

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of February 2, 2018 (the “Reconsideration Decision”), which denied the Appellant:

- coverage of the portion of fees for dental services in excess of the Ministry allowances established by sections 1 and 4 of Schedule C to the *Employment and Assistance for Persons With Disabilities Regulation* (“EAPWDR”) and set out in the Schedule of Fee Allowances – Dentist and the Schedule of Fee Allowances – Emergency Dental Supplements;
- coverage for fees for a service not covered under the Schedule of Fee Allowances – Dentist or the Schedule of Fee Allowances – Emergency Dental Supplements; and
- coverage for the uncovered portion of fees for dental services, under section 69 of the EAPWDR.

### **PART D – RELEVANT LEGISLATION**

EAPWDR, sections 63 and 69  
EAPWDR, Schedule C, sections 1 and 4  
Schedule of Fee Allowances – Dentist  
Schedule of Fee Allowances – Emergency Dental Supplements

## PART E – SUMMARY OF FACTS

The Appellant is a recipient of disability assistance. On December 12, 2017, the Appellant attended at the office of his dentist and was provided with a treatment plan.

The information before the Ministry at the time of the Reconsideration included the following:

- A treatment plan from the Appellant's dentist, dated August 2, 2016;
- A Treatment Plan, dated December 12, 2017 (the "Treatment Plan"), which included recommendations for the following procedures:

Code	Treatment	Fees
92444	IV Mod Sedation	\$465.00
23602	Build Up, foundation material	\$250.00
25731	Post	\$165.00
33121	2 Canal Root Canal	\$1,000.00
42621	Grafts/Ossesous Allograft	\$846.00
42702	Guided Tissue Regeneration	\$635.00
71211	Complicated Extraction	\$369.00

- An invoice from the Appellant's dentist, dated December 12, 2017 in the amount of \$53.60;
- An invoice from the Appellant's dentist, dated December 14, 2017 in the amount of \$621.75;
- An e-mail from a Ministry worker to the Pacific Blue Cross, dated December 18, 2017, regarding the denial of coverage for the Appellant's root canal and other requested dental services;
- An e-mail from Pacific Blue Cross to the Ministry worker, dated December 18, 2017, indicating that the only item for which coverage was denied was for sedation (code 92444) but which also indicated that the Appellant's dentist was billing higher than the fee schedule for the following services:

Code	Treatment	Fees
23314	Permanent Bicuspid	\$250.00
73224	Excision of Pericoronal Gingiva	\$55.10
92444	Parenteral Conscious Sedation	\$465.00
33121	Root Canal, Two Canals	\$1,000.00
73224	Excision of Pericoronal Gingiva	\$55.10
23314	Permanent Bicuspid	\$250.00
25731	Prefabricated Retentive Post	\$165.00
01205	Examination and Diagnosis	\$53.60

- The Appellant's Request for Reconsideration, dated January 15, 2018 ("RFR"), in which the Appellant stated that:
  - the damage to his teeth has caused considerable problems for him;
  - he finds it painful to eat many types of food;
  - he has suffered from several infections that have caused him pain and financial hardship; and
  - he has high blood pressure and is concerned that the damage to his teeth may be a contributing factor;
- A letter from a treating rheumatologist, dated January 8, 2018, which sets out that:
  - the Appellant has radiographic axial spondylarthritis;

- the Appellant's condition is severe;
  - non-steroidal agents at full anti-inflammatory doses have not helped the Appellant;
  - the Appellant requires a new and increased form of treatment that poses an increased risk of infection; and
  - the Appellant's arthritis poses a danger to his health and a heightened danger of infection if treatment for his arthritis is commenced prior to his dental health issues being addressed.
- The Ministry's Dental & Orthodontic Services Policy and Policy and Procedure Manual;
  - The Ministry's Schedule of Fee Allowances - Dentist, effective September 1, 2017 (the "Dental Schedule");
  - The Ministry's Schedule of Fee Allowances – Emergency Dental Supplements, effective September 1, 2017 (the "Emergency Dental Schedule");
  - The Ministry's Schedule of Fee Allowances – Crown and Bridgework Supplement, effective September 1, 2017;
  - Claim details for the Appellant's dental claims for services dated December 14, 2017 and December 12, 2017;
  - Claim details for the Appellant's dental claims for services dated December 14, 2017, December 12, 2017, and August 2, 2016 (the "Claim Details");

In his Notice of Appeal, filed February 20, 2018, the Appellant stated that:

- he disagreed with the Reconsideration because it prevented him from treating his spinal disease and further deterioration of his body;
- he was in considerable constant pain;
- he had lost 50-60% of his mobility and would like to keep what mobility he had left; and
- he was unable to have the treatment that his doctors wanted until his teeth were fixed.

The Appellant did not attend at the hearing and, having confirmed that the Appellant had been notified of the hearing date and time, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The Ministry relied on the Reconsideration Decision at the hearing of the appeal.

## PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry reasonably determined that the Appellant was ineligible for:

- coverage of the portion of fees for dental services in excess of the Ministry allowances established by sections 1 and 4 of Schedule C to the *Employment and Assistance for Persons With Disabilities Regulation* (“EAPWDR”) and set out in the Dental Schedule and the Emergency Dental Schedule;
- coverage for fees for a service not covered under the Dental Schedule and the Emergency Dental Schedule; and
- coverage for the uncovered portion of fees for dental services, under section 69 of the EAPWDR.

### **Relevant Legislation**

Section 63 of the EAPWDR authorizes the Ministry to provide dental supplements to eligible recipients:

#### **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.

Section 1 of Schedule C to the EAPWDR defines “basic dental service” as follows:

**“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,
- (b) if provided by a denturist,
  - (i) is set out in the Schedule of Fee Allowances — Denturist 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, and

(c) if provided by a dental hygienist,

(i) is set out in the Schedule of Fee Allowances — Dental Hygienist 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;

Section 1 of Schedule C to the EAPWDR defines “emergency dental service” as follows:

**“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

(b) if provided by a denturist,

(i) is set out in the Schedule of Fee Allowances — Emergency Dental — Denturist, 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;

Section 4 of Schedule C to the EAPWDR set out the limits on dental supplements that the Ministry is authorized to provide:

#### **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).

(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 relining or a rebase of dentures may be provided as a basic dental service only to a person who has not had a relining or rebase of dentures for at least 2 years.

The Dental Schedule and Emergency Dental Schedule set out the following coverage amounts for adults for the services that the Appellant's dentist performed on December 12, 2017 and December 14, 2017:

Fee Code	Fee Description	Fee Amount for Adult
23314	Permanent Bicuspid	\$177.11
73224	Excision of Pericoronal Gingiva	\$33.50
92444	Parenteral Conscious Sedation	Not available
33121	Root Canal, Two Canals	\$330.93
73224	Excision of Pericoronal Gingiva	\$33.50
23314	Permanent Bicuspid	\$177.11
25731	Prefabricated Retentive Post	\$94.66
01205	Examination and Diagnosis	\$21.75

While no coverage is available for conscious sedation with the fee code specified by the Appellant's dentist, coverage is available for General Anaesthetic under a different fee code (92215) under both the Dental Schedule and Emergency Dental Schedule at a rate of \$50.57 per hour or hourly portion. However, this coverage is available for adults only where the adult has a "severe mental or physical disability that prevents a dentist from providing the necessary treatment without the administration of a general anaesthetic or sedation."

Finally, section 69 of the EAPWDR authorizes the Ministry to pay out certain supplements in the case of a life threatening need:

**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).

**Panel Decision**

While section 63 of the EAPWDR authorizes the Ministry to provide dental supplements to qualified recipients, of which the Appellant is one, the benefits payable as dental supplements are limited in at least two respects. These limits are spelled out in sections 1 and 4 of Schedule C to the EAPWDR.

Section 1 of Schedule C defines both “basic dental service” and “emergency dental services” as services “provided at the rate set out in that Schedule for the service and the category of person receiving the service.” The categories set out in the Dental Schedule and Emergency Dental Schedule are “adults” and “children.” The limits for supplements available in respect of the services provided to the Appellant, an adult, by his dentist are as follows:

Fee Code	Fee Description	Fee Amount for Adult
23314	Permanent Bicuspid	\$177.11
73224	Excision of Pericoronal Gingiva	\$33.50
92444	Parenteral Conscious Sedation	Not available
33121	Root Canal, Two Canals	\$330.93
73224	Excision of Pericoronal Gingiva	\$33.50
23314	Permanent Bicuspid	\$177.11
25731	Prefabricated Retentive Post	\$94.66
01205	Examination and Diagnosis	\$21.75

The Claim Details confirm that the amount provided as supplements match the amount for which the services provided were eligible and there is no legislative authority for the Ministry to provide a supplement in excess of the amounts set out in the Dental Schedule and the Emergency Dental Schedule. There is also no discretion in the EAPWDR or either the Dental Schedule or the Emergency Dental Schedule for the Ministry to provide a supplement in excess of the amount set out in the Dental Schedule and the Emergency Dental Schedule. In the result, the panel finds that the Ministry reasonably determined that it cannot provide a supplement in excess of the limits set out in the Dental Schedule and Emergency Dental Schedule for the services provided by the Appellant’s dentist.

Section 4 of Schedule C establishes a limit on the amount that can be paid as a dental supplement in any “period.” Section 4(1)(b) establishes that, for adults, a “period” means any two year period beginning on January 1 in odd numbered years and ending on December 31 in the following year. The current “period” began on January 1, 2017 and will end on December 31, 2018. Under section 4(1.1)(b), the limit which can be paid as a supplement for dental services in any “period” for an adult is \$1,000.00. In the result, all of the services provided by the Appellant’s dentist on December 12, 2017 and December 14, 2017 were eligible to be paid as a dental supplement in the current “period” as the eligible amounts total less than \$1,000.00. In the result, the panel finds that the Ministry reasonably determined that the Appellant was eligible for dental supplements in the amounts set out in the Dental Schedule and Emergency Dental Schedule and that the Appellant has \$131.44 remaining of his \$1,000.00 limit for the current “period.”

However, the Appellant also submitted a treatment plan dated August 2, 2016. The evidence indicates the Appellant was provided supplements correlating to the amounts available under the Dental Schedule and the Emergency Dental Schedule for the services provided on August 2, 2016 and August 9, 2016. As those services were provided in a previous “period,” the panel finds that the Ministry reasonably determined that the Appellant is not eligible for coverage of any of those services in the current “period.” In this regard, it is also worth noting that there are no “carryover” provisions in section 4 of Schedule C to the EAPWDR which would permit the Ministry to carry over unused eligible amounts from one “period” and apply them to uncovered portions in another “period.”

Finally, section 69 of the EAPWDR does provide an exemption to the limits on the supplements that the Ministry may provide in the case of a life threatening need. However, it is only those supplements described in sections 2(1)(a) and 3 that the exemption on section 69 applies. The dental supplements and emergency dental supplements described in section 1 of Schedule C to the EAPWDR do not qualify for the exemption. Without making any finding on whether the Appellant meets the other criteria set out



under section 69 of the EAPWDR, the panel finds that the Ministry reasonably determined that section 69 does not and cannot apply to a “basic dental service” or an “emergency dental service” as defined in section 1 of Schedule C to the EAPWDR.

The panel confirms the Ministry decision. The Appellant is not successful on this appeal.