

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 November 21, 2016 which denied the appellant's request for coverage for complete lower dentures. The ministry determined that the appellant, who is a recipient of income assistance, is not a person described in the Employment and Assistance Regulation (EAR) section 68 and therefore is not eligible to receive coverage for dental supplements under EAR Section 68 and section 4 of Schedule C.

The ministry found that the appellant is eligible to receive denture services for lower dentures under EAR, section 69 and section 5 of Schedule C, however this provision is not available to the appellant until she can demonstrate that her lower arch has been cleared.

PART D – Relevant Legislation

EAR section 68 and 69 and Schedule C sections 4 and 5

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- The appellant is a sole recipient of income assistance.
- September 14, 2016 – the appellant contacted the ministry to enquire about dental and denture coverage. The appellant was advised that she qualified for emergency dental services and would qualify for dentures if her remaining teeth were pulled. The appellant asked if she would qualify for replacement of her upper plate. The ministry advised that you would likely not be covered for replacement but to have her dentist get a pre-approval from Pacific Blue Cross (PBC).
- October 20, 2016 – the appellant contacted the ministry to report that PBC denied the dentist's request.
- October 24, 2016 – the appellant submitted to the ministry the denied a pre-authorization dated October 6, 2016 from PBC to her dentist. The ministry denied assistance for the following two reasons:
 1. Dentures can only be considered over the participant's financial limit when the denture criteria, outlined in Part A of the current Ministry of Social Development Fee Schedule are met.
 2. The ministry is not able to pre-authorize this service. Please refer to the Ministry Fee Schedule for information about emergency services.
- October 25, 2016 – the ministry prepared a reconsideration package for the appellant to complete.
- November 8, 2016 – the appellant submitted her Request for Reconsideration. The appellant writes *"I am in constant pain from the 2 teeth on bottom right. They bleed daily and constantly leach poison into my system. I cannot chew any food as they are so loose and infected. I desperately need them pulled and need upper and lower dentures so I may regain my health. Please!"* Submitted with the Request for Reconsideration were the following two documents:
 1. A letter from the appellant's dentist dated October 20, 2016, advising that the appellant's maxillary (upper) denture is worn beyond repair. The occlusal (chewing) surfaces are flat. Making a lower denture without replacing the upper at the same time will not allow the prosthesis to perform properly intra-orally.
 2. A letter from the appellant's physician dated November 2, 2016 advising that the appellant needs urgent dental surgery and the appellant has multiple medical conditions and she is not able to eat healthy due to current state of her Dental health. Please support urgent surgery as her general health is declining.
- The ministry confirms that the appellant delivered her Notice of Appeal (NOA) to the ministry on December 5, 2016. The Employment and Assistance Tribunal (EAAT) hearing date is April 20, 2017. The ministry advises that the NOA was not forwarded to the EAAT, as required

under sections 84 and 85 EAR, is the result of ministry error.

In her NOA, the appellant writes:

- *This letter is in respect to request for re-consideration for a lower denture. The 2 teeth in question are now gone. One tooth fell out while eating, and the other was broken off during a slip and fall in the snow. I then had to find a Dentist to extract the root. The lower arch is now clear. With the 2 teeth gone, the partial plate is now not functional, as the 2 teeth were all that was holding it in place.*

I am currently working with Work B.C. with an E.I. Reach Back program to gain full-time permanent employment, so I can exit the income assistance. I feel that if I could possibly have a full proper set of teeth, it will greatly increase my chances and give me a much needed boost of self-esteem and confidence so I may gain the employment I desperately need to assist in my regaining my health. I am fighting Hashimoto Disease which seems to be directly related to diet. The previous condition of my teeth prevented me from being able to eat a proper diet.

And finally, my mother was given Tetraculine for bronchitis while she was pregnant with me, which resulted in my ugly teeth coming in brown due to no enamel. My teeth have caused me pain, embarrassment my whole life, so I pray for finally a nice smile, to eat what I want, and have the confidence to walk through life without fear of smiling.

- The appellant provides this additional letter dated December 5, 2016:

This is to inform you that lower arch has been cleared. The teeth in question, 1 tooth has fallen out on its own, and the other tooth was broken off from a slip and fall in the snow. The partial denture is no longer functional with the 2 teeth gone. I am currently working with Work B.C. through an E.I. Reach Back Program, to gain full time permanent employment. Having a full set of teeth I feel is important to getting a job when dealing with the public.

- Attached to the NOA is a letter from a the appellant's dentist stating: *"Just wanted to inform whoever it concerns that the remaining root tips are out and she is good to go ahead with making the denture."*
- Attached to the NOA is a clinical record provided by the appellant's Denturist which also advises that the appellant has Hashimoto Disease and acquired Hypothyroidism.
- Attached to the NOA is a note from the appellant's physician dated November 29, 2016 stating: *"(the appellant) need to have lower denture to (??) her upper dentures which she had since the age of 12 years."*

At the hearing:

The submission presented by the appellant's advocate supported the arguments presented by the appellant in the Notice of Appeal. In addition, the submission included a letter from the appellant's physician dated April 13, 2017 stating that the appellant has multiple health conditions and a healthy diet is essential and recommends that the appellant gets upper and lower dentures as soon as possible. The appellant reviewed all of the information concerning her dental condition before and after the date of the reconsideration decision.

The ministry relied on the information contained in the reconsideration decision and confirmed that the appellant qualified for new upper dentures but did not qualify for lower dentures because she still had two remaining teeth which does not demonstrate that the lower arch has been cleared as required under section 69(2)(b). However, subsequent to the date of the reconsideration decision, the appellant has had the two remaining teeth removed and does now qualify for lower dentures.

Admissibility of Additional Information

In this case, the information before the ministry at reconsideration was that the appellant did not qualify for lower dentures because she still had two remaining teeth which do not demonstrate that the lower arch has been cleared as required. In accordance with section 22(4)(a) of the *Employment and Assistance Act*, all of the evidence presented by the appellant subsequent to the date of reconsideration related to the removal of the two remaining teeth and the clearing of the lower arch is not admissible because it was not information and records that were before the ministry when the decision being appealed was made.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision to deny the appellant's request for coverage for complete lower dentures because the ministry determined that the appellant, who is a recipient of income assistance, is not a person described in the Employment and Assistance Regulation (EAR) section 68 and therefore is not eligible to receive coverage for dental supplements under EAR Section 68 and section 4 of Schedule C and to deny the appellant's request to receive denture services for lower dentures under EAR, section 69 and section 5 of Schedule C, because this provision is not available to the appellant until she can demonstrate that her lower arch has been cleared.

Relevant Legislation:

EAR

Dental supplements

68 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 income assistance, if*
 - (i) the family unit includes a person with persistent multiple barriers to employment, or*
 - (ii) the health supplement is provided to or for a person in the family unit who is a dependent child,*
- (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*
 - (i) is a continued person, and*
 - (ii) meets any of the following criteria:*
 - (A) the person is a dependent child;*
 - (B) the person was, on the person's continuation date, a person with persistent multiple barriers to employment or part of a family unit that then included a person with persistent multiple barriers to employment.*

[en. B.C. Reg. 145/2015, Sch. 1, s. 9.]

Denture supplement

69 (1) Subject to subsection (2), the minister may provide any health supplement set out in section 5 [denture supplements] of Schedule C to or for

- (a) a family unit in receipt of income assistance, or*
 - (b) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.*
- (2) A person is not eligible for a health supplement under subsection (1) unless*
 - (a) the person is not eligible for a supplement under section 68 [dental supplements], and*
 - (b) the person has had tooth extractions that were performed in the last 6 months because of pain and resulted in the person requiring a full upper denture, a full lower denture or both.*

[en. B.C. Reg. 145/2015, Sch. 1, s. 9.]

Emergency dental and denture supplements

70 The minister may provide any health supplement set out in section 6 [emergency dental supplements] of Schedule C to or for

- (a) a family unit in receipt of income assistance,*
- (b) a family unit in receipt of hardship assistance, 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.*

[en. B.C. Reg. 145/2015, Sch. 1, s. 9.]

Schedule C

Dental supplements

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

- (a) in respect of a dependent child or a child in a home of a relative, 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 68 [dental supplements] of this regulation are basic dental services to a maximum of

- (a) \$1400 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).

(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, other than a person who is a main continued person under section 66.3 (1) of this regulation as a result of having been part of a family unit identified in section 66.3 (3) (a) or a dependent continued person under section 66.3 (2) of that 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 income assistance or disability 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.

Denture supplements

5 The health supplements that may be provided under section 69 [denture supplements] of this regulation are denture services.

Emergency dental supplements

6 The health supplements that may be paid for under section 70 [emergency dental and denture supplements] of this regulation are emergency dental services.

Position of the appellant

Subsequent to the date of the reconsideration decision, the appellant has provided evidence that the 2 teeth in question are now gone. She states that one tooth fell out while eating, and the other was broken off during a slip and fall in the snow requiring a dentist to extract the root. The lower arch is now clear.

Position of the ministry

The appellant is not eligible for denture supplements set out in Schedule C of the EAR because at the time of reconsideration the appellant still had two remaining teeth and does not qualify for lower dentures because these remaining teeth do not demonstrate that the lower arch has been cleared as required under section 69(2)(b) EAR.

Panel Decision

The relevant evidence before the panel is that, at reconsideration, the appellant's medical practitioner confirmed that the appellant requires urgent dental surgery and that the appellant had two teeth remaining and therefore could not demonstrate that her lower arch has been cleared.

The panel, on reviewing the regulation and in particular sections 68 and 69 EAR, finds that the ministry's decision that the appellant is not eligible to receive lower dentures until she can demonstrate that her lower arch has been cleared was a reasonable application of the applicable enactment in the circumstances of the appellant. Section 69(2)(b) EAR states "*the person has had tooth extractions that were performed in the last 6 months because of pain and resulted in the person requiring a full upper denture, a full lower denture or both.*" At the date of reconsideration the appellant had two teeth remaining in her lower arch resulting in her being ineligible for denture supplements. The appellant has placed information before the panel on her change of circumstances in that she no longer has teeth in her low arch as confirmed by her dentist. While the new evidence is inadmissible at appeal, it should be provided to the ministry for a new determination.

The panel therefore confirms the decision of the ministry pursuant to section 24(2) EAA. The appellant is unsuccessful in her appeal.