



PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") July 29, 2014 reconsideration decision denying funding for dental implants and related services for not meeting the legislative requirements in the Employment and Assistance for Persons with Disabilities Regulation, sections 63, 63.1, 64, 69 and Schedule C sections 1, 4, 4.1 and 5.

PART D – Relevant Legislation

EAPWDR Employment and Assistance for Persons with Disabilities Regulation, sections 63, 63.1, 64, 69 and Section C sections 1, 4, 4.1 and 5.

PART E – Summary of Facts

The evidence before the ministry at reconsideration was

- the appellant is a recipient of disability assistance.
- October 29, 2007 dental referral letter advising the appellant has cerebral palsy with some associated diminished mental capacity, lived in a group home, and had a number of permanent teeth which did not develop and retained primary teeth that were destroyed by bruxism. The appellant had pain in the right joint, headaches, could not open his jaw wide and his food had to be cut up in small pieces. He had used a night guard for a few years but it broke in 2005. The dentist diagnosed a reduced vertical dimension due to the destruction of the appellant's teeth and recommended imaging of the joint.
- May 7, 2008 dental report describing the appellant as very difficult to treat with his few teeth as grossly worn, grinding habits secondary to his cerebral palsy, and his jaw as grossly over closed. The dentist recommended no surgery at that time but if the pain continued and the condition interfered with the appellant's lifestyle, freeing up some of the interference could be considered.
- May 30, 2013 treatment plan with list of implant related procedures and total charge of \$4432.00 and handwritten note "place 2 implants & make a night guard to protect implants while they integrate to bone".
- May 30, 2013 predetermination listing implant and denture procedures with a total charge of \$10,451.65 and handwritten note "When implants are ready in 3 mos. Make a complete upper denture with a metal strengthening bar & attach it to the 2 implants. Remove the remaining teeth."
- September 26, 2013 letter from dentist about restorative dental treatment for the appellant, describing the appellant has having a number of missing teeth with the remaining teeth with almost 100% of the coronal tooth structure lost and a genetic condition of significantly mismatched arches of his jaws. The proposed treatment consisted of using two dental implants and fitted attachments to hold a removable upper overdenture to help correct the jaw misalignment. The dentist advised the dental implants were required to stabilize the removable upper denture as there was not enough remaining tooth structure to use a conventional removable partial denture and the functional forces the appellant exerts are extreme. He further reported they attempted placing the dental implants in their office using local anaesthetic, but the appellant was unable to make it through the procedure for emotional and psychological reasons, and was referred to a periodontics specialist to provide the treatment with the appellant sedated.
- April 10, 2014 letter from dentist saying the appellant told him his insurance claim was being denied because dental implants were considered cosmetic. The dentist stated the implants were placed to retain an overdenture otherwise impossible to tolerate, asked for reconsideration and offered to speak directly about it.
- May 15, 2014 letter from a physician saying the appellant has cerebral palsy, was unable to chew solid foods because of his dental problems, limiting his dietary selection. The physician recommended that the appellant have his teeth fixed as per dental recommendation so he could resume a normal diet.
- June 2014 dental statement of account showing an August 26, 2013 balance of \$3760 paid by credit card.
- June 10, 2014 emailed statement of account and letter from dental clinic saying the appellant

used \$95.41 of his \$1000 two year limit.

- July 11, 2014 letter from the appellant's mother outlining the appellant's dental history. She said he should not have to suffer the jaw pain, or the humiliation of his facial looks, or not be able to eat his favourite foods which are raw vegetables, apples and the like. She said the appellant's parents, now close to seventy and on pension and in debt because of flood damage to their house, are unable to afford the dental work required.
- July 12, 2014 letter in support of the request for reconsideration from the appellant's caregiver of 24 years. The caregiver says the appellant stands to lose his ability to partake of and enjoy what the rest of society considers a normal part of day-to-day life - normal mealtimes and contents - possibly his current good health, and certainly his physical appearance will change. She indicates supplemental "ensure" type meal replacement products have been suggested, but says while allowable for the short term, it should not become a way of life as a solution to a situation which is not of the appellant's making. She says the appellant's parents have contributed \$5000 to the initial work but cannot now afford the still pending \$10,000 identified work. She believes the ministry has a responsibility to the appellant for full assistance in gaining dental implements to allow him to partake of nutritious foods and comfort in community involvement again.
- Employment and Assistance Request for Reconsideration form in which the ministry states the appellant had dental work including implants paid by his mother to date, but further treatment requested is in excess of \$10,000.
- Ministry document Table A – Predetermination May 30, 2013 – illustrating that of the recommended procedures totalling \$10,451.65, the ministry approved only the removal of teeth at a total of \$427.01.
- Ministry document Table B – Treatment Plan May 30, 2013 – illustrating that of completed dental work totalling \$3,760, the ministry approved only \$268.79 for a night guard.
- The ministry's 50 page *Dental Supplement – Dentist* document which provides details of how to confirm eligibility and obtain payment for services rendered.

With the Notice of Appeal the appellant's caregiver submits that the ministry is responsible for the health and well being of the appellant, a person with disabilities in the care of the ministry. She indicates that with a change of medical support or insurance carriers during the development of the appellant's dental condition, there ought to have been provision made or "grandfathered" to address such issues. She says the appellant likes cooking and enjoys that he is able to contribute, but this whole social aspect of his life is about to change drastically as meals and mealtime will be a time of social discomfort for him. She states the ministry has advised by letter that they will provide extra funding toward the appellant's nutritional needs by paying for a nutritional supplement and vitamins. She goes on to calculate the cost of doing so at \$158,400 for the estimated remainder of his life, and suggests that amount is unlikely to be met or exceeded by his current and future dental costs.

At the hearing the appellant's advocate, his caregiver, referred to her August 2014 letter. She said the ministry was well aware of the dentist's advice years ago that major dental work would be necessary and that the dentist advised to wait until the appellant had reached maturity before having the work done. She said they had not learned about a change in dental coverage until the appellant was denied funding. It was not an issue when pending work was discussed, and in her experience in the past extensive dental work applied for was usually approved. If they had been made aware of the change the appellant could have used part of his "comfort money" to purchase extended dental coverage. The needed treatment has not been done and the appellant has been on soft food for



about a year.

The appellant's mother confirmed the first dentist recommended waiting, that this was discussed with the appellant's social worker at the time, and it was jointly decided to wait. It was clear then that a normal denture would not work.

The ministry's representative said she was not aware of any decrease in coverage, not long ago some dental coverage was increased, and the ministry pays only what is listed in the fee schedule. She said there was a separate process for dentures. The decision was not made in the local office, dentists' submissions go to the Health Assessment department for consideration, and that will have been done in this case.

PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's reconsideration decision to deny funding for dental implants and related services for not meeting the legislative requirements in the Employment and Assistance for Persons with Disabilities Regulation, sections 63, 63.1, 64, 69 and Schedule C sections 1, 4, 4.1 and 5.

Relevant Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION – 2010
(Excerpts)

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],

(b) section 62 (1) (b) (i) or (iv), (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).

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],

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).

[en. B.C. Reg. 61/2010, s. 4; am. B.C. Reg. 197/2012, Sch. 2, s. 8.]

SCHEDULE C Health Supplements (excerpts)

"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, 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;

"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;

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.

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.

- (2) A health supplement may be paid under section 63.1 of this regulation for crown and bridgework but only if the minister is of the opinion that the person has a dental condition that cannot be corrected through the provision of basic dental services because

- (a) the dental condition precludes the provision of the restorative services set out under the

Restorative Services section of the Schedule of Fee Allowances — Dentist, and

(b) one of the following circumstances exists:

(i) the dental condition precludes the use of a removable prosthetic;

(ii) the person has a physical impairment that makes it impossible for him or her to place a removable prosthetic;

(iii) the person has an allergic reaction or other intolerance to the composition or materials used in a removable prosthetic;

(iv) the person has a mental condition that makes it impossible for him or her to assume responsibility for a removable prosthetic.

(3) The minister must also be satisfied that a health supplement for crown and bridgework will be adequate to correct the dental condition.

(4) A health supplement for crown and bridgework may not be provided in respect of the same tooth more than once in any period of 60 calendar months.

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.

Appellant's Position

The appellant argues the recommended dental implants are necessary to enable him to use a denture, without which he cannot chew food. He should not have to suffer jaw pain, the humiliation of facial looks without teeth, or be restricted to a diet of soft food for the rest of his life.

The appellant says he is a person with disabilities who has been in the care of the ministry for many years, and the ministry has known for years of his need for a special denture. Until the denial for funding this year, the ministry had never told him there may not be coverage, giving him no opportunity to arrange for extended dental insurance.

Ministry's Position

The ministry argues that the only dental health supplements payable are those provided in sections 63, 63.1 and 64 of Schedule C in the EAPWDR. There is no provision in the legislation for dental implants or commercial laboratory fees. The ministry is therefore not able to provide funding for services associated with implants or for commercial laboratory fees. There are no exceptions in policy and the ministry has no discretion in this matter.

The ministry also states that although there is coverage for a life-threatening need under EAPWDR section 69, the appellant does not face a direct and imminent life-threatening need, and in any case there is no provision for dental and denture supplements.

Panel's Decision

The appellant is a disabled adult who lives in care, and because he has a misaligned jaw and no remaining functional teeth he is no longer able to chew his food. The remedy is an upper denture that must be attached to two implants because there is not enough remaining tooth structure to use a conventional removable denture.

The ministry has denied funding for the implants and related services on the basis of the applicable legislation. EAPWDR sections 63, 63.1, 64 state the ministry may fund only dental work as provided by Schedule C sections 1, 4, 4.1 and 5, which in turn require the services be set out in the applicable Schedule of Fee Allowances. The schedule does not include dental implants or related services. The ministry says there are no exceptions and that it has no discretion in this matter.

The ministry has applied the legislation as written. The panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.