

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 August 11, 2016 which denied the appellant's request for crowns and posts because the requested coverage was for services which are not set out in the ministry's Schedule of Fee Allowances - Dentist, the ministry's Schedule of Fee Allowances - Emergency Dental - Dentist, or the ministry's Schedule of Fee Allowances - Crown and Bridgework (the ministry fee schedules) and are therefore not services that may be provided under sections 4 and 4.1 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

In addition, the ministry determined that the appellant's dental practitioner did not forward additional information to dental plan provider Pacific Blue Cross (PBC) as requested in PBC's letter dated June 30, 2016.

Finally, the ministry determined that the appellant was not eligible for the requested crowns and posts to meet a life-threatening need under section 69 of the EAPWDR because dental supplements are not included in the supplements provided under that section.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 63, 63.1, 64 and 69 and Schedule C, Sections 1, 4, 4.1 and 5

Schedule of Fee Allowances – Crown and Bridgework (Part F), Effective April 1, 2010

PART E – Summary of Facts

The appellant is a sole recipient of disability assistance.

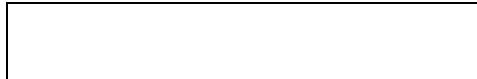
Through an arrangement with PBC, the ministry provides recipients with basic dental service and emergency dental service as defined in EAPWDR Schedule C, Section 1, and crown and bridgework as defined in EAPWDR Schedule C, Section 4.1(1).

The evidence before the ministry at reconsideration included:

- Request for reconsideration dated July 13, 2016 prepared by one of the appellant's parents/advocates (P/As) which included:
 - 8 page document entitled "Reasons for Request for Reconsideration" dated July 16, 2016 and prepared by the appellant's legal advocate (LA) expressing the opinion that the relevant legislation allows for the dental services;
 - Letter from the appellant's dentist (the dentist) dated July 18, 2016 providing details of the appellant's medical disorder and its impact on his dental condition, including that the appellant:
 - ◇ Has a rare genetic disorder with symptoms including a cognitive disability and a chronic feeling of hunger that can lead to excessive eating;
 - ◇ Has a long history of bruxism (involuntary or habitual grinding of the teeth);
 - ◇ Has been wearing splints on and off for 20 years;
 - ◇ Has required root canals on six of his upper teeth due to severe wear;
 - ◇ Cannot wear dentures because his grinding and bite are so severe that the dentures would not survive more than a few weeks; and
 - ◇ Has obtained a second opinion from another dentist which confirms the dentist's treatment plan;
 - Typed note dated August 2, 2016 signed by one of the P/As noting that the appellant has never requested any money for dental services since he was designated as a Person With Disabilities (PWD);
- Fee estimate dated June 2, 2016 prepared by the dentist and addressed to PBC providing a brief medical history of the appellant and including a total approximate fee of \$21,097.30;
- PBC standard dental claim form dated June 23, 2016 and prepared by the dentist identifying the procedure codes (27201 and 25711 are the codes for the requested crowns and posts), tooth codes and charges associated with the required dental work and associated 2 page patient treatment list providing details of all of the dental work required;
- 5 pages of barely legible photographs and images of the appellant's teeth;
- Undated ministry crown and bridge profile sheet indicating that the ministry has not received:
 - A list of the appellant's missing dentition;
 - A detailed clinical explanation as to the necessity of the crowns;
 - Relevant information regarding the appellant's medical conditions that would support the need for crowns; and
 - The handwritten comment: "Need more info - why not dentures";
- PBC statement dated June 28, 2016 in the name of the appellant identifying the dental benefit amounts remaining for the current calendar year.

Additional Information

The following documents were submitted with the appellant's notice of assessment (NOA):



- Letter dated August 22, 2016 from the dentist addressed to the Employment and Assistance Appeal Tribunal stating that the ministry fee schedule does not include full zirconia crowns which are more durable and typically have lower lab fees than “PFM and full gold crowns”, the two types of crowns that are listed on the fee schedule. He also states that PFM and full gold crowns will not work for the appellant as they will be destroyed due to his disability and that the ministry fee schedule is out-of-date and does not take into account modern dentistry;
- Copy of one page of the College of Dental Surgeons of BC (CDSBC) fee schedule showing “Crowns, Porcelain/Ceramic/Polymer Glass” with a fee code # 27201 and a suggested fee of \$742.00 plus laboratory (lab) fee;
- Copy of one page of PBC fee schedule showing under the category of “Crowns” a listing for “Porcelain/Ceramic/Polymer Glass” with a fee code # 27201 and a suggested fee of \$742.00 plus laboratory (lab) fee; and
- Copy of one page of the ministry fee schedule showing the following eligible dental procedures under the “Crowns” section:

Fee No.	Fee Description	Fee Amount (\$)*
27301	Crown, Full Cast Metal	539.90
27211	Porcelain/Ceramic/Polymer Glass, Fused to Metal Base	624.20
27213	Porcelain/Ceramic/Polymer Glass, Fused to Metal Base, with Porcelain Margin	624.20

* Denotes Lab fee(s) included

PART F – Reasons for Panel Decision

The issue is whether the ministry's reconsideration decision dated August 11, 2016 which denied the appellant's request for crowns and posts because the requested coverage was for services which are not set out in the ministry fee schedules and therefore not provided under sections 4 or 4.1 of Schedule C of the EAPWDR was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation is as follows:

EAPWDR

Dental supplements

63 The minister may provide any health supplement set out in section 4 [dental supplements] of Schedule C to or for

(a) a family unit in receipt of disability assistance, ...

Crown and bridgework supplement

63.1 The minister may provide a crown and bridgework supplement under section 4.1 of Schedule C to or for

(a) a family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who is a person with disabilities, ...

Emergency dental and denture supplement

64 The minister may provide any health supplement set out in section 5 [emergency dental supplements] of Schedule C to or for

(a) a family unit in receipt of disability assistance, ...

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) a person in the family unit is eligible to receive 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

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, ...

"**dentist**" means a dentist registered with the College of Dental Surgeons of British Columbia continued 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, ...

Dental supplements

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

(b) ... 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 ...

(b) \$1 000 each period, ...

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's position as set out in his request for reconsideration and NOA is that, while the appellant qualifies for dentures, full cast metal crowns (Fee # 27301), porcelain/ceramic/polymer glass, fused to metal base crowns (Fee # 2711), and porcelain/ceramic/polymer glass, fused to metal base with porcelain margin crowns (Fee # 27213), none of those solutions would be effective due to the nature of the appellant's disability. The required solution is zirconia based crowns (Fee # 27201) which are on the PBC and CDSBC lists but not on the ministry fee schedules because they are not up-to-date.

Furthermore, the appellant argues that even though only one of the circumstances listed in Section 4(2)(b) of Schedule C of the EAPWDR has to exist, all of the circumstances exist in this instance. Therefore the appellant satisfies the legislative requirements for receiving a crown and bridgework supplement.

The appellant feels that the ministry fee schedule should be maintained in lockstep with the PBC codes and, because the ministry has not kept the fee schedule up-to-date, the appellant is being discriminated against.

In addition, one of the appellant's P/As states that, while the appellant is entitled to \$1,000 in basic dental services every two years, the appellant has not made any claims for dental services since he qualified for disability assistance, and that now that the P/As have retired and are on fixed incomes they require the ministry's assistance.

Ministry's Position

The ministry states that the appellant might be eligible for any of the following dental supplements:

1. **Dental supplements or basic dental services** under Section 63 of the EAPWDR and section 4.1 of Schedule C of the EAPWDR;
2. **Crown and bridgework supplements** under Section 63.1, subject to the conditions and eligibility requirements set out in Section 4(1)(2) of Schedule C of the EAPWDR; and
3. **Emergency dental and denture supplements** under Sections 64 of the EAPWDR and Section 5 of Schedule C of the EAPWDR.

The ministry's position is that the appellant has been eligible for \$1,000 every 2 years for basic dental services since the date that he became eligible for health supplements. However, the ministry's position is that the requested supplement for crowns is not a health supplement set out in sections 4 or 4.1 of Schedule C of the EAPWDR.

The ministry states that the appellant is also eligible for emergency dental services over and above the \$1,000 every two years for basic dental services, whether or not any of the basic dental service allowance has been claimed, if the appellant requires dental services for the immediate relief of pain. However, the ministry contends that there was no indication in the appellant's application that the requested dental services were required to relieve pain.

The ministry acknowledges that the appellant might qualify for crowns and related services at ministry rates and those services are also not deducted from the \$1,000 every two years that is available for basic dental services. However PBC has determined that additional information is required before the ministry could determine whether or not the supplement could be provided. Specifically the additional information required was:

1. List of all missing teeth;
2. Date and condition of any existing prosthesis and teeth involved;
3. If no existing prosthesis, length of time teeth have been missing;
4. Explanation as to the necessity for the crown request; and
5. Relevant information regarding the applicant's medical condition that would support the need for a crown.

The ministry also acknowledges that Section 69 of the EAPWDR states that the ministry may supply a medical supplies supplement, a medical transportation supplement or a medical equipment and devices supplement to a family unit not otherwise eligible for that health supplement if the ministry is satisfied that the person faces an imminent and life threatening need and there are no resources available in the family unit to meet that need. In addition, the health supplement must be necessary to meet that need, the person's family unit must be receiving premium assistance under the *Medical Protection Act* and, if applicable, the supplement is a particular type of medical or surgical supply or

one of several specified pieces of medical equipment or medical devices. However, the ministry's position is that Section 69 of the EAPWDR does not apply in this instance because dental supplements are not a medical supplies supplement, a medical transportation supplement or a medical equipment and devices supplement.

The ministry stated that normally it would not make a decision until the additional information had been provided, but in this case it was making an exception because, even with the additional information, the services have to be set out in the appropriate ministry fee schedule for a supplement to be considered, and the ministry concludes that coverage cannot be provided for the crowns and posts requested because the appropriate fee codes do not appear in the ministry's fee schedule.

Panel Decision

The dentist has provided an explanation as to the necessity for the crowns requested. In this instance the required solution is to provide the appellant with zirconia based crowns (Fee # 27201).

Section 1 of Schedule C of the EAPWDR defines "basic dental service" as a dental service provided by a dentist which is set out in the "Schedule of Fee Allowances - Dentist" (Part B), effective April 1, 2010. As the Schedule of Fees - Dentist (Part B) does not include a fee description for crowns, the panel finds that the ministry has reasonably determined that the provision of crowns is not a basic dental service.

Section 1 of Schedule C of the EAPWDR defines "emergency dental service" as a dental service necessary for the immediate relief of pain that, if provided by a dentist, is set out in the "Schedule of Fee Allowances - Emergency Dental - Dentist" (Part D), effective April 1, 2010. As the argument had not been made by the dentist that the dental service in this instance is necessary for the immediate relief of pain, the panel finds that the ministry has reasonably determined that the necessary service is not an emergency dental service.

Section 4.1(2) of Schedule C of the EAPWDR sets out the circumstances which must exist before the minister may determine whether a health supplement may be paid under section 63.1 of the EAPWDR for crown and bridgework. The panel finds that the dentist's letter dated July 18, 2016 providing details of the appellant's medical disorder and its impact on his dental condition, including why removable dentures would not last, was unreasonably viewed by the ministry as not satisfying the requirements of Section 4.1(2) of Schedule C of the EAPWDR.

However, Section 4.1(1) of Schedule C of the EAPWDR requires that the crown dental service must be set out in the "Schedule of Fee Allowances - Crown and Bridgework" (Part F), effective April 1, 2010 and be provided at the rate set out for the service in that Schedule. Therefore the prescribed dental service, including the type of crown and post in this case, must be listed in the Schedule of Fee Allowances - Crown and Bridgework, in which case the ministry may approve a supplement up to the fee amount listed in the ministry fee schedule.

Because zirconia based crowns (Fee # 27201) are not listed in the Schedule of Fee Allowances - Crown and Bridgework, the panel finds that the ministry has no authority to approve the supplement. While the appellant argues that he has been discriminated against because the fee schedules are not up-to-date, the panel recognizes that the ministry can only provide services that are listed in the ministry fee schedules, and then only up to the rate and amount limits specified in the ministry fee

schedules. Therefore the panel sees no evidence of discrimination by the ministry towards the appellant.

The panel also finds that the ministry reasonably concluded that the prescribed dental service is not a medical supplies supplement, a medical transportation supplement or a medical equipment and devices supplement pursuant to Section 69 of the EAPWDR and therefore that Section 69 of the EAPWDR does not apply.

Conclusion

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant. Accordingly, the panel confirms the ministry's decision and the appellant is not successful in his appeal.