

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision made under section 63 and Schedule C, Section 4 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, and dated January 13, 2017, that denied the appellant's request for a supplement to cover the cost of a second replacement periodontal appliance and fees in excess of the legislated rate was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation, Section 63
Employment and Assistance for Persons with Disabilities Regulation, Schedule C, Sections 1 and 4
Employment and Assistance for Persons with Disabilities Regulation, Schedule of Fee Allowances – Dentist

PART E – Summary of Facts

Nature of the Appellant's Application

The Appellant had applied for two Bruxing Guards, additional to the one she had obtained in December, 2014. Her request was denied and she asked for Reconsideration. The Appellant asked for the decision to be reconsidered such that she would have two new guards, and that the amount charged by her dentist in excess of the legislated rate be paid. While a Person with Disabilities is limited to one such guard in any five-year period, the ministry has discretion to provide another with in the five-year period. At Reconsideration, the ministry agreed to provide one new guard, but not the second, and did not agree to pay the bill more than the legislated rate.

Evidence at the Time of Reconsideration

The evidence before the Ministry at the time of Reconsideration consisted of:

- A. The decision to be reconsidered
- B. The Appellant's statement that
 - she had been to her doctor prior to the dentist, and had to been treated for pain and infections
 - she was taking pain medication, and fights every day so as not to become addicted
 - she has other health issues to consider and having the pain daily with TMJ (temporomandibular joint issue) is affecting her
 - she has physicians in a lower mainland city as well as where she lives and both of them are asking for mouth guards to be considered as they are critical to her health
- C. A note from a lower mainland dentist dated October 28, 2016 identifying that at a dental examination the Appellant had left TMJ arthralgia, hypertrophic massetic (?), with limited mouth *illegible* and a past history of left head trauma and *illegible* clenching habit
- D. A note from a lower mainland physician dated November 4, 2016 opining that the Appellant requires a new mouth guard and without it she is at the risk of infection, increasing pain, increasing use of the healthcare system and substance misuse. The physician says that the current guard is broken through normal use in her condition
- E. A note from a lower mainland physician dated to December 12, 2016 advising that the Appellant has a very well documented pain syndrome directly attributed to not having a mouth guard and that previous documentation has been submitted; the note says further that from a medical viewpoint it is incomprehensible that a preventable problem is not being treated adequately with a mouth guard. The Appellant will continue in pain, will continue to damage her teeth, temporomandibular joint and continue to repeatedly access to healthcare system that significant public expense without proper and humane treatment
- F. A letter of from an interior physician dated November 18, 2016 advising that the Appellant has TMJ and jaw clenching, causing mouth and left facial pain. She requires a new mouth guard for medical reasons because pain causes risk-increased use of pain medications and increased depression
- G. A Standard Dental Claim Form stated to be for Pre-Determination of Benefits Only, submitted to Pacific Blue Cross on November 10, 2016, in which a dentist sets out that permission is requested for

fee guide items 14611 (maxillary guard), 14612 (mandibular guard), and for 2 fee guide items 99111 (lab fees), totaling \$768.70

Evidence Provided on Appeal

Appellant

In her notice of appeal the appellant said that since her original mouth guard was obtained she has received a new, more severe diagnosis and her dental and medical conditions have worsened as a result of having an inadequate device, and through no fault of her own she is without proper protective equipment leaving her with increased risk of health and complications and damage.

At the appeal, the Appellant further submitted

- that in August 2016 while taking a shower she fell in the tub and hit the left side of her head; she was taken by ambulance to the hospital and it was found by the end of September that the pain in her jaw and gumline and under her teeth and radiating into her eyes had made her mouth pain much worse
- she went to the dentist who could not work on her because of the inflammation and; he gave her prescription for the infection and another for the pain and sent her to another dentist who was knowledgeable about temporomandibular joint issues; it was found that her jaw was out of alignment and that led to the recommendation dated December 12, 2016, from her physician for a mouth guard, because without it she will continue to damage her teeth and temporomandibular joint and repeatedly access the healthcare system at significant public expense
- that the first mouth guard she obtained in December 2014 was broken through normal use; part of her problem is clenching her teeth and repeatedly doing so broke the guard
- she was initially turned down for any new mouth guard, but at the time of reconsideration she was approved for one guard
- she returned to a dentist, received a prescription for pain and was suffering from a number of issues so that she was sent to another dentist who was more knowledgeable about temporomandibular joint problems. It was found that her jaw was out of alignment and she was advised that she needed mouth guards
- the mouth guard that she was initially provided in December 2014 was bitten through in normal use due to repeated teeth clenching
- not having the mouth guard is affecting her type II diabetes and makes her more prone to infection, and poor sleep

At the appeal, the Appellant's Advocate submitted

- that the Appellant was told in December 2016 that she needed both the top and a bottom mouth guard and it was the top guard that was provided in the dentist bill was about \$140 more than the ministry rate
- that since he began assisting the Appellant, the Appellant's health is declined, she needs the second mouth guard, and she has infection in her jaw and ears
- that the Appellant has been very proactive but having to fight for the second mouth guard has taken its toll on the Appellant

New Evidence

- the Advocate stated that he had new evidence from a dentist in the form of a note that there had not been time to submit to the tribunal. He wanted to read it into evidence; it stated:
- “January 19, 2017. Due to [the Appellant’s] severity of temporomandibular joint disorder it would be best if she sees a TMJ specialist for evaluation and treatment”. The Advocate then read a note from the Appellant’s dental chart that read “[the Appellant] has a history of TMJ disorder - NG wear and currently is in a lot of pain and [the Appellant] needs TMJ evaluation and comprehensive treatment”

The ministry objected to the introduction of this new evidence on the grounds that it was not available at the time of reconsideration and was not submitted in time.

Panel Decision

Pursuant to section 22(4)(b) of the *Employment and Assistance Act*, the panel admits the new evidence because it is oral or written testimony in support of the information and records, specifically the information and records concerning the Appellant’s mouth, jaw and tooth problems, that were before the minister at the time the decision being appealed was made.

Ministry

The ministry’s representative submitted

- that the Appellant’s request for two guards was denied and so was her request for fees in excess of those set out in the Schedule of Fee allowances because initially there was no request is submitted to Pacific Blue Cross, but in November 2016 I dental claim form was submitted asking for two guards at a cost of \$244.35 each plus two lab fees of \$140, and later in December 2016 a physician wrote a note advising that a mouth guard was required
- that the ministry’s initial response was that Pacific Blue Cross had denied the Appellant’s request for any new mouth guard as the appellant had been provided one in December 2014 and periodontal appliances are limited to one in any five-year period
- that on December 13, 2016 the Appellant was advised her request was denied, on December 23, 2016 a physician wrote saying that the mouth guard was needed for medical reasons and on January 13, 2017 the ministry completed its review and issue the reconsideration decision allowing, using its limited discretion under policy to provide one mouth guard, but not the second, and not allowing fees in excess of the fees set out in the Schedule of Fee Allowances.

PART F – Reasons for Panel Decision

Issue

The decision under appeal is whether the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision made under section 63 and Schedule C, Section 4 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, and dated January 13, 2017, that denied the appellant's request for a supplement to cover the cost of a second replacement periodontal appliance and fees in excess of the legislated rate, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Relevant Legislation

Section 63 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,

Schedule C – Health Supplements – EAPWDR

Definitions

Section 1(a)

"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, and

(ii) is provided at the rate set out for the service in that Schedule,

Section 4(2)

Dental Supplements

(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.

Schedule of Fee Allowances - Dentist

Fees 14611 and 14612 are inclusive of the cost of study models and patients are limited to one guard (either 14611 or 14612) in any five-year period. Patients that have upper and/or lower complete dentures are not eligible for these fee items.

FEE NO.	FEE DESCRIPTION	FEE AMOUNT (\$)
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14611	Maxillary	244.35
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14612	Mandibular	244.35
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General Scheme of the Legislation

The legislation provides that so long as an applicant is an individual with Persons with Disability status, they are eligible for dental supplements under section 63 and Schedule C, section 4 of the *Employment and Assistance for Persons with Disabilities Regulation*, and in the case of periodontal appliances, a person is limited to either one Maxillary guard (fee guide # 14611) or one Mandibular guard (fee guide # 14612) in any five-year period at the legislatively prescribed fee amount of \$244.35, inclusive of the cost of study models. Under section 25 of the *Employment and Assistance for Persons with Disabilities Act*, the minister has delegated Pacific Blue Cross to determine eligibility for dental supplements.

Appellant's Position

The Appellant's position was that she had medical and dental advice that both an upper and lower guard were required, so two guards should be supplied, and the dentist should be paid for the lab fees, in addition to the legislated rates.

Ministry Position

The ministry's position was that only one periodontal appliance may be provided within any five-year period. The ministry has a limited policy discretion to provide a replacement denture if the denture being replaced was lost or damaged beyond repair, the loss or damage was beyond the control of the client and the failure to provide the replacement denture would result in compromised health.

Although a periodontal appliance (a mouth guard) is not a denture, the ministry used its limited discretion to provide a second periodontal appliance within a five year period under the "replacement denture" policy exemption, but was not authorized to provide two replacement periodontal appliances. In summary, the ministry representative said that while the ministry could use its limited discretion to provide one replacement periodontal appliance within the five year period following provision of the initial appliance, it could not supply a second appliance.

The ministry further took the position that the "Schedule of Fee Allowances -Dentist" fee for a periodontal appliance (fee code 14611 and/or fee code 14612) was inclusive of study models and the lab fee was included in the category of "lab fees". Further, the ministry submitted that the fee code for lab fees, 99111, as set out in the standard dental claim form dated November 10, 2016, was not a fee code included in the "Schedule of Fee Allowances – Dentist", and was therefore not an allowable expense.

Analysis

***EAPWDR* Section 63**

This section provides that the minister may provide dental supplements, identified in Schedule C of the *EAPWDR*, for someone who has Persons With Disability status.

Panel Finding

The ministry and the Appellant were in agreement that the Appellant was a Person with Disability status, and therefore qualified for a dental supplement under section 63 *EAPWDR*, so there was no issue as to the Appellant's entitlement provided she qualified under Schedule C "Health Supplements", Sections 1 and 4, and the item sought was an item included in the Schedule of Fee Allowances – Dentist.

***EAPWDR* Schedule C, Section 1(a)**

This section provides that the minister may pay for dental services provided by a dentist, at the rate set out in the "Schedule of Fee Allowances-Dentist" so long as they are provided by a dentist.

Panel Finding

The ministry and the Appellant agree that periodontal appliances are, in this case, provided by a dentist and are items included in the "Schedule of Fee Allowances-Dentist" and therefore the Appellant does qualify for payment for a periodontal appliance, so long as she qualifies under *EAPWDR* Schedule C, Section 4(2).

EAPWDR Schedule C, Section 4(2)

This section provides that the minister may provide dentures to a person who has never worn them or whose dentures are more than five years old.

Panel Finding

The ministry exercised its discretion to provide one (but not two) periodontal appliance as if the Appellant's periodontal appliances supplied in December 2014 was a denture, because it was clear that it was damaged beyond repair beyond the control of the Appellant and that the Appellant's health was suffering.

The panel finds that the ministry exercised its discretion so as to provide one of the requested periodontal appliances, the Maxillary guard fee item 14611, and that therefore the Appellant qualified pursuant to this section and ministry policy for replacement of the periodontal appliance before the expiry of five years from provision of the original in December 2014.

EAPWDR Schedule of Fee Allowances – Dentist

This schedule sets out for which fee items a dentist may bill the ministry, and sets out the approved fee for each item. If a fee item is not included in the Schedule, the ministry may not provide it for the simple reason that it is not an item included in the Schedule of Fee Allowances-Dentist.

Panel Finding

The panel finds that although the ministry, through its policy, may provide another item for a person before the expiry of five years from when that item was first provided, there is no authority for providing two new items within a five-year period. The Regulation provides that fee guide items numbered 14611 and 14612 are limited to one guard in any five-year period.

The panel finds that the ministry is limited to the fee amount set out in the Schedule for any item, and may not provide or pay for something that is not set out in the Schedule. As the cost of study models, which includes lab fees, are specifically included in the prescribed fee for fee guide items 14611 and 14612, lab fees may not be billed for separately.

The panel finds that the minister reasonably determined at reconsideration that it was limited to providing one new periodontal appliance (the Maxillary guard).

The panel finds that the minister reasonably determined at reconsideration that it could not pay lab fees in excess of the amounts prescribed in the Schedule because they are not legislatively authorized.

Conclusion

The panel finds that the ministry was reasonable when it determined at reconsideration that it could provide one new periodontal appliance within five years of the original having been provided, but could not provide two new appliances, and could not pay lab fees, and that the decision was reasonably supported by the evidence.

The panel confirms the ministry's decision and the Appellant is not successful in her appeal.