

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) December 22, 2014 reconsideration decision denying the appellant's request for coverage of denturist's fees in excess of the legislated fee rates and the maximum legislated limit of \$1000 for the period ending December 31, 2014 pursuant to section 4 of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 62, 63, 64 and 69.

Schedule C sections 1 and 4.

Dental – Schedule of Fee Allowances

PART E – Summary of Facts

The evidence before the ministry at reconsideration included:

1. A ministry letter dated May 27, 2014 approving PWD designation
 2. Information from ministry files
 3. A letter by the appellant dated December 3, 2014
 4. A letter by medical specialist A dated December 1, 2011
 5. A letter by medical specialist B dated November 11, 2013
 6. 10 dental x rays
 7. A letter by dentist A dated July 9, 2014
 8. A quote by dentist A dated July 23, 2014, listing suggested extractions in the amount of \$1779,61.
 9. A denturist quote for \$3,500, dated July 30, 2014
 10. An undated Pacific Blue Cross Statement with a “received Sep 12 2014” stamp
 11. A letter from the appellant’s family doctor dated November 25, 2014
2. For the period ending December 31, 2014 the appellant has accessed \$79.06 of his \$1000 allowance. This is confirmed by the appellant at the hearing.
3. The appellant relates that in December 2010 he was diagnosed with inoperable lung cancer and underwent 32 radiation treatments and 12 chemotherapy treatments. The primary side effect of the treatments was a significant decay of all his teeth. 3 dentists have told him that all of his teeth must be extracted and that they are all in a life-threatening state and causing chronic pain. He has experienced one abscess to date. He was given the wrong antibiotic and experienced severe infection and pain. Due to a previous accident he is under medical treatment for chronic pain. Removal of all teeth is a medical emergency and critically important, as is the need for a set of full dentures.
4. Specialist A states that the appellant is under her treatment and management of lung cancer. The appellant started radiation therapy January 2011 followed by chemotherapy which was completed in June 2011. The appellant is followed with regular CT scans and laboratory studies.
5. Specialist B reports that the appellant required extensive surgery in 2009 and 2010. The appellant “has been rendered in a chronic pain state”.
7. Dentist A states that the appellant “had a dental examination on July 9, 2014. At this appointment it was determined that due to his extensive chemotherapy treatment, all of his teeth are in dire need of extraction and replacement with both upper and lower complete dentures. These teeth are causing him discomfort, and this treatment needs to be performed as soon as possible. Please approve this treatment for him under his emergency coverage.”
9. The denturist quotes \$3,500 for dentures and states that “this is an urgent treatment required for the patient. As a result of radiation therapy for cancer patient requires full clearance.” The denturist writes that “this is a medical emergency due to health issues. The balance owing after insurance is \$2126.00.”

10. An undated Pacific Blue Cross statement details a submitted amount of \$3,500.00 and an approved amount of \$920.94.

11. A letter by the appellant's family doctor says that "this letter is to support the appellant's application for financial assistance for the complete dentures. The appellant has a history of lung cancer that was treated with radiation and chemotherapy. His dental condition has worsened and dentists have now recommended removing all the teeth and getting dentures to avoid potential infection and recurrent abscess. His current medical condition is vulnerable for complications of dental infection and it is recommended that the appellant go ahead with the plan for dentures, as he has already consulted a couple of dentists in this regard.

On appeal the appellant submitted the following information:

12. The appellant's statement in his Notice of Appeal dated January 11, 2015.

13. A letter by dentist B who works in the same office as dentist A, dated January 13, 2015

14. A statement by the appellant dated January 22, 2015

15. A letter from medical specialist C dated February 15, 2011

16. A picture, according to the appellant, representing the incision for the insertion of the titanium bar in his neck

12. The appellant states that without the removal of all his teeth he will experience severe and life-threatening infection and pain. His health is already compromised by permanent disability.

13. Dentist B states that as a result of a car accident the appellant "suffers from chronic nerve pain, and takes several medications to reduce pain. Unfortunately, these medications are likely the contributing factor to the appellant's dry mouth and declining dentition.....". The appellant has rampant cervical caries (decay of the root/crown junction of the teeth), and coronal caries in multiple teeth. He has also chronic generalized periodontitis. The appellant has teeth infected with caries that are encroaching on, and/or entering the pulp and nerve region. These teeth are specifically concerning: they may cause significant pain, swelling and sometimes hospitalization if not treated. The appellant reports mild to moderate pain (although deadened by the pain killers he takes daily) in multiple areas of his mouth. The teeth on his left side are specifically tender and painful, resulting in his attempts to masticate food mostly on his right side. The appellant has only a couple of teeth occluding on his right side making mastication difficult.

Due to the declining state of his dentition, missing teeth, and continued use of pain killers that promote dental caries, I concur with the other dentist's of this clinic recommendation to remove all remaining teeth and replace them with removable complete dentures. ...treatment should be provided as soon as possible. Without treatment, all presently infected areas are a significant health risk for the appellant because of his medical history. By providing treatment the appellant will become free from infection and will be able to increase his ability to chew food properly.

...I fear any restoration will likely fail in a short time due to recurrent caries from dry mouth, and lead to subsequent failure of the partial denture leaving the appellant in the same place he is now. I have recommended the appellant have immediate complete dentures made. Immediate dentures help to ensure tissue healing that is ideal for long term denture stability. They also provide some ability to chew immediately, and facilitate patient adaptation quicker than if all teeth or just some teeth are extracted and then dentures are made at a subsequent time.

14. The appellant affirms that the radiation treatments and medications he received are the primary cause of severe and uniform decay of his teeth.

15. Specialist C reports on the appellant's routine weekly treatment evaluation of his chemoradiotherapy.

At the hearing the appellant submitted the following information:

17. An undated monthly income report declaring \$528.37 pension income and \$273.67 other income from U.S. disability.

18. A bank transaction record of a deposit of \$273.67, dated December 4, 2014

19. One side of a 2-sided form titled "To receive further assistance: complete both sides of this form and return to you Employment and Assistance Office...", signed by the appellant and dated December 8, 2014, stating his next check in the amount of \$144.79 will be issued on December 17 for the benefit month of December 2014.

20. Online information by the Cancer.Net Editorial Board of March 2014.

20. Online information states that "chemotherapy may affect tooth enamel and increase the risk of long-term dental problems. High-dose radiation therapy given to the head and neck may change tooth development, cause gum disease, and lower saliva production, causing a dry mouth."

At the hearing the appellant showed a color picture of the picture he had submitted on appeal [item. 16]. As a result of his accident which resulted in surgeries, as well as a result of his lung cancer he was bed ridden for 3 years. As a result of this accident he is still on some pain medication which numbs his tooth ache. In case of an abscess in his mouth he would be in the emergency room with a life threatening condition.

The ministry stood by its reconsideration decision and clarified that dental services are approved in accordance with the Schedule of Fee Allowances and subsequently forwarded to and paid by Pacific Blue Cross.

The ministry was in favor of admitting all evidence provided by the appellant on appeal and at the hearing

Pursuant to section 22(4) of the Employment and Assistance Act the panel admits the appellant's information and documents submitted on appeal and at the hearing as being in support of the information that was before the ministry at reconsideration. This information provides additional details about the state and history of the appellant's teeth, as well as additional information on his income which is consistent with the information available at reconsideration.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant funding for coverage of fees in excess of the legislated rates and the maximum legislated limit of \$1000 for the period ending December 31, 2014.

The following sections of the EAPWDR apply to this appeal:

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)

Schedule C – Health Supplements

Health Supplements

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,

(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, ...

Dental supplements

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

... 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

... \$1 000 each period, ...

(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,

...

Position of the parties:

Appellant:

The appellant argues that he is in a life-threatening situation as a result of his infected teeth; left untreated this may lead to significant pain and hospitalization and in case of an abscess in his mouth he would be in the emergency room with a life threatening condition. Removal of all his teeth and replacement by a set of full dentures is a dental emergency. Radiation and Chemotherapy treatment resulted in significant decay of all his teeth causing discomfort and chronic mild to moderate pain in multiple areas of his mouth which is deadened by daily pain medication. He chews on only one side of his mouth because it causes him sharp pain when chewing on the opposite side. The ministry should make an exception due to the appellant's unique situation – this would save the ministry costs in the long term.

Ministry:

The ministry argues that the requested dentures will exceed the \$1000 limit for basic dental service (the appellant has already accessed \$79.06) for the period ending December 31, 2014 in accordance with EAPWDR Schedule C section 4(1); therefore the appellant must meet one of the exemptions under Section 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. The ministry argues that it is unable to determine whether the appellant meets the eligibility requirement to exceed the \$1000 limit because the extractions have not yet occurred.

The ministry argues further that dentures are a basic dental service in Schedule C and there is no exception in policy for coverage of fees in excess of the rates set out in the Schedule of Fee Allowances – Dentist. The ministry is bound by legislation and there is no, the ministry is not authorized to exceed fee allowances as set out in the Schedule.

Panel Decision

The panel notes that as there appears not to have been a request for extractions at the time the dentures were requested, the extractions are not subject of the reconsideration decision or the appeal. The panel notes further that the reconsideration decision has indicated the need for the dentist to identify that the extractions are required for the “*immediate relief of pain*”.

The appellant argues that he has both an emergency and a life-threatening need for dentures. Under the EAPWDR, the provision of dentures is governed by section 63 and section 4 of Schedule C which allow for the provision of dentures as a basic dental service if the criteria set out in those sections are met.

The panel further notes that complete dentures are not an emergency dental service in accordance with Schedule C section 1 of the EAPWDR as they are not included under emergency dental services in the Schedule of Fee Allowances.

Section 63 of the EAPWDR and section 4 of Schedule C determine that the appellant is eligible to receive \$1000 for each 2 year period for basic dental services (including extractions and dentures) - the period relevant to this appeal is the period ending December 31, 2014. Section 4(3) of Schedule C provides that the limit of \$1000 may be exceeded if a person requires full dentures because of extractions made in the previous 6 months to relieve pain.

The panel finds that there is no evidence that any or all teeth were extracted as advised by dentist A before December 31, 2014. As a result the panel finds that the ministry reasonably determined that the appellant cannot be considered for an excess of the \$1000 limit for dentures for the above mentioned period.

Pursuant to section 1 of Schedule C ministry rates for dentures are fixed and set out in the Schedule of Fee Allowances. Consequently, the appellant is only eligible for ministry rates for complete dentures even if the denturist charges \$2071.80 more than ministry rates; the ministry was therefore reasonable in determining that the appellant is not eligible for coverage in excess of the set out rates based on the definition of basic dental services in section 1 of Schedule C.

For these reasons, the panel finds that the ministry was reasonable in denying the appellant's request for coverage of fees in excess of the legislated rates and the maximum legislated limit of \$1000 for the period ending December 31, 2014. The ministry's decision is confirmed.