

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's Reconsideration Decision dated October 31, 2017 which determined that the appellant's request for coverage for replacement of his lower denture was denied, because replacement of a denture is authorized only every 5 years, and the Appellant's lower denture was provided in August 2015.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation, Section 64 and Schedule C sections 4(2) and 5

PART E – Summary of Facts

Documents and Information Before the Minister at Reconsideration

The documents and information before the ministry at the time of the reconsideration decision included:

- (a) A three page Pacific Blue Cross Dental Claim Form (Pre-authorization) dated June 5, 2013, concerning the denture lost during the move in November
- (b) An invoice from a local denture clinic for \$2450 dated to June 1, 2017
- (c) A Dental Supplement Exception form dated June 27, 2013 for a partial lower denture
- (d) A predetermination letter from Pacific Blue Cross dated July 5, 2017
- (e) A letter from a local social service agency to the Appellant dated September 26 the 2017 in the support of the appellant's request for dentures destroyed as a result of a hate crime, setting out that the Appellant is prevented from eating, and the loss of the dentures contributed to his malnutrition and physical mouth pain, as well as to an imminent decline in the Appellant's physical health and well-being
- (f) The Appellant's denture claims history for a lower denture (the claims history refers to upper dentures as well but the Appellant did not appeal concerning an upper denture as it was approved). The application history for the lower denture was:
 - (i) February 15, 2012 a partial lower denture was provided
 - (ii) November 1, 2013 a replacement partial lower denture was provided due to its loss during a move
 - (iii) August 27, 2015 a complete lower denture was provided
- (g) The original decision dated July 1, 2017
- (h) A Report from a plastic surgeon dated August 1, 2016, which was not included in the appeal materials but was quoted from extensively in the reconsideration decision, explaining the physical injuries suffered by the Appellant in the assault of late November 2015
- (i) A note from the appellant dated October 16, 2017, which was not included in the appeal materials but was quoted in the reconsideration decision, stating that the Appellant was unable to eat, had mouth pain causing malnutrition, affecting his health and weight and his situation was urgent. In that note the Appellant reported to the ministry that his dentures were destroyed in a hate crime.

A Ministry Trainee attended the hearing by consent of the Appellant.

PART F – Reasons for Panel Decision

Issue On Appeal

The issue on appeal is whether the Ministry of Social Development and Poverty Reduction's Reconsideration Decision dated October 31, 2017 which determined that the appellant's request for coverage for replacement of his lower denture was denied, was reasonably supported by the evidence or was a reasonable application of the applicable enactment, namely *EAPWDR* section 64 and Schedule C section 4(2) in the circumstances of the Appellant. The ministry denied the application because replacement of a denture is authorized only every 5 years, and the Appellant's lower denture was provided in August 2015.

Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 64 and Schedule C Section 4(2)

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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.

Schedule C – Section 4(2)

- (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 C – Section 5

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.

Parties' Positions at Appeal

Appellant's Position

The Appellant's witness, a Registered Nurse, who also acted as his advocate, said that without the ability to chew his food the appellant's health was compromised and there was imminent danger to him from lack of nutrition. The appellant's witness said that "imminent" was used in the sense of inevitable rather than about to occur immediately.

The Appellant's witness said that the Appellant has lost a lot of weight, until recently was homeless and severely addicted, and has mental health problems. The Appellant had hepatitis C but no longer suffers from it. Since shelter was found for the Appellant, his substance use has declined significantly and although he continues to use alcohol, it is at his home, where he feels safe. He volunteers at a local social service agency but is embarrassed because of his toothless appearance. Although he is now in secure housing, his weight loss continues. Because of his weight loss, the local health authority is providing the appellant with Boost three times a day because the appellant is unable to eat and chew.

The appellant confirmed that the ministry provided the Appellant with an upper denture but that he still needs the lower denture in order to eat and be healthy.

The Appellant confirmed that he received a partial lower denture in 2012. He only required a partial denture because he still had lower teeth left. The replacement lower denture was provided in 2013 because the original partial lower denture was lost during a move.

The Appellant confirmed that in the late summer of 2015 he was provided with a complete lower denture, due to loss of more teeth.

The Appellant said that he was the victim of gay-bashing, which is a hate crime, in the fall of 2015, and as a result was hospitalized for a month. He said that during the assault his dentures, obtained only a month or so before, were destroyed. He can't chew and is in pain. He has no family and is alone in the world, and so has no one to assist him with providing anything he needs. The Appellant said that he had reported the assault to the police department in the city where it occurred, provided a police file number to the panel, and advised that the assault was being investigated as a hate crime but there is no resolution as yet. He said that he had investigated to see if he is eligible for victims of crime compensation, the authorities administering that assistance have not made a decision; apparently no decision would be made until the police report is more complete. He said that during the hate crime his dentures were destroyed, and although the ministry provided a new upper denture because it was almost 5 years since the original upper denture had been provided, the ministry would not provide him with a lower denture to replace the one destroyed in the assault.

Ministry's Position

The ministry confirmed the history of the Appellant's being supplied with dentures; specifically, the ministry confirmed that in 2015 when the Appellant was provided with the complete lower denture, it was as a result of the Appellant's losing more teeth, and needing a complete denture as opposed to a partial lower denture, and was therefore treated as a basic dental service rather than an emergency replacement.

The ministry said there have been many exceptions allowed the Appellant, sometimes approving a replacement of a replacement, and it is not reasonable to expect the ministry to make exceptions to the legislation on a continuous basis.

In questioning, The ministry acknowledged that there had not been "many exceptions", as stated in the reconsideration decision, in the provision of dentures to the appellant. The ministry acknowledged that the only exception to the five-year rule was replacement of the lower denture in 2013 when it was lost in the move in 2012.

The ministry stated that there was a five year rule regarding replacement of dentures; the ministry said that rule was found in schedule C section 4 (2) which provided that dentures may be provided to a person who has never worn dentures or whose dentures are more than five years old, and under this subsection they are provided as a "basic dental service".

The ministry also stated that there was an exception to this five year rule only once in a lifetime. As there had been an exception in the Appellant's case, no further exceptions could be made and the Appellant would have to wait until 2020 be provided with a new lower denture.

The ministry was asked where the five-year rule came from, and how it applied to the provision of emergency dental services and where the rule about an exception being made only once-in-a-lifetime was found. The ministry was unable to point out where the once-in-a-lifetime rule was found and said that it must be a Pacific Blue Cross policy.

The ministry confirmed that the Appellant is a person in receipt of disability assistance.

The ministry also confirmed, as was set out in the Reconsideration Decision, that the Appellant's dentures were lost or damaged due to circumstances that were largely beyond the Appellant's control and failure to provide a new lower denture may result in compromised health of the Appellant.

Panel Decision

The panel finds that the Appellant's loss of his lower denture in the gay-bashing was unexpected, resulted in the Appellant being unable to eat, suffering detrimental health consequences, and pain, and that constitutes an emergency.

The panel finds that provision of a new lower denture in the circumstances of the Appellant is an emergency dental service that may be provided as an emergency dental supplement under section 64 EAPWDR.

The panel finds that the five-year rule of Schedule C section 4(2) refers to provision of dentures as a "basic dental service", and does not refer to an emergency dental supplement. The panel finds that to receive an emergency dental supplement under section 64 EAPWDR, the only requirements, other than there being an emergency, are that a person be in receipt of disability assistance, hardship assistance, or a member of a family unit who is a continued person. Here the only applicable requirement is whether or not the Appellant is in receipt of disability assistance, and it was not in dispute that he is.

The panel finds that the five year rule is only found in Schedule C section 4(2), and is applicable only to "basic dental service", and not to an emergency dental supplement authorized by section 64 EAPWDR and section 5 EAPWDR schedule C.

The panel further finds that the legislation does not contain a once-in-a-lifetime exemption to the five-year rule of Schedule C section 4(2). The Panel also notes that there is no five-year rule found in the *Schedule of Fee Allowances-Emergency Dental-Dentist*.

The panel further finds that section 64 EAPWDR operates independently of section 4(2) of Schedule C EAPWDR.

The Panel finds that in applying the five-year rule of section 4(2) Schedule C EAPWDR for basic dental services to section 64 EAPWDR dealing with emergency supplements, the ministry did not reasonably apply the legislation in the circumstances of the Appellant, and the Reconsideration Decision was not reasonably supported by the evidence.

Conclusion

Having reviewed and considered all the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for provision of a new lower denture was not reasonably supported by the evidence and was not a reasonable application of the applicable enactment, and rescinds the ministry's reconsideration decision dated October 31, 2017.

The appellant is successful in his appeal.