



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the “ministry”)’s reconsideration decision dated December 15, 2016, finding the appellant is not eligible to receive funding for: (i) dental fee code number 99111 (“99111”), because 99111 is not set out in the relevant fee schedule in accordance with section 4.1(1)(f) of Schedule C to the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), and (ii) a full cast metal crown (“metal crown”) because the appellant does not meet the eligibility requirement for a metal crown in section 4.1(2)(a) of Schedule C to the EAPWDR or section 69 of the EAPWDR.

PART D – Relevant Legislation

The relevant legislation is sections 63, 63.1 and 69 of the EAPWDR and sections 4 and 4.1 of Schedule C of the EAPWDR.

PART E – Summary of Facts

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

1. A letter from Pacific Blue Cross (“PBC”) to the appellant’s dentist dated August 5, 2016, stating that the appellant’s request for a crown or bridge is denied because (i) “the documentation provided does not indicate that the dental condition precludes the provision of restorative services set out under the Restorative Services section of the Ministry of Housing and Social Development Schedule of Fee Allowances – Dentist.” and (ii) “the clinical explanation submitted does not confirm that this patient’s needs cannot be met through the MSD Basic Dental Program.” Included with the letter is the appellant’s Dental Predetermination Form which sets out the recommended treatment as:

Code	Tooth	Fee
23602	36	90.56
27301	36	539.90
99111		400.00

There are two undated, unsigned handwritten notes on this page which read: “Basic Dental Program has been tried and failed multiple times. Crown would be the standard of care, lack of crown will result in premature loss of tooth.” And “#36 tooth is root canaled filling keeps breaking. Broke buccal portion pt needs a crown”.

2. A letter from the appellant’s physician to the ministry dated November 21, 2016, stating that the appellant “has a history of head injury several years ago making her forgetful, often losing things. She would not be a good candidate for a dental prosthesis. Instead, it would be more feasible for her to have a crown instead.”
3. A letter from the appellant’s dentist to the ministry dated November 17, 2016, stating:

“We have sent you many requests for the treatment needed for [the appellant]. A crown on her #36 is the standard of care. Her tooth is root canaled and fillings fail. We have sent you photos and x-rays previously.

“According to section B of 4.12 regarding if her condition precludes the use of a removable prosthetic. Extracting the tooth is not recommended. [The appellant] has no other missing teeth on the lower and a partial is not needed in any other areas.

“According to her health supplement, a crown on 36 is the best choice for her health. An extraction would be very hard on [the appellant’s] health.”
4. An advocate’s submission stating that the appellant has a head injury and is a “PWD”, that PBC determined her to be ineligible for her treatment plan and that, as stated by the appellant’s physician, she is not a good candidate for a prosthetic due to her head injury. The submission goes on to state that the appellant suffers from TMJ and has a brain injury which mean that her dental condition cannot be addressed through “regular basic dental services”. As her head injury would cause her to lose a prosthetic device or to take it out so that it becomes a choking hazard, “the legislation under s. 4.1 2 (b) (iv) gives discretion that is applicable in this circumstance,” and

[Redacted]

the ministry “would have a reasonable duty to accommodate the disability of the Requestor.”

5. The “Reason for Request for Reconsideration” section of the Reconsideration Request dated November 17, 2016, in which the appellant states: (1) that she is dismayed by the timelines of the reconsideration process, that it is difficult to contact the ministry and that she needs time to find an advocate; (2) that as a person with disabilities she is eligible for a crown and bridgework supplement under section 4.1 of Schedule C; and (3) that she has a dental condition that cannot be corrected by the provision of basic dental services (Note: the appellant’s submission was apparently continued on another page, which was not in the materials provided to the panel).

Additional Evidence

The appellant submitted three documents at appeal which were not before the ministry at the time of the reconsideration decision. These are:

1. An email from the appellant to the Tribunal and a number of pages from an online source “WebMD”. In the email the appellant states that the ministry indicates that she may be eligible for a stainless steel crown but her dentist told her and the WebMD article states that a stainless steel crown is a temporary measure used on children’s primary teeth. The WebMD article states that: “Stainless steel crowns are prefabricated crowns that are used on permanent teeth primarily as a temporary measure. The crown protects the tooth or filling while a permanent crown is made from another material.”
2. A list of dental services rendered to the appellant dating from October 29, 2007 to Aug 4, 2009 indicating that the appellant received treatment for TMJ and received a night guard.
3. A letter from the appellant’s dentist dated January 26, 2017 which states:

“The crown recommended for [the appellant] on tooth 36 is the standard of care, lack of a crown will result in premature loss of this tooth. Then the patient would need a partial denture and this would cause loss of more teeth due to wire clasp wearing and putting pressure on these teeth. Also, the patient suffers from TMJ and wearing a partial would cause her pain.”

The ministry objected to the admission of this additional evidence.

In accordance with section 22(4) of the Employment and Assistance Act, the panel must determine whether this additional evidence is admissible or not. In order to be admissible, the evidence must be in support of evidence that was before the ministry at the time of the reconsideration decision. If it is new evidence that is not in support of evidence that was before the ministry at the time of the reconsideration decision then it is not admissible.

In this case the panel finds that the three items of additional evidence are admissible as they do not contain any new information that was not before the ministry at the time of the reconsideration decision and are in support of that information. The WebMD material regarding the use of stainless steel crowns is public knowledge. That the appellant suffers from TMJ, wears a night guard and is not a suitable candidate for a dental prosthetic is information that had been supplied to the ministry at or before the reconsideration decision stage.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated December 15, 2016, finding the appellant is not eligible to receive funding for: (i) dental fee code number 99111 ("99111"), and (ii) a full cast metal crown ("metal crown") because: (i) 99111 is not set out in the relevant fee schedule in accordance with section 4.1(1)(f) of Schedule C to the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), and (ii) the appellant does not meet the eligibility requirement for a metal crown in section 4.1(2)(a) of Schedule C to the EAPWDR or section 69 of the EAPWDR.

The relevant legislation is sections 63, 63.1 and 69 of the EAPWDR and sections 4 and 4.1 of Schedule C of the 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,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

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, or
- (b) a family unit, if the supplement is provided to or for a person in the family unit who
 - (i) is a continued person, and
 - (ii) was, on the person's continuation date, a person with disabilities.

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).

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.

The Appellant's Position

(i) 99111: The appellant was not aware what this fee was for but did not argue that it is not included in the ministry schedules of fees and so is not fundable by the ministry.

(ii) Metal Crown: The appellant submitted that she meets the eligibility requirements in section 4.1(2) and so should be funded for a metal crown. The requirement under section 4.1(2)(a) is met because the appellant's dental condition requires a metal crown as set out in the Schedule of Fee Allowances for Crowns and Bridges rather than a prosthetic or stainless steel crown as set out in Schedule of Fee Allowances for Restorative Services. The appellant argued that the medical evidence establishes that she cannot wear a prosthetic and that a stainless steel crown is not appropriate because it is a temporary measure.

The appellant also argued that she meets the eligibility requirements under section 4.1(2)(b)(i), (ii) and (iv) as a result of her TMJ, tooth sensitivity and forgetfulness due to her brain injury.

The appellant also submitted that a metal crown is the most economical solution because, although it is more expensive than a prosthetic or stainless steel crown, it lasts considerably longer and will cause fewer ancillary health issues.

The Ministry's Position

(i) 99111: The ministry was not aware of what this fee was for but argued that as it is not included in the ministry schedules of fees it is not fundable by the ministry.

(ii) Metal Crown: The ministry argued that the evidence did not establish that the appellant's dental condition precludes the provision of a stainless steel crown as set out in Schedule of Fee Allowances for Restorative Services as required by section 4.1(2)(a). The ministry did not present arguments regarding section 4.1(2)(b) either in its reconsideration decision or at appeal.

In its reconsideration decision the ministry also canvassed the applicability of section 69 and found

that the appellant did not qualify under this section as it does not apply to dental supplements.

The Panel's Decision

(i) 99111: section 63 of the EAPWDR establishes that the ministry may only provide dental supplements that are set out in section 4 of Schedule C which in turn refers to the Schedule of Fee Allowances. As this item is not included in the Schedule of Fee Allowances the ministry was reasonable in finding that it is not fundable by the ministry.

(ii) Metal Crown: Section 4.1(2)(a) requires that in order for a recipient to be eligible to receive a crown and bridgework supplement the minister be of the opinion that "the dental condition precludes the provision of the restorative services". To meet this requirement in this case, there must be evidence that the appellant's dental condition (a damaged and deteriorating tooth #36) must preclude the provision of a stainless steel crown.

The panel finds that there is no evidence which supports the position that the appellant's dental condition precludes the provision of a stainless steel crown. Whether or not a stainless steel crown is the best, most appropriate or economical approach is irrelevant in determining whether the requirement of this section is met. Based on all the evidence before it, the ministry's decision that the appellant did not meet the eligibility requirement of section 4.1(2)(a) was reasonable.

The appellant also argued that she met three of the requirements under section 4.1(2)(b). These sections are, however, not relevant as they deal exclusively with conditions that apply to a prosthetic and the ministry did not argue that a prosthetic was an appropriate approach.

Finally, although neither party spoke to the section at appeal, the panel considered the application of section 69 and found the ministry reasonably determined that this section does not apply to dental supplements.

Accordingly, the Panel finds that the ministry's reconsideration decision was a reasonable application of the relevant legislation and confirms the ministry's reconsideration decision.