

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the Ministry") Reconsideration Decision dated October 9, 2013 which denied the Appellant's request for full coverage for an immediate complete upper denture on the following bases:

1. The Appellant did not submit a treatment estimate for the extraction of her remaining upper teeth and as such the Ministry could not determine the amount that the Appellant had available for basic dental services as provided by Schedule C, section 4(1.1)(a) of the *Employment Assistance Regulation*.
2. The Appellant's dentist had not identified what extractions were required and whether they were for the immediate relief of pain and as such the Ministry could not determine whether the Appellant had met the eligibility requirements for immediate complete maxillary dentures as provided by Schedule C, section 4(3)(a) of the *Employment Assistance Regulation*;
3. The requested coverage was for fees that exceeded the prescribed rates for dental procedures as set out in the Schedule of Fee Allowances – Dentist;
4. The request for coverage for the immediate complete upper denture did not constitute a direct and imminent life threatening need as required by section 76 of the *Employment Assistance Regulation*; and
5. The requested immediate complete upper denture did not meet the definition of medical supplies, medical transportation or medical equipment and devices as provided by section 76 of the *Employment Assistance Regulation*.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) sections 68, 69, 70 and 76 and Schedule C, sections 1, 4, 5 and 6

Schedule of Fee Allowance – Dental Supplements-Dentist October 1, 2012

PART E – Summary of Facts

The evidence before the Ministry at the time of the Reconsideration Decision consisted of:

1. The Appellant's Request for Reconsideration dated September 16, 2013 which has attached to it the Appellant's two hand-written pages of submissions dated September 23, 2013;
2. A Treatment Estimate dated April 11, 2013 and prepared by the Appellant's dentist ("the Treatment Estimate");
3. A letter from the Appellant dated August 5, 2013;
4. The Appellant's dental claim history with her insurance carrier for the period of January 1, 2013 through October 3, 2013 ("the Claims History");
5. The Appellant's dental claim details with her insurance carrier for a claim received April 11, 2013;
6. The Appellant's dental benefit eligibility details with her insurance carrier; and
7. A note from the Appellant's physician dated September 23, 2013.

In her letter of August 5, 2013, the Appellant states that she consulted with her dentist on April 11, 2013 and was advised that the total cost for her dental treatment would be over \$2000.00 and that the portion the Appellant would have to pay would be \$1070.00. The Treatment Estimate sets out the cost for both a complete upper denture as well as a partial lower denture. The estimated patient cost for both is \$2121.00 (\$1443.00 for the complete upper denture and \$678.00 for the partial lower denture) and the Treatment Estimate notes that after Ministry coverage, the Appellant's cost is \$1070.00.

The Appellant goes on in her August 5, 2013 letter to state that she has been experiencing a lot of pain and has a lot of trouble chewing as she only has six teeth on the top and only one molar left for eating. She says she is no longer able to smile, chew or feel confident about herself because of this. She notes that the cost for a "top denture" is approximately \$1400.00 and it was her hope that this cost would be covered by the Ministry. She says that a top plate would make her quality of life better as it would result in "no pain, smile and confidence" as well as employment and overall well-being.

In her Request for Reconsideration, the Appellant says that one of the main issues she is facing is the amount of pain she experiences and the possibility of infection she faces due to her inability to properly chew food. She reiterates that she only has six top teeth with five located in the front (with one missing in the middle) and of the six top teeth that she does have, only one is a molar. She says that she is very conscientious about her looks and finds that she can no longer smile at anyone or look at someone when speaking to them as this adds to her depression. She says that the requested denture would improve her confidence, her mental and physical health and her quality of life. She says that her medical condition has her body fighting against infections and that it is getting harder to fend them off and as such she feels that her health would be at less risk by having the dental work done.

The Appellant continues in the Request for Reconsideration to reference the Treatment Estimate and confirms that the requested denture would be her first. The Appellant further confirms that she is seeking coverage for the upper complete denture only which is listed at a cost of \$1443.00 in the Treatment Estimate. She states that the upper complete denture would allow her to eat and smile without pain and that it would improve her appearance and attitude and make her more employable. The Appellant says that based on her current financial situation, she cannot afford to pay for the dentures she has requested.

In the September 23, 2013 physician's note, the Appellant's physician states that she would benefit from having a top dental plate but does not expand as to why or on what basis he makes this statement.

The Appellant's insurance carrier Dental Benefit Eligibility details indicate that for the benefit period of January

1, 2013 through December 31, 2014, the Appellant has used \$246.62 out of her \$1000.00 benefit for basic and major dental services leaving her with \$753.38.

At the hearing, the Appellant stated that she had only five top teeth left as well as one molar for chewing. She said that because of this, she could not smile as she has a gap between her top teeth in the front. The Appellant submitted that she cannot function without upper teeth and that she is in pain. The Appellant stated that the requested upper dentures would aid in her employability and health which is deteriorating. She stated that she could not afford to pay for the dentures herself.

In response to questions, the Appellant said that she had been given no advice from the Ministry as to the steps that she should have taken to comply with the applicable legislation and that she had not discussed an extraction plan with her dentist. The Appellant stated that there were no dentists in her town who work with Ministry clients and that as a result she had to drive out of town to seek dental services. The Appellant thought that the Treatment Estimate covered the cost of extractions. The Appellant confirmed that this appeal only dealt with her request for coverage for complete upper dentures.

At the hearing, the Ministry referred to the Reconsideration Decision and stated that the fee schedule is negotiated with dentists and the amount that it could authorize for coverage for dental services is limited by the applicable legislation and as such it has no discretion to exceed those amounts.

In response to a question, the Ministry confirmed that the current benefit period for the Appellant expires on December 31, 2014. In response to a question, the Ministry confirmed that the Appellant needs to submit a treatment plan from her dentist for the extraction of her upper teeth in order for the Ministry to determine whether she would be eligible for coverage as basic or emergency dental services. In response to a question, the Ministry confirmed that the limits for health supplements for a full upper denture may be exceeded if the person requires a full upper denture due to extractions made in the previous 6 months to relieve pain.

In her Notice of Appeal, the Appellant states that she will never be able to afford an upper plate without assistance and that she is unable to gain employment with the present condition of her mouth. The Appellant further confirms her qualification as a Person with Persistent and Multiple Barriers.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision to deny the Appellant's request for full coverage for an Immediate Complete Upper Denture on the following bases:

1. The Appellant did not submit a treatment estimate for the extraction of her remaining upper teeth and as such the Ministry could not determine the amount that the Appellant had available for basic dental services as provided by Schedule C, section 4(1.1)(a) of the *EAR*.
2. The Appellant's dentist had not identified what extractions were required and whether they were for the immediate relief of pain and as such the Ministry could not determine whether the Appellant had met the eligibility requirements for immediate complete maxillary dentures as provided by Schedule C, section 4(3)(a) of the *EAR*.
3. The requested coverage was for fees that exceeded the prescribed rates for dental procedures as set out in the Schedule of Fee Allowances – Dentist;
4. The request for coverage for the immediate complete upper denture did not constitute a direct and imminent life threatening need as required by section 76 of the *EAR*; and
5. The requested immediate complete upper denture did not meet the definition of medical supplies, medical transportation or medical equipment and devices as provided by section 76 of the *EAR*.

Sections 68, 69, 70 and 76 of the *EAR* provide as follows:

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

(a) a person referred to in section 67 (1) (a) [general health supplements],

(a.1) a person referred to in section 67 (1) (f),

(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) a dependent child of a recipient of income assistance or hardship 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,

(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

(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.

(3) A person who was eligible to receive a health supplement under subsection (1) (a.2) 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.

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,

(b) a recipient of hardship assistance under Schedule D,

(c) a person referred to in section 67 (1) (f) [general health supplements],

(c.1) a person referred to in section 67 (1) (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,

(d) a person referred to in section 72 [dental and optical supplements — healthy kids program],

(e) a dependant of a person referred to in paragraph (a) or (b),

(f) a dependant of a person referred to in paragraph (c), or

(g) a dependant of a person referred to in paragraph (c.1), if the dependant is a dependant of the person referred to in paragraph (c.1) on the day the person's family unit ceased to be eligible for income assistance, and any person in the family unit

(i) is under age 65 and the family unit is receiving premium assistance under the Medicare Protection Act, or

(ii) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement.

(2) A person eligible to receive a health supplement under subsection (1) (c) or (f) 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.

(3) A person who was eligible to receive a health supplement under subsection (1) (c.1) or (g) 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.

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

76 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, section 1 of the *EAR* sets out the following definitions:

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

(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;

"dentist" means a dentist registered with the College of Dental Surgeons of British Columbia continued under the Health Professions Act;

"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

(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

(ii) are provided at the rate set out for the service or item in that Schedule;

"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

(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;

Schedule C, sections 4, 5 and 6 of the *EAR* provide as follows:

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.

(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) \$1 000 each period, if provided to a person not referred to in paragraph (a).

(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.

(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.

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.

Eligibility for Basic Dental Services

The Ministry takes the position that as the Appellant has not submitted a treatment estimate for the extraction of her remaining upper teeth, it is unable to determine whether the associated cost would be within the amount that the Appellant has available for basic dental services pursuant to section 4(1.1) of Schedule C of the *EAR*.

The Appellant argues that the Treatment Estimate does in fact reference extractions of her upper teeth and the associated cost.

Panel Finding

In reviewing the Treatment Estimate, the Panel notes that under the heading "Procedure Number/Description" there is reference to a Complete Upper Denture as well as a Partial Lower Denture. The request for a Partial Lower Denture, as confirmed by the Appellant, has been abandoned and is not the subject of the Reconsideration Decision or this Appeal.

The Panel further notes that the Treatment Estimate states in part "YOUR MINISTRY COVERAGE IS ALL EXTRACTIONS AND \$1050.00 FOR THE DENTURE AND PARTIAL."

The Panel finds that the Treatment Estimate does not specifically provide what the cost will be for the extraction of the Appellant's remaining upper teeth. While the Treatment Estimate does make reference to extractions, the Panel finds that the actual amount quoted is "for the denture and partial". The Panel therefore finds that the Ministry's position that it is unable to determine whether the associated cost of extraction would be within the amount that the Appellant has available for basic dental services pursuant to section 4(1.1) of Schedule C of the *EAR* was reasonable.

Eligibility for Complete Upper Dentures

The Ministry takes the position that the Appellant's dentist has not identified what extractions were required and whether they were for the immediate relief of pain and as such the Ministry could not determine whether the Appellant had met the eligibility requirements for immediate complete maxillary dentures as provided by Schedule C, section 4(3)(a) of the *EAR*.

The Appellant takes the position that she is eligible for complete upper dentures.

Panel Finding

Section 4(3) of Schedule C of the *EAR* provides that the limits for basic dental services may be exceeded by an amount necessary to provide dentures where one of three circumstances exists. In the case of a person who requires a full upper or lower denture (or both), section 4(3)(a) provides that the person must require the denture because of extractions made in the previous 6 months to relieve pain.

It was the Appellant's evidence at the hearing that she has not had her upper teeth extracted nor has she discussed extraction with her dentist.

As the Appellant has not had her upper teeth extracted within the previous 6 months to relieve pain, the Panel finds that the Ministry's determination that she has not met the eligibility requirement of section 4(3)(a) of Schedule C of the *EAR* to be reasonable.

Fees in Excess of the Prescribed Rates

The Ministry's position is that while the Appellant is qualified as a Person with Persistent and Multiple Barriers ("PPMB") and therefore eligible for dental supplements under section 68 and Schedule C section 4 of the *EAR*, the Ministry is not authorized to provide full coverage for fees for dentures in excess of the rates set out in the Schedule of Fee Allowances – Dentist.

The Appellant takes the position that she is unable to afford her portion of the cost for complete upper dentures.

Panel Finding

On review of the Treatment Estimate, the Appellant's dentist proposes to charge \$1,443.00 for a complete upper denture which exceeds the rate of \$757.50 which is set out in the Schedule of Fee Allowances – Dentist.

Section 1 of Schedule C to the *EAR* defines a "basic dental service" as a dental service that is set out in the Schedule of Fee Allowances – Dentist and which is provided at the rate set out in that Schedule. Further, section 4(2) of Schedule C to the *EAR* provides that dentures may be described as a "basic dental service." Considering the legislation, the Panel finds that the Ministry's decision that it is unable to provide coverage for fees for the Appellant's complete upper denture that exceeds the rates as set out in the Schedule of Fee Allowances – Dentist to be reasonable.

Direct and Imminent Life Threatening Need

The Ministry's position is that the Appellant's request for coverage for complete upper dentures does not constitute a direct and imminent life threatening need as required by section 76 of the *EAR* and that dentures do not qualify as "health supplements" as contemplated by that provision.

The Appellant's position is that she faces the possibility of infection due to her inability to properly chew food and that her health is deteriorating.

Panel Finding

Section 76 of the *EAR* provides that health supplements described in sections 2 (1) (a) and (f) and section 3 of Schedule C may be provided to a person who demonstrates that, among other things, they face 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. Those health supplements are medical and surgical supplies (section 2(1)(a) of Schedule C), medical transportation (section 2(1)(f) of Schedule C) and medical equipment and devices (section 3 of Schedule C).

In the present case, the Appellant gave evidence that she needs the complete upper denture due to the possibility of infection and deterioration of her health. The Panel notes however that the only medical evidence provided is a note from her general physician which simply states that the Appellant would benefit from the top denture. The Panel finds that there is no other evidence to demonstrate that the Appellant faces a direct and imminent life threatening need for complete upper dentures and the Panel notes further that dentures do not fall within the categories of health supplements described by sections 2(1)(a) and (f) and section 3 of Schedule C to the *EAR*.

The Panel finds therefore that the Ministry reasonably determined that it is not able to provide full coverage for dentures to the Appellant as emergency dental services pursuant to section 76 and Schedule C of the *EAR*.

The Panel finds that the Ministry's Reconsideration Decision was a reasonable application of the applicable enactment in the circumstances of the Appellant and confirms the decision.