient funds to cover the cost of a cast partial lower denture. Therefore, the partial lower denture will be subject to the limitations set out in EAPWDR, Schedule C, subsection 4(5) limiting the services provided in these circumstances to acrylic dentures, only.

The ministry also determined that it is not authorized to provide coverage for partial dentures as emergency dental services because they are not set out in the Schedule of Fee Allowances – Emergency Dental-Denturist.

Also, the ministry noted that coverage for eligibility as a Life-Threatening Health need under Section 69 of the EAPWD Regulation does not include a provision for dental and denture supplements.

Relevant Legislation

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 section (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).

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 3.12, other than paragraph (a) of section 3 (1).

SCHEDULE C Health Supplements sections:

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

4(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,

4(3)(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,

4(5) The dental supplements that may be provided to a person described in subsection (3) (b) 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.

Schedule of Fee Allowance – Dentist, Emergency Dental-Dentist and Dental Supplement- Denturist.

The ministry's position is that the appellant is eligible for a cast partial upper denture and an acrylic partial lower denture at ministry rates. The appellant's claims history for the current period of January 1, 2013 - December 31, 2014 indicates that he has a remaining balance of \$410.25 from the \$1000 limit. The \$1000 limit may be exceeded if emergency dental services are necessary for an eligible person who needs immediate attention to relieve pain or to control infection or bleeding or if a person's health or welfare is otherwise immediately jeopardized. The ministry determined that pursuant to the legislation, it is not authorized to provide coverage for partial dentures as emergency dental services because they are not set out in the Schedule of Fee Allowances – Emergency Dental-Denturist. Exercising its discretion where possible, the ministry determined that the restorations performed in March 2013, by the appellant's dentist were emergency dental services as they were deemed necessary prior to denture fabrication and without partial dentures the appellant's health and welfare appear to be jeopardized. Therefore, the cost of the restorations performed in March 2013 could be transferred to the Emergency Dental Plan leaving a new balance of \$898.38 to cover the cost of a cast partial upper denture. With the provision for the cast partial upper denture, the appellant will not have sufficient funds to cover the cost of a cast partial lower denture and the remaining balance from the \$1000 limit would be used for an acrylic denture at the lowest rate of \$320.25.

The ministry noted that the remedy provided under coverage for eligibility as a Life-Threatening Health need applies to medical supplies, medical transportation and medical equipment and devices, however, does not include dental and denture supplements.

The ministry also noted that both the appellant's dentist and denturist intend to charge fees in excess of the rates set out in the Schedule of Fee Allowances - Dental and Denturist. There is no exception in policy for coverage of fees in excess of rates set out in the Schedule of Fee Allowances-Dentist and Emergency Dentist-Denturist.

The appellant's position is that his situation is urgent, he has no funds and cast partial dentures are necessary to avoid further deterioration of his face, jaw bone, teeth and mouth. The appellant's second dentist has supported his request; “His best option is to proceed with fabrication cast partials to allow better function.” The appellant's first dentist has also indicated that the cast lower partial articulating with upper cast is a minimum requirement to meet the appellant's chief concern of swallowing and choking on food. Implants are more ideal but not practical financially. The appellant further indicates that he has been advised that the cheaper plastic dentures end up costing more in the short term, resulting in not being usable because they require fixing, repair and/or adjustment and that with his restricted annual dental plan allotment, it may not include repairs and/or replacement for a 5 year period.

In determining the reasonableness of the ministry's decision, the panel has reviewed and considered the appellant's written testimony and all medical information confirming the necessity of the appellant's treatment.

The panel finds that while section 69 of the EAPWDR sets out that a health supplement for persons facing direct and imminent life threatening health need applies to medical supplies, medical transportation and

medical equipment and devices; it does not include dental and denture supplements and that the Schedule of Fee Allowances – Emergency Dental-Denturist does not authorize the ministry to provide coverage for partial dentures as emergency dental services.

The panel notes that after the payment for cast partial upper dentures approved by the ministry (at ministry rates) the remaining balance leaves insufficient funds for cast bottom partial dentures from the \$1000 limit for basic dental services. However, section 4(3) of Schedule C provides that the \$1000 limit may be exceeded by an amount necessary to provide partial dentures if the requirements of paragraph (b) are met – the partial denture is required to replace at least 3 contiguous missing teeth on the same arch and at least one of those teeth was extracted in the previous 6 months to relieve pain. In this case, the ministry accepted that the appellant's request for partial lower dentures met those criteria. However, section 4(5) of Schedule C limits the types of partial dentures that may be provided under subsection (3) to specific partial dentures identified by certain fee numbers. The panel finds that the ministry reasonably determined that the partial dentures identified in section 4(5) are acrylic partial dentures not cast partial dentures and that the appellant is only eligible for acrylic partial dentures not cast partial dentures. The panel notes that the ministry has no discretion in this respect.

The panel also finds that the ministry is not authorized to provide coverage for fees over above the rates set out in the Schedule of Fee Allowances -Dentist and Emergency Dentist-Denturist. Therefore, the panel finds that the ministry reasonably determined that it can only pay the fees for basic dental services provided at the rate set out for the service in the Schedule of Fee Allowances as per Schedule C, section 4 of EAPWDR and that no authority exists to grant more than those amounts.

The panel finds that the ministry decision was a reasonable application of the legislation in the circumstances of the appellant and confirms the reconsideration decision.