

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated May 29, 2018, which denied the appellant's request for a supplement to cover the full cost charged for Immediate Complete Upper and Lower Dentures. The ministry found that the services requested are included in the "basic dental service" pursuant to Section 4 of Schedule C to the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), but that the ministry is not authorized to provide coverage for fees in excess of the rates set out in the appropriate Schedule of Fee Allowances.

The ministry also found that Section 69 of the EAPWDR, which provides a health supplement for persons facing a direct and imminent life-threatening health need, does not apply because dental supplements are not set out in this section.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 63 and Schedule C, Section 4.

Schedule of Fee Allowances- Dentist.

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Business card with contact information for a Prosthodontist;
- 2) Pacific Blue Cross (PBC) statement dated April 3, 2018 indicating total claimed amount of \$5,400, being \$2,700.45 for Upper Denture (code #51301) and \$2,700.45 for Lower Denture (code #51302) with a plan paid amount of nil;
- 3) PBC statement dated May 12, 2018 indicating total claimed amount of \$5,400, a payment amount of \$1,766.33, and a hand written note of the difference being "\$3,634.57";
- 4) PBC Claim Details statement as of May 29, 2018 indicating that \$1,766.33 was paid;
- 5) Request for Reconsideration dated April 30, 2018, with attached letter dated May 28, 2018.

In the letter attached to the Request for Reconsideration, the appellant's information included the following:

- She requests that the ministry fully fund her upper and lower dentures that she received on March 12, 2018 immediately after her surgery to remove all 22 of the remaining decayed teeth.
- She acknowledges that PBC paid \$1,766.33 towards the amount that she was billed for the dentures and several relining services provided by her prosthodontist and wrote that there is still \$3,634.57 outstanding, which she cannot cover.
- These costs are not out of line with what ordinary dentists currently charge for immediate upper and lower dentures followed by relining services.
- She lost half of her lower jaw to osteosarcoma bone cancer and ordinary denturists are not qualified to handle her case. She will eventually need an expensive prosthetic device.

Additional information

In the Notice of Appeal dated June 6, 2018, the appellant expressed her disagreement with the ministry decision and wrote that her story and medical case are extremely exceptional and illustrate the failures of the system and deserve to be heard. She cannot afford the balance owing (for the Dentures).

Prior to the hearing, the appellant provided a number of additional documents (158 pages) that included her health records from July 1, 2011 to February 9, 2017, such as Pathology and Operative Reports, Dental Records, Diagnostic and Medical Imaging Reports, CT scan, Chest, Head, Neck and Jaw X-Rays, as well as a copy of the Reconsideration Decision and record on another issue before a panel of the Employment and Assistance Appeal Tribunal (EAAT) heard March 15, 2017, and letters from various advocates and the Ombudsperson.

At the hearing, the appellant also provided a better copy of a photograph of her undergoing a scan and X-Rays of her jaw (3) that showed teeth on the lower right side, with her teeth removed, and with the metal support inserted.

At the hearing, the appellant stated:

- She provided her health records and the information from her previous appeal before the EAAT to give the panel an idea of what she has been through in her battle against cancer. She wants to ensure that she has explored every option for funding from within the system for the balance of the bill for her dentures, so she might pursue other options by appealing to the public.
- Although there was initially some problem with the billing, PBC ultimately paid \$1,766.33 towards the bill for her dentures. Her appeal is about the \$3,634.77 that remains on the total bill and which amount she cannot afford. She discovered that the “royal treatment” was over when she beat the cancer and her life is no longer in danger.
- Her opinion is that the ministry’s Fee Guide is out-dated, and she wants to raise the issue in an effort to also help others.
- In the Spring of 2011 she ended up having a biopsy done for bumps that had formed on her jaw that were affecting her teeth and discovered that she had osteosarcoma, the type of cancer that afflicted Terry Fox. She was treated with chemotherapy that can cause damage to the organs and teeth. The cancer was removed from her jaw and she had to have reconstructive surgery to build up her jaw with tissue, bone and muscle, from her leg.
- In 2012, she had physiotherapy to learn how to walk properly with the missing bone in her leg. In 2013, the BC Cancer Agency told her that she needed to be 2 years post-cancer before they would consider funding further reconstruction, especially since the recurrence rate for this type of cancer is high.
- In 2014, she was told that there was no funding available through the BC Cancer Agency. In 2015, she went to the surgeon and the metal support was taken out of her jaw as the bone had healed.
- She could not eat solid food since 2011 and her teeth were deteriorating rapidly and beginning to cause a lot of pain. In 2016, she was referred to the hospital and a plan was made to remove and then restore her teeth, with a total cost of about \$40,000 as she needs implants on her jaw. She started taking strong pain medication to deal with the pain.
- In February of 2018, she decided that it would be better to not have her teeth and they were all pulled out on March 12, 2018. She has been able to get off the pain medication.

The ministry relied on the reconsideration decision as summarized at the hearing.

Admissibility of Additional Information

The ministry objected to the admissibility of the additional documents on the basis that there is no relevance to the issue under appeal. The panel considered the additional documents provided by the appellant prior to and at the hearing and found that they provide background information to her request for a supplement to cover the full cost of dentures and support the various procedures the appellant has undergone as a result of her diagnosis of osteosarcoma in her jaw and, therefore, corroborate the information in the appellant’s Request for Reconsideration. The panel considered that while these documents are admissible pursuant to Section 22(4) of the *Employment and Assistance Act*, they have minimal relevance to the issue under appeal.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the full cost charged for Immediate Complete Upper and Lower Dentures, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances. The ministry found that the services requested are included in the "basic dental service" pursuant to Section 4 of Schedule C to the EAPWDR, but that the ministry is not authorized to provide coverage for fees in excess of the rates set out in the appropriate Schedule of Fee Allowances

The EAPWDR provides as follows:

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 . . .

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 of the EAPWDR sets out:

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,

Section 1 of Schedule C further 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 for the service in that Schedule for the service and the category of person receiving the service,

The Preamble to the Schedule of Fee Allowances- Dentists provides as follows:

Part A- Preamble- Dental Supplements- Dentist

Specialist Referrals

Certified specialists, including oral surgeons may receive an additional 10% on services billed from the Schedule of Fee Allowances- Dentist. The ministry contractor must have a record of the specialty on their billing system and the referring practitioner must be indicated on the claim form. If either of these is missing, the claim will be refused or reduced. If the referring practitioner is a Medical Doctor, please indicate this clearly on the claim form. As fee item 01601- Examination and Diagnosis, Surgical by Oral Surgeon is restricted for use by Oral Surgeons only

the additional 10% will not be applied to this fee item.

Panel's decision- Dental services

The ministry determined that the appellant is a Person With Disabilities (PWD) and is, therefore, eligible to receive the health supplements set out in Schedule C of the EAPWDR. The ministry also determined that the services requested are included in the "basic dental service" pursuant to Section 4 of Schedule C to the EAPWDR; however, the ministry's position is that the ministry is not authorized to provide coverage for fees in excess of the rates set out in the appropriate Schedule of Fee Allowances. The ministry reasonably considered the PBC statements dated April 3, 2018 and May 12, 2018 showing the total amount claimed was \$5,400, being \$2,700.45 for Upper Denture (code #51301) and \$2,700.45 for Lower Denture (code #51302), and that PBC paid the sum of \$1,766.33, with the difference being \$3,634.57.

The appellant acknowledged that PBC had paid the amounts indicated in the Schedule of Fee Allowances- Dentist for an Immediate Complete Maxillary Denture (Code #51301), which is \$789.75, and for an Immediate Complete Mandibular Denture (Code #51302), which is \$816, plus an additional amount of 10% as the services were provided by a specialist, for a total of \$1,766.33. The appellant argued that she does not have the resources to pay the balance of the bill for these services, or \$3,634.57, and that the amounts established in the Schedule of Fee Allowances are outdated. In her Request for Reconsideration, the appellant argued that the total cost is not out of line with what ordinary dentists currently charge for immediate upper and lower dentures followed by relining services.

The panel finds that the ministry, through the PBC contractor, reasonably applied the applicable Section 1 of Schedule C of the EAPWDR that defines "basic dental service" to be a dental service that, if provided by a dentist, is set out in the Schedule of Fee Allowances- Dentist that is effective September 1, 2017 and is published on the ministry website and is provided at the rate set out for the service in that Schedule for the service and the category of person receiving the service. The Preamble to the Schedule of Fee Allowances- Dentist provides that certified specialists, including oral surgeons, may receive an additional 10% on services billed from the Schedule of Fee Allowances- Dentist, and this additional amount was also applied by PBC. Although the amount billed for the provision of upper and lower Dentures exceeded the amounts set out in the Schedule of Fee Allowances- Dentist plus an additional 10%, leaving a balance outstanding of \$3,634.57, the panel finds that the ministry is not afforded the discretion under the EAPWDR to modify the amounts as established in the Schedule of Fee Allowances.

Section 69 of the EAPWDR- Life threatening health need

Section 69 of the EAPWDR provides for some health supplements, medical supplies, medical transportation and medical equipment and devices, when the person is not otherwise eligible and the person faces a direct and imminent life-threatening need; however, dental supplements provided for in Section 4 of the Schedule are not included. The panel finds that the ministry reasonably determined that the appellant's request for a supplement to cover the full cost charged for her Dentures did not meet all of the eligibility criteria for a life threatening health need under Section 69 of the EAPWDR.

Conclusion

In conclusion, the panel finds that the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the full cost charged for Immediate Complete Upper and Lower Dentures, was a reasonable application of the applicable enactment in the appellant's circumstances, and the panel confirms the decision. The appellant's appeal, therefore, is not successful.

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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018-06-27

PRINT NAME

Nancy Eidsvik

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-06-27

PRINT NAME

Reece Wrightman

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-06-27