

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry), dated 09 July 2014, which approved the replacement of the appellant's complete mandibular denture at the rate set out in the Schedule of Fee Allowances – Denturist, specifically \$581.25. The ministry determined that it is not authorized to provide coverage for fees in excess of that set out in the Schedule of Allowances – Denturist.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation, Schedule C, sections 1 and 4.

PART E – Summary of Facts

With the consent of parties, this hearing was conducted in writing pursuant to section 22(3) (b) of the *Employment and Assistance Act*.

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

- From the ministry's files: the appellant is designated as a person with disabilities, residing in a care facility and in receipt of a \$95 monthly comfort allowance.
- A consultation report from a denturist dated 16 May 2014. The denturist writes that it is clear that the appellant needs a lower denture for function of his daily activities and to be able to properly eat and chew. He has an extensive medical history that also tells us this denture is important to not cause more upset or health issues. The denturist attaches a price quote for \$1500 (complete mandibular standard, \$1000, plus "+L" commercial laboratory procedure, \$500).
- A letter from a health authority hospital psychiatrist dated 16 May 2014. The psychiatrist writes that without a lower denture, the appellant's ability to properly chew and digest food is compromised; this could lead to a decline in his physical health or him making food choices that do not provide him with a healthy diet. Without his teeth, the appellant's speech is impaired, making it difficult for people to understand him. Given his history of mental illness, and having an intellectual disability, his inability to clearly express himself will cause him stress and anxiety that could lead to a decline in his mental health, possibly leading to hospitalization. The appellant is currently hospitalized because of a decline in his mental health. Not having a full set of teeth could affect his self-image and self-esteem, which could lead to him isolating himself in the community. This social isolation can also lead to a worsening of the symptoms of his mental illness and make it more difficult for his support system to be aware of changes in his physical or mental health.
The psychiatrist goes on to write that the circumstances of his loss of his lower denture are not clear, but the appellant experiences some memory loss, and has some difficulty expressing himself. Hospital staff have attempted to search for the lost denture, and have been unsuccessful in locating it.
- The appellant's Request for Reconsideration, dated 26 June 2014. The appellant gives as reasons that without the requested item, he will not be able to chew food properly.

In his Notice of Appeal dated 16 July 2014, the appellant wrote:

"I only received \$95 per month from PWD and I cannot afford the remaining amount (\$918.75). I don't have any family members who could help me. Please reconsider your decision."

The following written submissions were received prior to the hearing:

- A submission from the appellant dated 24 July 2014. The appellant writes that he is a single man in his mid-50's with a long history of mental illness. He was hospitalized at a health authority hospital before and now he is being transferred to a care facility to work on his rehabilitation. Staff members there are helping him to prepare this submission because he has difficulty in writing and short-term memory. He writes that staff at the hospital attempted to

locate is missing lower denture without any success. Due to his memory problem and stress in the midst of being admitted to a psychiatric hospital, he does not remember how and where he lost his lower denture. The balance of his submission goes to argument, listing reasons why the ministry should pay the full costs of the replacement denture (see Part F, Reasons for Panel Decision, below).

- A letter from a health authority social worker dated 24 June 2014. The social worker states that although the appellant was granted partial coverage (\$581.25) for his denture, he is unable to pay the remaining cost (\$918.75). For the duration of the appellant's stay at the care facility, he only receives a comfort allowance of \$95 from his PWD status. The social worker writes that the appellant is not employable to earn a substantial amount of money at this time and he does not have any family member who could help. The social worker concludes by stating that upon the appellant receiving the lower denture, the care facility staff will try its best to provide continuous education regarding proper care, storage and maintenance so that he will learn to appreciate not to lose it again.
- An e-mail from the ministry dated 06 August 2014, in which the ministry states that its submission will be there reconsideration summary provided in the Record of Ministry Decision.

The panel finds that the information provided social worker and the appellant in their submissions on appeal is in support of the information and records before the ministry at reconsideration. Accordingly, the panel admits this evidence under section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to approve the replacement of the appellant's complete mandibular denture at the rate set out in the Schedule of Fee Allowances – Denturist, specifically \$581.25, was reasonable. More specifically, the issue is whether the ministry determination that it is not authorized to provide coverage for fees in excess of that set out in the Schedule of Allowances – Denturist is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The applicable legislation is from Schedule C of the EAPWDR:

Definitions

1 In this Schedule:

"basic dental service" means a dental service that

- (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

Dental supplements

4 (1) In this section, "period" means

- (a) in respect of a dependent child, a 2 year period beginning on January 1, 2009, and on each subsequent January 1 in an odd numbered year, and
- (b) in respect of a person not referred to in paragraph (a), a 2 year period beginning on January 1, 2003 and on each subsequent January 1 in an odd numbered year.

(1.1) The health supplements that may be paid under section 63 [*dental supplements*] of this regulation are basic dental services to a maximum of

- (a) \$1 400 each period, if provided to a dependent child, and
- (b) \$1 000 each period, if provided to a person not referred to in paragraph (a).
- (c) Repealed. [B.C. Reg. 163/2005, s. (b).]

(2) Dentures may be provided as a basic dental service only to a person

- (a) who has never worn dentures, or
- (b) whose dentures are more than 5 years old.

(3) The limits under subsection (1.1) may be exceeded by an amount necessary to provide dentures, taking into account the amount remaining to the person under those limits at the time the dentures are to be provided, if

- (a) a person requires a full upper denture, a full lower denture or both because of extractions made in the previous 6 months to relieve pain,
- (b) a person requires a partial denture to replace at least 3 contiguous missing teeth on the same arch, at least one of which was extracted in the previous 6 months to relieve pain, or
- (c) a person who has been a recipient of disability assistance or income assistance for at least 2 years or a dependant of that person requires replacement dentures.

- (4) Subsection (2) (b) does not apply with respect to a person described in subsection (3) (a) who has previously had a partial denture.
- (5) The dental supplements that may be provided to a person described in subsection (3) (b), or to a person described in subsection (3) (c) who requires a partial denture, are limited to services under
 - (a) fee numbers 52101 to 52402 in the Schedule of Fee Allowances — Dentist referred to in paragraph (a) of the definition "basic dental service" in section 1 of this Schedule, or
 - (b) fee numbers 41610, 41612, 41620 and 41622 in the Schedule of Fee Allowances — Denturist referred to in paragraph (b) of the definition "basic dental service" in section 1 of this Schedule.
- (6) The dental supplements that may be provided to a person described in subsection (3) (c) who requires the replacement of a full upper, a full lower denture or both are limited to services under
 - (a) fee numbers 51101 and 51102 in the Schedule of Fee Allowances — Dentist referred to in paragraph (a) of the definition "basic dental service" in section 1 of this Schedule, or
 - (b) fee numbers 31310, 31320 or 31330 in the Schedule of Fee Allowances — Denturist referred to in paragraph (b) of the definition "basic dental service" in section 1 of this Schedule.
- (7) A reline or a rebase of dentures may be provided as a basic dental service only to a person who has not had a reline or rebase of dentures for at least 2 years.

And from the Schedule of Fee Allowances — Denturist:

COMPLETE DENTURES

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. Any lab costs are included in the stated fee. Arch code required.

Complete denture fees include:

- Impressions, initial and final jaw relation records
- Try-in; evaluation
- Records check
- Insertion
- Adjustments and 6 months post-insertion care including tissue conditioning

FEE NO.	FEE DESCRIPTION	FEE AMOUNT (\$)
31320	Complete Mandibular Denture	581.25

In the reconsideration decision, the ministry notes that the appellant's claims history indicates that he received dentures on 17 May 2012, with the record showing that the bottom dentures were "replacement" dentures. As subsection 4(2) of Schedule C of the EAPWDR sets out the dentures may be provided as a basic dental service only to a person (b) whose dentures are more than five years old, the appellant would not be eligible for a replacement until June 2017. However, the ministry drew upon a provision in policy that allows for exemptions to the once every five years replacement legislation if the dentures being replaced were lost or damaged beyond repair, the loss or damage was beyond the control of the client and failure to provide a replacement dentures would result in compromised health. The ministry made an exception in the particular circumstances of the appellant, as it appears that the loss of his dentures was beyond his control and that his health would be compromised without dentures.

In the reconsideration decision, the ministry goes on to note that the appellant's denturist intends to

charge fees in excess of the rates set out in the Schedule of Fees -- Denturist. The ministry states that health supplements that may be provided under section 4 of Schedule C are "basic dental services." A "basic dental service" is defined in section 1 of Schedule C as a dental service that, if provided by a denturist, is set out in the Schedule of Fees – Denturist and is provided at the rate set out in that Schedule. The position of the ministry is that there is no exception and policy for coverage of fees in excess of the rates set out in the Schedule of Fees -- Denturist and the ministry has no discretion in this matter. Therefore the ministry is not authorized to provide coverage for fees in excess of the rates set out in the Schedule of Fees – Denturist and the appellant will be responsible for the difference.

The position of the appellant, as set out in his submission on appeal, is that he needs to be able to maintain healthy diet by chewing. If he does not get proper nutrition he will not be able to work on his rehabilitation. Secondly, other people are having difficulty understanding him. This contributes to miscommunication among staff and co-residents, which in turn prohibits him from socializing with others and from obtaining some vocational opportunities. Thirdly, while he is in the care facility, he will not get the full disability assistance. His monthly allowance is \$95 and this is not sufficient to cover the cost. Lastly he does not have any family members or next of kin who would help him. He has no means to access any extra funds if the ministry does not cover the cost. He would do some vocational work and earn some money, but the earning from such work would not be sufficient.

Panel findings

The legislation is clear: section 1 of Schedule C of the EAPWDR states that if a basic dental service, such as a denture, is provided by a denturist, the ministry is limited to providing it at the rate set out Schedule of Fee Allowances – Denturist. As indicated in the reconsideration decision, for a complete mandibular denture (fee number 31320), the authorized rate is \$581.25. Sections 1 and 4 of Schedule C of the EAPWDR sets out the dental supplements that the minister is authorized to provide and, by reference to the Schedule of Fees – Denturist, the applicable rates for denturist services. The legislation does not confer to the minister the discretion or authority, either under unique or exceptional circumstances or in cases of compelling need, to provide any dental supplement for dentures at rates in excess of those set out the Schedule of Fee Allowances – Denturist.

Accordingly, the panel finds that the ministry determination that it is not authorized to provide coverage for fees in excess of that set out in the Schedule of Allowances – Denturist is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.