

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 09 May 2018 that denied the appellant's request for coverage in excess of ministry rates for dental work done on 29 March 2018. The ministry determined that it is not authorized to provide coverage for fees in excess of the rates set out in the Schedule of Fees – Dentist, as provided in section 4 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, section 4.

**PART E – SUMMARY OF FACTS**

The evidence before the ministry at reconsideration included the following:

1. The appellant is a recipient of disability assistance.
2. According to a statement from the appellant’s dentist and from Pacific Blue Cross (PBC) records, the appellant had dental work performed on 29 March 2018, with the following dental fees and PBC coverage:

<b>Tooth #</b>	<b>Fee Code</b>	<b>Description</b>	<b>Dentist Fee</b>	<b>PBC Coverage</b>
n/a	01201	Standard oral exam/new patient	\$43.80	\$24.35
46	23323	Tooth coloured restorations/Permanent teeth/Bonded-molars/Three surfaces	\$287.00	\$99.14
36	23324	Tooth coloured restorations/Permanent teeth/Bonded-molars/Four surfaces	\$344.00	\$209.19
		<b>TOTAL</b>	<b>\$674.80</b>	<b>\$332.68</b>

3. According to PBC records:
  - PBC provided coverage to the appellant from 01 January 2017 to before the dental work done on 29 March 2018 in the amount of \$195.48.
  - PBC provided coverage for a tooth coloured restoration/two surfaces to tooth #46 (fee code 23322) on 14 July 2016 in the amount of \$144.04.
4. The appellant’s Request for Reconsideration dated 25 April 2018. Under Reasons, the appellant’s mother writes that they are seeking to recover funds for dental work that has not been covered by PBC, as this is causing financial hardship. The mother explains that the appellant’s regular dentist’s office recommended a dentist closer to home that could take him right away – he was in pain and he considered it an emergency. He had a seizure which caused nocturnal clenching and broke his tooth because of the pressure. Frequent nocturnal seizures have loosened his teeth, but he cannot wear a bite guard for danger of swallowing. She writes that since 1995 the appellant has been on epilepsy medication. He has had many injuries, including a broken hip in 2016. He was put on therapeutic calcium and vitamin replacement to counteract the side effects of the long-term use of anti-convulsive medication that contributes to poor dental strength and makes him more vulnerable to breaking his teeth.
5. Accompanying the Request for Reconsideration is a “To it may concern” undated letter from a dentist. The dentist writes that the appellant was first seen in his office in June 2015. The dentist noted that the appellant currently takes anti-seizure medication to control his seizure patterns and is a “clencher.” While a night guard/bruxism appliance was recommended for protection, the appellant refused as he says it will never stay in his dentation. Until his records were transferred to another office in November 2017, routine dentistry of fractured teeth and dental decay with recurrent dental decay was completed. X-rays show wear facets evident, coinciding with his history of clenching and possibly

untimely seizure activity. Since leaving his office, the appellant had another area of his mouth fracture, and although unable to determine the exact cause, the dentist notes that his low decay rates, issues with clenching, and his seizure activity may have been a contributing factor to areas treated in the past not able to withstand the stresses on these dental areas.

### **Notice of Appeal**

The appellant's Notice of Appeal is dated 16 May 2018. Under Reasons for Appeal, he writes: "Special health condition and dental emergencies. Not routine care. \*Note correction to Background info [in reconsideration decision]: 'fell asleep,' not 'fell'."

### **The hearing**

At the hearing, the appellant's mother spoke on his behalf. She explained that the appellant has epilepsy and is a Community Living BC client with mental challenges. As such, he is unable to advocate for himself on matters such as that under appeal and, as a recipient of disability assistance, relies on her to cover extra costs like the dental bill under discussion. She is a senior and worries that she will not be in a position to fulfil both these roles in the future.

She asked that the reconsideration decision be corrected to show that, under Background, a sentence reading, "You stated you fell during a seizure and broke a tooth," he corrected to read, "...you fell *asleep and* during a seizure..."

The appellant's mother noted that in his letter the dentist had recommended a bite guard. She said that anybody who suffers from epilepsy is afraid of swallowing something during a seizure, as they lose swallowing control. This is why her son refuses to have a bite guard.

The balance of the mother's presentation followed along the lines of her submission at reconsideration and went to argument (see Part F, Reasons for Panel Decision, below).

The ministry stood by its position at reconsideration.

### **Admissibility of additional information**

The panel accepts the testimony of the appellant's mother as argument.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry was reasonable in denying the appellant's request for coverage in excess of ministry rates for dental work done on 29 March 2018. More specifically, the issue is whether the ministry determination, that it is not authorized to provide coverage for fees in excess of the rates set out in the Schedule of Fees – Dentist as provided in section 4 of Schedule C of the EAPWDR, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The applicable legislation is from the EAPWDR, Schedule C:

### 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,

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).
- Schedule of Fee Allowances - Dentist* ©Repealed. [B.C. Reg. 163/2005, s. (b).]

And from “Dental Supplement – Dentist” as posted on the ministry's website:

From Part A - Preamble - Dental Supplements – Dentist:

The attached Part B - *Schedule of Fee Allowances - Dentist* outlines the eligible services and fees associated with the Ministry's Dental Supplements and the provision of basic dental services. It contains the rules, frequency and financial limits associated with each service. All frequency limitations include services performed by dentists, denturists and hygienists.

From Part B - Schedule of Fee Allowances - Dentist

### TOOTH COLOURED RESTORATIONS

**Note:** Maximum fee allowance is five surfaces or the dollar equivalent per tooth in a two-year period. Tooth numbers are required. When billing for restorations, the total number of surfaces restored in that sitting on that tooth should be billed cumulatively. Where two different filling materials are used, these restorations may be billed separately.

## TOOTH COLOURED RESTORATIONS

<b>Fee Number</b>	<b>Fee Description</b>	<b>Fee Amount (\$)</b>	
<u>Tooth Coloured – Primary Teeth</u>			
Bonded - Molars		Adult	Child
23321	One surface	94.21	113.53
23322	Two surfaces	144.04	173.63
23323	Three surfaces	174.08	209.24
23324	Four surfaces	209.19	250.80
23325	Five surfaces (maximum)	243.18	297.54

### **Analysis**

#### *The position of the parties*

##### *General*

The position of the appellant, as explained by his mother at the hearing, is that it is only fair that the ministry exercise a reasonable degree of flexibility and discretion in providing dental care to recipients of disability assistance in excess of ministry rates in circumstances where a medical condition results in above average wear and damage. Such is the case with the appellant, whose nocturnal seizures have resulted in broken teeth, sometimes the same tooth within a two-year period.

The ministry's position, as set out in the reconsideration decision, is that the ministry is not authorized to provide coverage for fees in excess of the financial limits set out in the Schedule of Fee Allowances – Dentist. There is no exception in policy and the ministry has no discretion in this matter.

##### *Tooth #46*

In the reconsideration decision, the ministry noted that on 14 July 2016, the appellant received a tooth coloured restoration to tooth #46 (two surfaces/fee code 23322). PBC provided coverage, as per the Schedule of Fee Allowances – Dentist, in the amount of \$144.04. On 29 March 2018 the appellant received a tooth coloured restoration to the same tooth, #46, (three surfaces/fee code 23323). Full coverage was not provided as the appellant had reached the maximum fee allowance of \$243.18 for tooth coloured restorations to tooth #46 within a two-year period:

$$[14 \text{ July } 2016] \$144.04 + [29 \text{ March } 2018] \$99.19 = \$243.18$$

[Or stated another way:

the maximum \$243.18 – earlier coverage of \$144.04 = \$99.19, the amount paid by PBC]

The ministry held that it is unable to provide coverage for tooth coloured restorations in excess of the maximum fee allowance per tooth in a two-year period.

The position of the appellant is that the time difference between 14 July 2016 and 29 March 2018 is only three months short of the two-year period. Considering the appellant's medical condition, the ministry should show some flexibility and pay the full amount of \$174.08.

In the alternative, in accordance with the definition of period in section 4(1) of Schedule C of the EAPWDR, the work done on 14 July 2016 is outside the time period beginning 01 January of the odd numbered year, and is therefore not relevant to the calculation of the amount payable on 29 March 2018 – \$174.08.

### Panel decision

The general issue in this appeal is whether the ministry was reasonable in denying the appellant coverage for basic dental services in excess of ministry rates (as set out in the Schedule of Fee Allowances – Dentist as referred to in sections 1 and 4 of Schedule C of the EAPWDR). Put another way, as suggested by the appellant's mother, the issue is whether the minister has the authority or discretion under the legislation to waive the rates listed in the Schedule of Fee Allowances – Dentist to provide the requested financial relief on the basis of compelling medical evidence.

The panel has reviewed the legislation and finds that the minister has no authority or discretion, even under the exceptional circumstances of the appellant as described by his mother and his dentist, to provide financial assistance or coverage for dental services not specifically authorized in Schedule C of the Regulation. The panel therefore finds that the ministry reasonably determined that there is no authority to provide coverage for the requested dental services in excess of ministry rates.

There remains the issue of the interpretation of “in a two-year period” as specified in the Note for Tooth Coloured Restoration in the Schedule of Fees – Dentist. The panel notes that there is a risk of confusion with the “2 year period” beginning on 01 January of odd numbered years as defined in section 4(1) of Schedule C of the EAPWDR. The panel is satisfied that “in a two-year period” in the Note means “during the last two years,” and not “since 01 January 2017,” for the following reasons:

- The definition of “period” in Section 4(1) of Schedule C of the EAPWDR applies only to the words in that section of the legislation.
- The Preamble to the Schedule of Fees – Dentist makes reference to “the rules, *frequency* and financial limits associated with each service,” with the panel understanding that frequency means “number of times something happens over a fixed length of time.” “Since 01 January 2017” is not a fixed length of time.
- Reading the Schedule of Fees – Dentist as a whole, there are numerous times the phrase “in an x year period” are used where x is not two and the clear intention is that the meaning is “during the last x years.” For example: for Clinical Oral Examinations “A complete examination will not be paid for any patient more than once in any three-year period,” and for Appliances – Periodontal “Patients are limited to one guard (either 14611 or 14612) in any five-year period.”

Accordingly, the panel finds the ministry was reasonable in taking into account the 14 July 2016 restoration work to tooth #46 in calculating coverage for work on that tooth done on 29 March 2018.

### **Conclusion**

The panel finds the ministry decision denying the appellant's request for coverage in excess of ministry rates for dental work done on 29 March 2018 was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. The appellant is thus not successful in this appeal.

**PART G – ORDER**

THE PANEL DECISION IS: (Check one)

 UNANIMOUS BY MAJORITY

THE PANEL

 CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?  Yes  No

**LEGISLATIVE AUTHORITY FOR THE DECISION:***Employment and Assistance Act*Section 24(1)(a)  or Section 24(1)(b) 

and

Section 24(2)(a)  or Section 24(2)(b) **PART H – SIGNATURES**

PRINT NAME

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018 June 11

PRINT NAME

Robert Fenske

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018 June 11

PRINT NAME

Lowell Johnson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018 June 11