

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated June 3, 2013 which found that the appellant's request for coverage of the cost for extractions and dentures did not meet the requirements of the *Employment and Assistance Regulation* (EAR) sections 68-70, and Schedule C, section 1, 5 and 6.

In particular, the ministry found that the appellant is eligible for emergency dental services for extractions pursuant to section 70 of the EAR but is not eligible for coverage in excess of the rates set out in the Schedule of Fee Allowances – Emergency Dental-Dentist.

The ministry also found that the appellant is eligible for dentures pursuant to section pursuant to section 69 of the EAR but is not eligible for coverage in excess of the rates set out in the Schedule of Fee Allowances – Dentist.

In addition, the ministry found that the appellant is not eligible for coverage for the bilateral bone excision as this service is not set out in the Schedule of Fee Allowances –Emergency Dental-Dentist.

PART D – Relevant Legislation

Employment and Assistance (EA) Regulation sections 69 & 70
Schedule C, sections 1, 5 and 6.
Schedule of Fee Allowances – Part A Dentist and Part D Emergency Dental-Dentist

PART E – Summary of Facts

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

- 1) The appellant's Request for Reconsideration (RFR) dated May 21, 2013;
- 2) Letter from a job developer dated May 16, 2013 stating that the appellant has been working with the job developer but it has been difficult placing the appellant in a suitable position as his main barrier to employment is his teeth. The job developer reports that the appellant complains of severe pain in his mouth, gums and teeth, has had to use many antibiotics to deal with recurring infections, and that his physical appearance can cause customers and employers to feel intimidated. The job developer also states that the appellant can only eat liquid soup, so there is a risk that his health will continue to deteriorate. The job developer states that the appellant is in desperate need of dental surgery to remove his teeth and obtain dentures so that he can continue his life pain free and reach his goal of obtaining a full time permanent position in the culinary industry. The job developer states that without the surgery, the appellant will remain obstructed by the overwhelming pain he feels and be barred from competing in a competitive labor force where days of absence are not always met with understanding;
- 3) Fax from a dental centre dated April 19, 2013 with a dental pre-authorization remittance statement for dental work in the amount of \$3,319.20;
- 4) Letter from a dentist dated March 14, 2013 stating that the appellant came into the office today to have his teeth examined and diagnosed in preparation for possible surgery; and
- 5) Letter from a dentist dated February 18, 2013 stating that the appellant had a tooth extraction that day and was advised to rest and avoid engaging in strenuous activities for at least 48 hours;
- 6) Letter from a dentist dated January 21, 2013 stating that the appellant had a tooth extraction on January 17, 2013, had severe pain for one week prior to the extraction and may have pain or discomfort for another week after extraction; and
- 7) Treatment plan proposal dated January 16, 2012 for extractions and dentures in the amount of \$3,611.

In his Notice of Appeal the appellant states that to have a proper fitting of the lower full denture in the mouth, the removal of bilateral torus mandibularis is needed.

With the consent of both parties, the appeal proceeded by way of a written hearing.

Admissibility of New Information

Prior to the hearing, the appellant submitted a treatment plan estimate dated July 18, 2013 for bilateral torus mandibularis excision in the amount of \$332.

The panel has admitted the treatment estimate into evidence as it is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information relates to the appellant's request for dental work.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision which found the appellant ineligible for coverage for bilateral bone excision and coverage for dental extractions and dentures above the ministry rates set out in the Schedule of Fee Allowances – Dentist and Emergency Dental-Dentist 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

General health supplements

67 (1) Subject to subsection (1.1), 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 (B.C. Reg. 89/2005) (B.C. Reg. 67/2010)

(a) is a recipient of income assistance under section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A if

(i) **any person in the family unit is a person who has persistent multiple barriers to employment**, and

(ii) the recipient does not receive a federal spouse's allowance or guaranteed income supplement benefits,

(iii) Repealed

(B.C. Reg. 57/2007)

(b) is a recipient of income assistance under section 8 [*people receiving special care*] of Schedule A, (B.C. Reg. 89/2005)

Paragraphs 67(1)(c) through (h) set out categories including persons who are dependants, people over 65 years old, or families that have ceased to be eligible for income assistance.

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)

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,

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, and (B.C. Reg. 314/2006) (B.C. Reg. 65/2010)

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

(ii) is provided at the rate set out for the service in that Schedule, and (B.C. Reg. 88/2005)

"denture services" means services and items that

(a) if provided by a dentist

(i) are set out under fee numbers 51101 to 51302 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 (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, and

(b) if provided by a denturist

(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,

(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 (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, 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 (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.

Schedule of Fee Allowances – Part D - Emergency Dental-Dentist

EXTRACTIONS (REMOVALS)

Erupted teeth

Uncomplicated

71101 Single tooth 69.02

71109 Each additional tooth in same quadrant 45.59

Extraction, impacted tooth involving tissue and bone coverage requiring incision of overlying soft tissue, elevation of flap, removal of bone AND sectioning of tooth for removal (Complete Bone Covered).

72221 Single tooth 209.96

Schedule of Fee Allowances – Part A – DentistExcision of Bone

73154 Bilateral - \$231

PROSTHODONTICS - REMOVABLE

Note: Dentures are an eligible item once every five years. The replacement of dentures within five years of original insertion will normally not be paid by the Ministry. Refer to Denture Policy. Lab fees are included in the listed fee unless otherwise indicated. Arch code required.

COMPLETE DENTURES

Includes:

- impressions
- initial and final jaw relation records
- try-in evaluation and check records
- insertion
- adjustments (includes 6 months post-insertion care)

51101 Complete Maxillary Denture 757.50

51102 Complete Mandibular Denture 780.75

Eligibility for Dental Services

The appellant's position is that he has severe pain in his mouth, teeth and gums and requires the excision and dentures so that he can continue his life pain free and reach his goal of obtaining a full time permanent position in the culinary industry. The appellant also states that his main barrier to employment is his physical appearance due to his teeth that intimidates employers and customers.

The ministry's position is that the appellant is not eligible to receive dental supplements under section 68 and Schedule C, section 4 of the EAR but he is eligible to receive emergency dental services under section 70 and Schedule C, section 6 of the EAR. The ministry's position is that the appellant is eligible for coverage for the extractions of teeth at the ministry rate of \$644.97 based on the rates set out in the Schedule of Fee Allowances –Emergency Dental-Dentist, but as the dentist intends to charge fees in excess of the rates set out in the Schedule of Fee Allowances –Emergency Dental-Dentist, the ministry is not authorized to provide coverage for fees in excess of the ministry rates.

The ministry also states that the appellant is not eligible for coverage for the bilateral excision of bone (fee code 73154 in the Schedule of Fee Allowances - Dentist) as that is not a dental service set out in the Schedule of Fee Allowances –Emergency Dental-Dentist. The ministry states that unfortunately,

there are no exceptions in policy that would allow the ministry to provide excess coverage or coverage for services that are not set out in the Schedule of Fee Allowances –Emergency Dental-Dentist.

Panel Decision

EAR section 68 provides that the minister may provide any health supplement set out in section 4 of Schedule C (dental supplement) if the health supplement is provided to a person who is a person referred to in section 67(1)(a),(b),(c),(f) or (h). However, as the appellant does not fall into one of the criteria of those sections of EAR section 67, the panel finds that the ministry was reasonable in determining that the appellant was not eligible for dental supplements pursuant to EAR section 68 but was eligible for emergency dental supplements pursuant to EAR section 70.

In particular, the panel notes that while the appellant's position is that the poor condition of his teeth is a barrier to his employment, the appellant is a recipient of income assistance and has not been designated as a Person with Persistent Multiple Barriers that would qualify him for health supplements pursuant to EAR section 67(1)(a).

EAR section 70 provides that the minister may provide any health supplements set out in section 6 of Schedule C (emergency dental supplements) where the person meets the eligibility criteria. Pursuant to Schedule C, section 1, the definition of emergency dental service means a dental service provided by a dentist that is provided at the rate set out in the Schedule of Fee Allowances – Emergency Dental-Dentist. The Schedule of Fee Allowances – Emergency Dental-Dentist provides for extractions for the fee codes reported by the appellant's dentist (71101, 71109 and 72221) in the amounts of \$69.02, \$45.59 and \$209.96 respectively. The panel finds that ministry was reasonable in determining that the appellant is eligible for coverage for dental extractions based on the rates in the Schedule of Fee Allowances –Emergency Dental-Dentist but is not eligible for coverage in excess of those rates.

The panel notes that in the reconsideration decision the ministry refers to the bilateral bone excision fee code of 73154 at a ministry rate of \$231. The panel notes that this fee code is found in the Schedule of Fee Allowances – Dentist, but is not contained in the Schedule of Fee Allowances – Emergency Dental-Dentist. Accordingly, having already found that the ministry was reasonable in determining that the appellant is not eligible for basic dental services pursuant to EAR Section 68 and Schedule C, sections 1 and 4, the panel finds that the ministry's decision that the minister is not authorized to provide coverage for the bilateral bone excision as it is not an item provided for in relation to emergency dental services, was reasonable.

Eligibility for Dentures

The appellant argues that he is in pain and needs the dentures for pain relief, so that he can eat foods other than liquids and prevent deterioration of his health and so that he can obtain employment.

The ministry's position is that as the appellant does not fall into one of the criteria of EAR section 67(1)(a) to (h), the appellant is not eligible to receive dentures under section 68 and Schedule C, section 4 of the EAR. However, because he has had total extractions performed in the last six months due to pain and those extractions resulted in the appellant requiring dentures, he is eligible to receive dentures under section 69 and Schedule C, section 5. However, the ministry's position is that

pursuant to EAR Schedule C, section 1, denture services mean services set out under fee numbers 51101 to 51302 at the rate set out for those services in the Schedule of Fee Allowances – Dentist.

The ministry's position is that the appellant's coverage is limited to the fee amounts in the Schedule of Fee Allowances - Dentist, which for fee codes 51101 and 51302, are \$757.50 and \$780.75 respectively for a total of \$1,538.25. The ministry's position is that the appellant's dentist has submitted a quote for fees for fee codes for \$1,018 and \$1,079 respectively for a total of \$2,097 and the ministry is not authorized to pay the rates in excess of those permitted by the Schedule of Fee Allowances - Dentist. The ministry provided the appellant with a list of low-cost dental clinics.

Panel Decision

The panel finds that as the appellant does not fall into any of the criteria of EAR section 67(1), the ministry was reasonable in determining that the appellant was not eligible for dentures pursuant to EAR section 68 and Schedule C, section 4.

The panel finds that the ministry's determination that as the appellant had tooth extractions on January 21, 2013 and February 28, 2013 as a result of pain that resulted in the appellant requiring dentures, the ministry's decision that the appellant is eligible for dentures pursuant to EAR section 69 and Schedule C, section 5 is reasonable.

As EAR Schedule C, section 1 states that dentures services for the fee codes submitted by the appellant's dentist, fee numbers 51101 and 51102, are to be provided at the rate set out in the Schedule of Fee Allowances – Dentist, the panel finds that the fees are set at \$757.50 and \$780.75 respectively.

Although the appellant's dentist has submitted a quote for fee numbers 51101 and 51102 for \$1,018 and \$1,079 respectively, the panel finds that the ministry's decision that the minister is not authorized to provide coverage for rates in excess of the fee amounts set out in the Schedule of Fee Allowances – Dentist was reasonable.

Conclusion

In conclusion, the panel therefore confirms the ministry's reconsideration decision.