



## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated February 21, 2017, which denied the Appellant’s request for coverage of dental fees not set out in the Schedule of Fee Allowances – Dentist (“the Schedule”). The Ministry determined that the Appellant is eligible for dental supplements under sections 63, 63.1 and 64 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and sections 4, 4.1 and 5 of Schedule C, EAPWDR; however the Ministry found that they not authorized to provide coverage for fees not set out in the Schedule. In addition, the Ministry determined that Section 69, EAPWDR, Health supplement for persons facing direct and imminent life threatening health need, does not apply in this instance because dental supplements are not set out in this section.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 62, 63, 69; Schedule C, sections 1, 4, 5; Schedule of Fee Allowances – Dentist (the Schedule)

## PART E – Summary of Facts

The Appellant requested coverage for a number of dental services relating to implant surgery and modification of dentures following surgery which are identified by the Appellant's dentist as Fee Codes 00111, 03002, 51911, 79942 and 99555.

Information before the minister at reconsideration included:

- A Dental Predetermination Summary from Pacific Blue Cross (PBC) dated December 12, 2016, with a submitted amount of \$39,850 and an approved amount of \$0.00.
- A Diagnostic Imaging Report dated November 30, 2016.
- A Diagnostic Imaging Report dated November 30, 2016.
- An Outpatient Clinic Note dated January 13, 2016.
- A Diagnostic Imaging Report dated January 6, 2016.
- An Outpatient Clinic Note dated July 8, 2015.
- A Diagnostic Imaging Report dated July 8, 2015.
- A Diagnostic Imaging Report dated July 9, 2014.
- A note from a dental clinic dated January 22, 2014.
- A Treatment Note from the BC Cancer Agency dated December 1, 2016, with an assessment that the Appellant's cancer shows no evidence of recurring and a note that she has poor dentition.
- A note from the BC Cancer Agency dated October 22, 2013.
- A laboratory report dated November 26, 2016.
- A Diagnostic Imaging Report dated October 22, 2013.
- A laboratory report dated October 4, 2016.
- A Diagnostic Imaging Report dated June 22, 2016.
- A Diagnostic Imaging Report dated July 17, 2013.
- A radiation consultation report dated May 12, 2016.
- A Diagnostic Imaging Report dated July 17, 2013.
- A Medical Imaging Report dated May 12, 2016.
- A note from the BC Cancer Agency dated July 17, 2013.
- A Diagnostic Imaging Report dated January 6, 2016.
- A note from the BC Cancer Agency dated May 1, 2013.
- A Diagnostic Imaging Report dated July 15, 2015.
- A Diagnostic Imaging Report dated April 24, 2013.
- A Diagnostic Imaging Report dated January 30, 2013.
- A Diagnostic Imaging Report dated January 7, 2015.
- A note from the BC Cancer Agency dated July 23, 2014.
- A Diagnostic Imaging Report dated January 22, 2014.
- A Diagnostic Imaging Report dated December 18, 2012.
- A note from the BC Cancer Agency dated October 31, 2012.
- A note from the BC Cancer Agency dated January 22, 2014.
- Three Diagnostic Imaging Reports dated October 23, 2012.
- A note from the BC Cancer Agency dated September 19, 2012.
- Two Diagnostic Imaging Reports dated July 18, 2012.
- A note from the BC Cancer Agency dated May 2, 2012.
- A Diagnostic Imaging Report dated May 2, 2012.
- A Diagnostic Imaging Report dated March 12, 2012.
- A Diagnostic Imaging Report dated February 20, 2012.
- A Diagnostic Imaging Report dated January 30, 2012.
- A note from the BC Cancer Agency dated January 30, 2012.
- An Admission and Discharge Summary from the BC Cancer Agency dated December 10, 2011.
- Two laboratory reports dated December 9, 2011.
- An Admission and Discharge Summary from the BC Cancer Agency dated December 31, 2011.

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- A note from the BC Cancer Agency dated December 10, 2011.
  - A note from the BC Cancer Agency dated November 19, 2011.
  - A Diagnostic Imaging Report dated October 3, 2011.
  - An Operative Report dated October 12, 2011, stating that the Appellant underwent a tracheotomy and jaw and floor of mouth and neck resection with revascularized fibular graft.
  - A laboratory report dated October 12, 2011.
  - A note from the BC Cancer Agency dated October 3, 2011.
  - A Diagnostic Imaging Report dated September 29, 2011.
  - An Admission and Discharge Summary from the BC Cancer Agency dated September 17, 2011.
  - An Admission and Discharge Summary from the BC Cancer Agency dated August 27, 2011.
  - A note from the BC Cancer Agency dated August 16, 2011.
  - A Diagnostic Imaging Report dated August 15, 2011.
  - A note from the BC Cancer Agency dated August 15, 2011, with a diagnosis of osteosarcoma right mandibular.
  - A note from the BC Cancer Agency dental clinic dated August 12, 2011.
  - An Admission and Discharge Summary from the BC Cancer Agency dated August 6, 2011.
  - A psychiatry consultation report from the BC Cancer Agency dated July 29, 2011.
  - A note from the BC Cancer Agency dated July 27, 2011.
  - A Diagnostic Imaging Report dated July 22, 2011.
  - An Oncology History and Consultation report dated July 29, 2011.
  - A laboratory report dated July 22, 2011.
  - A Diagnostic Imaging Report dated July 20, 2011.
  - An Oral Pathology Consultation Report dated July 15, 2011.
  - A dental clinic report dated January 30, 2013, reporting rampant decay requiring full clearance.
  - An Operative Report dated June 18, 2015.
  - A Progress Note from the BC Cancer Agency dated January 18, 2015, reporting many dental caries causing some discomfort and pain with eating.
  - A Diagnostic Imaging Report dated July 18, 2016, noting poor dentition.
  - A Progress Note from the BC Cancer Agency dated June 22, 2016, the inflammatory nature of the Appellant's teeth.
  - A treatment note from the BC Cancer Agency dated December 1, 2016, noting poor dentition and some rotting teeth obvious.
  - A copy of a prescription for hydromorphone, dated February 6, 2017.
  - A copy of an account summary from a bank, showing a balance of \$19.17 in chequing and \$25.27 in savings.
  - A copy of a referral letter from BC Cancer Agency to a hospital dated June 30, 2015, referring the Appellant for consideration of full mouth extractions.
  - A note from the BC Cancer Agency dated October 4, 2016 with a treatment plan for restorative dentures.
  - A note `To Whom it May Concern` from a dentist dated February 6, 2017, stating that the Appellant needs extensive restorative and periodontal work, without which she will suffer health problems that will continue and worsen.
  - A letter `To Whom it May Concern` from a physician dated January 30, 2017, stating that as a consequence of surgery and chemotherapy, the Appellant requires extensive corrective work on her teeth, without which her condition would be expected to deteriorate.
  - The Appellant's Request for Reconsideration, with attachments.

At the hearing, the Appellant provided a written submission of her argument with copies of documents and x-rays previously provided, with photographs to demonstrate the extent of her surgery and maxillofacial reconstruction.

The Appellant stated that she is in urgent need of full mouth extractions, she is in constant pain, finding it



difficult to eat, sleep, talk or focus, and her doctors say her health is being harmed. She stated that her chemotherapy finished in 2011 and she has been cancer free since, however it has not been possible to find funding for the special type of dentures she now needs.

The Ministry responded by referring to the reconsideration decision, which states that the Appellant's request for funding does not meet the legislative criteria in the EAPWDR sections 62, 63, 69 or Schedule C, sections 1 or 4. The Ministry stated that funding cannot be provided for dental services not set out in the Schedule of Fee Allowances – Dentist.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision which denied the Appellant's request for coverage of dental fees not set out in the Schedule of Fee Allowances – Dentist ("the Schedule"). The Ministry determined that the Appellant is eligible for dental supplements under sections 63, 63.1 and 64 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and sections 4, 4.1 and 5 of Schedule C, EAPWDR; however the Ministry found that they are not authorized to provide coverage for fees not set out in the Schedule. In addition, the Ministry determined that Section 69, EAPWDR, Health supplement for persons facing direct and imminent life threatening health need, does not apply in this instance because dental supplements are not set out in this section.

### Legislation

EAPWDR

### General health supplements

**62** The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] 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.

### 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.

### 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

### 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, 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.

### **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 is that she is in urgent need of full mouth extractions and requires a special type of dentures because half of her jaw was removed and replaced with a bone graft. She argued that she has tried without success to obtain funding through the BC Cancer Agency, and although she has been told that she is eligible, there have been ongoing problems with obtaining the funds and finding an operating room. She argued that her health is in danger due to constant pain which makes it difficult to eat, sleep, talk or focus, and her pain medication is addictive. The Appellant argued that it is unreasonable to deny her funding because the codes for her procedure are not in the schedule of fees and should not be denied because 'accounting codes' are not listed.

## **Ministry`s position**

The Ministry's position is that the payment for dental services is defined in section 1 of Schedule C, EAPWDR, and is provided at the rate set out in the Schedule of Fee Allowances – Dentist. There is no authority to provide coverage for the services requested (dental implants, overdentures and associated fees) that are not set out in the Schedule. The Ministry, in the reconsideration decision, wrote that section 5 of Schedule C, emergency dental supplements, refers to services set out in the Schedule, and the dentures requested by the Appellant are not set out in the Schedule.

With respect to eligibility for coverage under Section 69, EAPWDR, Health supplement for persons facing direct and imminent life threatening health need, the Ministry argued that Section 69 refers supplements set out in Schedule C, sections 2(1)(a) and (f) and 3, and refers to medical supplies, medical transportation and medical equipment and devices, not dental supplements, and therefore is not applicable.

## **Panel Decision**

Section 1 of Schedule C, EAPWDR defines “basic dental service” and “emergency dental service” as dental services that are set out in the Schedule of Fee Allowances – Dentist or –Emergency Dental - Dentist. Sections 4 and 5 of Schedule C, EAPWDR set out the conditions under which dental supplements may be provided. These subsections state that dental services or emergency dental services may be provided for services set out in the Schedule. There is no provision for provision of services not set out in the schedule. The Panel notes that the Schedule sets out fee descriptions for dental services, each of which is assigned a number. If a fee number for a particular service or fee is not listed, it is not authorized for payment. The procedures requested by the Appellant's dentist are not listed in the Schedule, and therefore cannot be provided under EAPWDR Schedule C, sections 4 or 5. The Panel finds that the Ministry reasonably determined that the Appellant did not meet the requirements for provision of the requested procedures.

With respect to the Ministry's determination concerning Section 69, EAPWDR, Health supplement for persons facing direct and imminent life threatening health need, the Panel notes that this section does not refer to dental supplements. The Panel finds that the Ministry reasonably determined that Section 69, EAPWDR does not apply in this instance.

The Panel finds that the Ministry reasonably determined that the Appellant is not eligible for provision dental services not set out in the Schedule of Fee Allowance – Dentist. The Panel therefore confirms the Ministry decision. The Appellant is not successful on appeal.