

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated June 20, 2018 in which the ministry found that:

- the appellant was not eligible for a dental crown under section 63.1, and subsection 4.1(2)(b) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"); and
- the appellant was not eligible for a dental crown under section 68.1 of the Employment and Assistance Regulation ("EAR").

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 63.1, and subsection 4.1(2)(b) of Schedule C

Employment and Assistance Regulation - EAR - section 68.1

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. A Request for Reconsideration (“RFR”) signed by the appellant on June 8, 2018 with the following attached documents:

- A Standard Dental Claim form dated June 7, 2018 in which the appellant’s dentist requested the following services “for pre-determination only”:

- Fee Code 52301: Partial Denture/ Acrylic/ Maxillary at a cost of \$449; tooth number, “n/a”;
- Fee Code 99111: Service Not Listed in the Ministry Schedule of Fee Allowances - Dentist, at a cost of \$750; tooth number, “n/a”; and
- Fee Code 71101: Extraction/ Erupted Teeth - Uncomplicated/ Single tooth, at a cost of \$69.02; tooth number 12.
- The total cost for services is \$1,268.02.

- An email dated May 24, 2018 in which Pacific Blue Cross (“PBC”), responding to an information request from the ministry, stated that the appellant is not eligible for a crown or bridgework as her coverage is “PWD person spouse.” PBC explained that eligibility for a crown/ bridgework “is only listed for clients under PWD or PPMB status” who meet the criteria for the service.

2. Information from the ministry’s record of decision which included:

- A letter dated June 20, 2018 in which the ministry advised the appellant that she is not eligible for a dental crown.

- The ministry’s Dental Supplement guide and Schedule of Fee Allowances - Dentist

- The reconsideration decision which stated:

- The appellant is receiving Persons with Disability (“PWD”) benefits as a couple (with her spouse).
- On May 22, 2018, the appellant contacted the ministry by phone and stated that she needed a crown but was denied by PBC.
- On May 24, 2018, the ministry emailed PBC to ask for clarification. PBC stated the appellant is not eligible for a crown or bridgework as the spouse of a PWD client - crown/ bridgework “is only listed for clients under PWD or PPMB status.”
- On June 20, 2018, the ministry emailed PBC to ask for clarification. PBC confirmed the following:
 - the appellant’s dentist contacted PBC by phone and was advised that the appellant is not eligible for dental crowns;
 - on May 25, 2018, PBC approved coverage of a partial denture (fee code 52301) up to the ministry rate of \$468; and
 - PBC has not received a request for coverage of fee code 99111; or fee code 71101 (extraction of tooth number 12).

On June 26, 2018, the Tribunal received the appellant’s Notice of Appeal with attached hand-written submission which the panel accepts as argument. At the hearing, both parties summarized their arguments and did not submit any new evidence.

PART F – REASONS FOR PANEL DECISION

The issues on appeal are whether the ministry reasonably concluded that:

- the appellant was not eligible for a dental crown under section 63.1, and subsection 4.1(2)(b) of Schedule C of the EAPWDR; and
- the appellant was not eligible for a dental crown under section 68.1 of the EAR.

The ministry based its reconsideration decision on the following legislation:

EAPWDR

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.

Schedule C

Crown and bridgework supplement

4.1 (2) A health supplement may be paid under section 63.1 of this regulation for crown and bridgework but only if the minister is of the opinion that the person has a dental condition that cannot be corrected through the provision of basic dental services because

- (a) the dental condition precludes the provision of the restorative services set out under the Restorative Services section of the Schedule of Fee Allowances — Dentist, and
- (b) one of the following circumstances exists:
 - (i) the dental condition precludes the use of a removable prosthetic;
 - (ii) the person has a physical impairment that makes it impossible for him or her to place a removable prosthetic;
 - (iii) the person has an allergic reaction or other intolerance to the composition or materials used in a removable prosthetic;
 - (iv) the person has a mental condition that makes it impossible for him

or her to assume responsibility for a removable prosthetic.

EAR

Crown and bridgework supplement

68.1 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 income assistance, if the supplement is provided to or for a person in the family unit who has persistent multiple barriers to employment, 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 persistent multiple barriers to employment.

Appellant's arguments

In her Notice of Appeal, the appellant stated that the ministry will cover \$502.08 for a partial denture, leaving a balance of \$731.02. The appellant stated that her dentist told her that she needs a partial denture due to the root of her tooth being broken. The appellant's position is that she cannot afford to pay the balance of \$731.02 for the partial denture - her spouse is disabled; they only receive \$1,500 per month; and there is nothing left over after bills are paid. The appellant indicated that her dentist will not accept payment by installments.

At the hearing, the appellant acknowledged that she requested a dental supplement for a crown but indicated that she no longer needs a crown. The appellant explained that she was hoping the dentist could replace her existing crown but when he x-rayed the tooth, "he said that the root was broken; there is no way to re-crown it; he has to pull the tooth and give me a partial plate." The appellant reiterated that she cannot afford a \$1,268 dental bill - she is unable to work as she has to take care of her disabled spouse and she has no one to borrow money from and cannot afford to repay a loan anyway. The appellant argued she is being "penalized" by the ministry for being her spouse's caregiver - she receives health benefits from the ministry as the spouse of a PWD client and she doesn't know why dental services are not fully covered as well.

In response to a question from the panel, the appellant stated she does not know what the \$750 charge on the Dental Claim form is for (Fee Code 99111: Service Not Listed in the Ministry Schedule of Fee Allowances). The appellant stated that "it might be to install the partial plate" that she needs. The appellant clarified that her hand-written submission on appeal is a note that she wrote to the ministry after the ministry advised her to call the dentist "and give them the 99111 code for \$750 and it would be covered." The appellant explained that the "insurance girl" at the dentist's office "did not believe that the ministry covers it" and wanted the ministry to call the dentist's office to confirm that code 99111 would be covered before any work was carried out. The appellant maintained that neither the dentist's office nor the ministry indicated what service was required under Fee code 99111. As far as the appellant is concerned, "the dentist wants to charge \$731.02 for it" and she cannot afford that amount.

Ministry's arguments:

The ministry's position is that the reconsideration decision pertains only to the appellant's request for a crown (notwithstanding the appellant's submission that she no longer needs a crown). The ministry argued that reconsideration for a partial maxillary denture (Fee code 52301) was not required because

PBC approved coverage for the denture on May 25, 2018, up to the ministry rate of \$468. Regarding Fee codes 99111 and 71101, the ministry argued that reconsideration of these items could not be granted because no decision regarding eligibility for these services had been made as required under section 16 of the *Employment and Assistance for Persons with Disabilities Act*. The ministry noted that PBC confirmed it did not receive a request for those Fee codes and in any event the ministry is not authorized to provide coverage for services that are not set out in the Schedule of Fee Allowances – Dentist. The ministry also stated it did not know what service was required under Fee code 99111.

The ministry argued the appellant was not eligible for a crown under the EAPWDR because she did not have PWD designation; was not a continued person under the Regulation; and did not have a dental condition or medical condition that precludes the use of a restorative prosthetic (the ministry reiterated that a partial denture was approved). The ministry argued that the appellant was not eligible for a crown under the EAR because she did not have the Persons with Persistent Multiple Barriers qualification (“PPMB”) and was not a continued person under the EAR.

Panel’s decision - re: reconsideration of crown only

The panel finds that the ministry was reasonable in excluding Fee codes 99111 and 71101 from the reconsideration. The evidence indicated the appellant phoned the ministry on May 22, 2018 to request a crown and on May 24 and June 20, 2018, PBC confirmed by email that the appellant was not eligible for a crown. Despite the dentist’s request for Fee codes 99111 and 71101 on the June 7, 2018 Claim form, the most recent information in the record (June 20, 2018) indicated that PBC did not receive a request to cover those Fee codes. The appellant’s arguments were primarily centered on not being able to afford the \$750 fee for code 99111 but the panel finds that any services covered by that Fee code are not the subject of this appeal.

Panel’s decision - EAPWDR section 63.1

Section 63 of the EAPWDR authorizes the minister to provide the dental supplements set out in Schedule C of the Regulation to or for a family unit in receipt of disability assistance. The evidence indicated the appellant receives disability assistance as a couple (with her spouse). Section 63.1 applies specifically to a Crown and Bridgework supplement under section 4.1 of Schedule C and authorizes the minister to provide the supplement to or for “a person with disabilities” under subsection 63.1(a), or to or for a “continued person” (i.e., a person with disabilities as of a specified date) under subsection 63.1(b).

The ministry argued that even though the appellant receives disability assistance, she was not eligible for the Crown and Bridgework supplement because she did not personally have PWD designation. The evidence indicated the appellant’s spouse has PWD designation but the appellant was not a PWD under EAPWD legislation. The appellant confirmed at the hearing that she is a caregiver for her disabled spouse but she herself has not been determined to have a disability. The appellant argued she is eligible for health supplements and medications as the spouse of a PWD and dental supplements should be treated the same way. The evidence confirms that the appellant did not have PWD designation and was not a continued person under EAPWD legislation. The panel therefore finds that the ministry reasonably determined the appellant was not eligible for a dental crown under subsections 63.1(a) and 63.1(b) of the EAPWDR.

Panel’s decision - EAR section 68.1

Section 68.1 authorizes the minister to provide a crown and bridgework supplement under Schedule C of the Regulation to or for a family unit in receipt of income assistance, if the supplement is provided to or for a person in the family unit who has PPMB status [subsection 68.1(a)] or who is a “continued person” under subsection 68.1(b); i.e., a person with the PPMB qualification as of a specified date. The ministry argued that “technically, EA Regulations, section 68.1 does not apply” because the appellant was in receipt of disability assistance (as the spouse of a PWD) as opposed to income assistance and regardless, the appellant had not qualified as a person with PPMB. The EAR applies only to persons in receipt of regular income assistance but the evidence indicated the appellant was in receipt of disability

assistance and she does not have PPMB status. The panel therefore finds the ministry reasonably determined that section 68.1 of the EAR did not apply in the circumstances of the appellant.

Panel's decision - subsection 4.1(2)(b) of Schedule C

Section 4.1 of Schedule C defines crown and bridgework and sets out specific requirements that must be met in order for the minister to pay for the service. In particular, under subsection 4.1(2) of the Schedule, the ministry may pay for a crown and bridgework only if it is of the opinion that the person has a dental condition that cannot be corrected through the provision of basic dental services due to the factors and circumstances set out in subsections 4.1(2)(a) and (b). Subsection 4.1(2)(b) - clauses (i) to (iv) requires evidence of one of the following circumstances:

- the dental condition precludes the use of a removable prosthetic;
- the person is unable to place a removable prosthetic due to a physical impairment;
- the person is allergic to the materials used in a removable prosthetic;
- the person is unable to assume responsibility for a removable prosthetic due to a mental condition.

The ministry argued that the information submitted with the initial request for a crown and at reconsideration did not establish any of the circumstances set out in clauses (i) to (iv). The panel finds that the ministry's determination that none of these circumstances existed, was reasonably supported by the evidence. Regarding clauses (i) and (iii) the appellant indicated that her dentist prescribed a partial denture and the ministry confirmed that a partial denture was approved. There was no indication that the appellant's dental condition precluded the use of a removable prosthetic or that she is allergic to the materials used in the prosthetic. There was also insufficient evidence to confirm the circumstances set out in clauses (ii) and (iv) as the appellant did not have PWD designation and she testified that she has not been determined to have a disability. The panel therefore finds that the ministry was reasonable in finding the appellant was not eligible for a crown under subsection 4.1(2)(b) of Schedule C.

Conclusion

The panel finds that the ministry's reconsideration decision that found the appellant ineligible for a dental supplement for a crown was reasonably supported by the evidence and was a reasonable application of the legislation. The panel confirms the decision and the appellant is not successful in her 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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018-07-18

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-07-18

PRINT NAME

Bill Haire

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-07-18