

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated October 3, 2017, 2017 which found that the appellant is not eligible for Coverage of dental fees in excess of ministry rates (tooth coloured restorations) as the ministry is not authorized to provide coverage for fees in excess of the rates set out in the Schedule of Fee Allowances- Dentist.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)– Sections 62, 63, and 69

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)– Schedule C sections 1 and 4

Schedule of Fee Allowances- Dentist, Emergency Dental-Dentist, Crown and Bridgework

PART E – Summary of Facts

The appellant is a recipient of disability assistance and is eligible for dental supplements under section 63, 63.1, and 64 and Schedule C, sections 4, 41 and 5 of the EAPWDR.

The reconsideration decision focused solely on the denial of full coverage for tooth coloured restorations to tooth #33 (three surfaces/fee code 23113) as provided on August 9, 2017

August 25, 2017- the appellant attended a ministry office stating he had no coverage with Pacific Blue Cross (PBC) and presented a dental bill dated August 9, 2017.

August 30, 2017- an Employment and Assistance Worker (EAW) contacted the appellant and was told by the appellant he was in need of repair of two teeth prior to his cancer treatment. The EAW informed the appellant the ministry had paid the maximum fee allowance for tooth 33 for the two-year period as restorations were done October 8, 2015 and August 9, 2017.

September 20, 2017- the appellant submitted a Request for Reconsideration

October 3, 2017 the ministry completed its review of the appellant's Request for Reconsideration. The appellant was denied coverage of dental fees in excess of ministry rates.

In the appellant's Notice of Appeal dated October 13, 2017, the appellant wrote:

- Spastic tetraplegia, due to spinal cord injury I break my teeth when sleeping

The information before the ministry at the time of reconsideration included the following:

- Dental bill dated August 9, 2017 for tooth #33 totaling \$146.18
- Claim Details PBC dated September 2017- October, 2015

In the appellant's Request for Reconsideration, the appellant wrote:

- He has a medical condition, spastic tetraplegia which causes uncontrollable muscle contractions and as a result has broken 11 teeth while asleep. He has no control of this condition.
- He requires 5000 calories per day due to cancer and spastic tetraplegia, he needs his teeth in order to eat.
- He cannot substitute a liquid diet as his body will not digest and it goes right through his system.
- He cannot use a mouth guard or dentures as he breaks them.

At the hearing, the appellant stated:

- His medical condition causes him to break his teeth and the two-year wait period does not allow him to have his teeth fixed when needed.
- He has been given additional dental funds in the past to address his special dental needs and does not understand why not this time.
- The ministry has letters on file explaining his medical condition which would verify his eating issues and the problems of his breaking of teeth.
- He must have solid food, blended or liquid food is not processed by his body.
- He was in pain when he went to the dentist to address tooth #33.
- Pacific Blue Cross, is on work to rule and difficult to contact.

At the hearing, the ministry stated:

- The appellant is being given additional funds to address his caloric needs.
- The ministry can provide a blender for the eating needs of a client.
- Although the appellant is eligible for a dental supplement, he was denied funds as he had reached his two-year maximum and the ministry is not able to pay funds in excess of the allocations based on the Schedule of Fees Allowances- dentist. As well, in terms of Section 69 of the EAPWDR, “life threatening”, the dental procedure is not covered.
- When asked if the appellant could resubmit the dental costs now as the two-year period had ended, the ministry representative replied he could and he possibly would be eligible but this would depend on Pacific Blue Cross, the service provider.
- When asked if the ministry showed any flexibility in terms of coverage and a dental emergency (Schedule C section 1, definitions, “Emergency dental service”), the ministry representative responded PBC would cover pain to be relieved such as a cavity and that the dentist would have to ask PBC if there would be coverage.

Admissibility of New Information

Section 22(4) of the *Employment and Assistance Act* states that the panel is empowered to admit as evidence only “the information and records that were before the minister when the decision being appealed was made” and “oral or written testimony in support of” the record of the ministry decision. If the additional evidence substantiates or corroborates the information and records before the minister at the reconsideration stage, the evidence should be admitted; if it does not, then it does not meet the test of admissibility under s. 22(4)(b) of the *Employment and Assistance Act* and should not be admitted.

The appellant stated he was in pain due to his broken tooth and required the dental work. He also stated he was given antibiotics to address infection. The appellant also stated he had a number of letters on his ministry file that explained his disability and the issues in terms of pain. The ministry did not object to this information when it was shared by the appellant and when asked if they were able to verify the information responded they did not have access to the appellant’s case file at that moment.

The panel accepts that evidence shared in reference to letters on file in terms of his disability as well as pain and possible infection as it collaborates the information and records before the minister at the reconsideration stage and therefore meets the test of admissibility under s. 22(4)(b) of the *Employment and Assistance Act* and therefore will be admitted.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated October 3, 2017, 2017 which found that the appellant is not eligible for coverage of dental fees in excess of ministry rates (tooth coloured restorations).

The relevant legislation of the EAPWDR is sections 62, 63, 63.1, 64 and 69 and Schedule C sections 1 and 4:

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

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 under 19 years of age, 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 under 19 years of age, 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.

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,
- (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.

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

D 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 September 1, 2017 and is published on the website of the ministry of the minister, and
- (ii) is provided at the rate set out in that Schedule for the service and the category of person receiving the service,

"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 September 1, 2017 and is published on the website of the ministry of the minister, and
- (ii) is provided at the rate set out in that Schedule for the service and the category of the person receiving the service, and

Dental supplements

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

- (a) in respect of a person under 19 years of age, a 2 year period beginning on January 1, 2017, 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) \$2 000 each period, if provided to a person under 19 years of age, 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 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

Panel Findings

In its reconsideration decision, the ministry states the appellant is eligible for dental supplements under sections 63, 63.1 and 64 and Schedule C, sections 4, 4.1 and 5 of the EAPWDR. As well, the ministry refers to section 69 of the EAPWDR in its decision.

Section 63 of the EAPWDR stipulates the ministry may provide health supplements set out in section 4 of Schedule C providing funding per tooth at the rate set out in the Schedule of Fee Allowances-dentist over a two-year period.

The Ministry's Position

As the appellant had a tooth coloured restoration for tooth #33 in October 8, 2015 he was given full coverage (\$141.99 of a maximum fee allowance of \$171.65), partial coverage was given when tooth #33 was a was given a tooth coloured restoration in August 9, 2017 in the amount of \$29. As the maximum fee allowance per tooth in a two-year period had be met, the ministry has no discretion in

pay the excess of the financial limits set out in the Schedule of Fee Allowances- dentist.

The Appellant's Position

As he has a special medical condition which causes him to break his teeth while asleep, he requires his teeth be repaired when they are broken, a two-year limit does not address his special medical situation.

Panel's Decision

The panel found the ministry was reasonable to conclude the appellant was not entitled to additional coverage as section 63 of the EAPWDR is bound by the financial limits set out in the Schedule of Fee Allowances- Dentist. The appellant had reached his two-year maximum allowance.

Section 63.1 of the EAPWDR stipulates the minister may provide a crown and bridgework supplement under section 4.1 of Schedule C. As this section is not applicable to the appellant, no decision was given by any party.

Section 64 of the EAPWDR stipulates the minister may provide any health supplement set out in section 5 [*emergency dental supplements*] of Schedule C. The Schedule of Fee Allowances- Dentist states: Emergency Dental Supplements is available for all eligible Ministry of Social Development and Poverty Reduction (Ministry) clients, including those who do not have a 2-year limit under the Ministry's Dental Supplements or those who have exhausted their limit.

Ministry's Position

The ministry did not note Section 64 in their Reconsideration Decision. When questioned during the hearing process, the ministry representative stated to qualify the appellant would have had to be experiencing pain which required emergency service and that the dentist would have to contact PBC.

Appellant's Position

The appellant stated he was in pain from his broken tooth and went to the dentist to address the issue. He also stated the dentist provided antibiotics to address any infection possibilities.

Panel's Decision

The ministry noted in the Reconsideration Decision dated October 3, 2017, the appellant was eligible for dental supplements under a number of sections of the EAPWDR including Section 64 but did not address the section in the decision. The panel in reviewing the evidence found the ministry reasonable not to address section 64 as it was reasonable for the ministry to conclude there was insufficient evidence available to consider the appellant was seeing the dentist for an emergency dental need. Although the appellant testified he was experiencing pain with his broken tooth, there was no statement or documentation (dentist request for emergency supplements) of an emergent situation in the appellant's reconsideration request.

Section 69 of the EAPWDR stipulates 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 appellant is facing a direct and imminent life-threatening health need.

Ministry's Position

The ministry recognizes the appellant may face a direct and imminent life-threatening health need but notes that section 69 only applies to medical supplies, medical transportation and medical equipment and devices, not dental supplements.

Appellant's Position

The appellant believes his life is at risk if his teeth are broken and he is unable to eat the required calories each day.

Panel's Decision

The panel found the ministry reasonable to conclude that the appellant did not qualify for additional funding to address the coverage of dental fees in excess of ministry rates as section 69 of the EAPWDR does not cover dental supplements.

Conclusion

The panel finds that the Ministry's decision in denying the appellant coverage of dental fees in excess of ministry rates was a reasonable application of the evidence in the circumstances of the appellant and therefore confirms the decision. The appellant is not successful in his appeal.