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PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated July 17, 2018 in which the ministry found that the appellant was not eligible for various dental services under sections 63.1, 64, 69, and Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) including crown work, fee codes not listed in the ministry *Schedules of Fee Allowances* and services in excess of ministry rates.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - sections 63, 63.1, 64 and 69, and sections 1, 4, 4.1 and 5 of Schedule C

PART E – SUMMARY OF FACTS

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

1. A letter dated July 17, 2018 in which the ministry advised the appellant that on reconsideration he was approved for coverage of basic dental services up to his two-year \$1,000 limit as well as select emergency dental services. The appellant's request for crown work, services not listed in the *Schedule of Fee Allowances - Dentist*, and services in excess of the rates set out in the *Schedule of Fee Allowances - Dentist* was denied.

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

• The reconsideration decision with the following date entries:

- On June 7, 2018 the appellant contacted the ministry by phone and stated he was denied Pacific Blue Cross ("PBC") coverage for emergency dental work. The appellant described his medical conditions including diabetes and "many infections." He requested reconsideration of the ministry's decision.
- On June 8, 2018 the ministry received documents from PBC including letters exchanged between PBC and the appellant's dentist; *Standard Dental Claim Forms* ("claim forms"); copies of various dental x-rays; a ministry *Crown and Bridge Profile Sheet* outlining assessment notes internal to PBC; and a one-page print-out of the appellant's PBC benefits containing general information on select services.
- On July 3, 2018 the ministry received the appellant's *Request for Reconsideration* ("RFR") with a type-written submission (argument) and addendums from the appellant's doctor and dentist.
- On July 6, 2018 the ministry received invoices from an endodontic clinic summarizing charges and payments.

3. A letter dated July 17, 2018 in which the ministry advised the appellant's dentist that the appellant is eligible for coverage of specified services; the appellant will be responsible for any fees in excess of ministry rates; and coverage for the requested crown work has not been approved at this time.

4. A PBC claims history print-out showing amounts claimed and paid for specific services from November 26, 2016 to June 19, 2018, with *Expanded Detail* sheets for services from April 25 to June 19, 2018.

5. A copy of the Ministry's guide: *Dental Supplement - Dentist* dated September 1, 2017, including preambles and *Schedules of Fee Allowances: Dentist, Emergency Dental - Dentist, and Crown and Bridgework*.

6. An RFR signed by the appellant on July 3, 2018 with the following attached documents:

- A written submission dated June 21, 2018 summarizing the appellant's argument, with the following addendums:
 - A statement from the appellant's doctor dated June 29, 2018, describing the appellant's medical conditions (visual impairment and diabetes) and associated health risks (skin conditions and infections);
 - A statement from the appellant's dentist dated July 3, 2018, stating that the appellant's condition "cannot be corrected through the provision of basic dental services and precludes him from properly placing a removable prosthetic denture."

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- A letter to the appellant's dentist from PBC dated June 1, 2018, outlining the legislative criteria for a crown or bridge and indicating that the clinical explanation and information and documentation provided do not establish that the criteria were met.
 - A letter to the dentist from PBC dated May 22, 2018, requesting supporting documentation and an explanation as to the necessity of crown/ bridge requests.
 - Copies of various dental x-rays (3 pages).
 - Claim forms (7 pages) dated May 29, 2018 in which the appellant's dentist submitted various fee codes for pre-determination.
 - A letter to PBC from the appellant's dentist dated May 28, 2018, providing additional information per PBC's request. Among other things, the dentist listed all of the appellant's missing teeth; indicated the appellant has a bridge "in stable condition"; and justified the need for crowns: "teeth that have crowns with leaky margins or recurrent decay can only be restored with new crowns. Uncrowned teeth are heavily restored and are at risk for fracture - crowns are necessary."
 - A letter to PBC from the appellant's dentist dated April 25, 2018, regarding the appellant's oral health status and "urgent need for care." The letter indicated the appellant's posterior teeth have fractured, with leaking fillings and crowns with open margins and large overhangs. The letter stated that faulty crowns are causing severe gum inflammation and bone loss and the appellant's medical condition (diabetes) results in poor circulation which exacerbates the inflammation and bone loss. The letter indicated that "necessary treatment" consists of fillings, crowns, and a strict scaling and debriding regimen and by not following the dentist's treatment plan, the appellant's oral health will continue to deteriorate and in turn will negatively impact his overall systemic health.
 - A ministry (Health Assistance Branch) *Crown and Bridge Case Profile Sheet* regarding the appellant's request for full cast metal and porcelain metal crowns ("does not meet criteria") as well as dental cores and other fee codes ("need more information").
 - A PBC *Plan Benefits* print-out regarding preventive dental services.
 - Copies of invoices from an endodontics clinic (5 pages), date range May 3 to June 22, 2018, regarding fee codes for root canals, dental imaging and testing (Pulp vitality test), and an emergency examination.

On July 23, 2018 the Tribunal received the appellant's *Notice of Appeal* with emailed submission dated July 22, 2018. The panel accepts these as argument. At the hearing, both parties summarized their arguments and did not submit any new evidence. The appellant attended the hearing with a support person to provide assistance due to the appellant's visual impairment. The ministry attended the hearing with an observer and the appellant consented to the observer's presence at the teleconference.

ATTACH EXTRA PAGES IF NECESSARY

[Redacted]

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry reasonably concluded that the appellant was not eligible for various dental services under sections 63.1, 64, 69, and Schedule C of the EAPWDR including crown work, fee codes not listed in the ministry *Schedules of Fee Allowances* and services in excess of ministry rates.

The ministry based its reconsideration decision on the following legislation:

EAPWDR

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,

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,

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,

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

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,

"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

Dental supplements

4 (1) In this section, **"period"** means

- (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

- (b) \$1 000 each period, if provided to a person not referred to in paragraph (a).

Crown and bridgework supplement

4.1 (1) In this section, "**crown and bridgework**" means a dental service

- (a) that is provided by a dentist,
- (b) that is set out in the Schedule of Fee Allowances — Crown and Bridgework, that is effective April 1, 2010 and is published on the website of the ministry of the minister,
- (c) that is provided at the rate set out for the service in that Schedule, and
- (d) for which a person has received the pre-authorization of the minister.

(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.

(3) The minister must also be satisfied that a health supplement for crown and bridgework will be adequate to correct the dental condition.

(4) A health supplement for crown and bridgework may not be provided in respect of the same tooth more than once in any period of 60 calendar months.

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.

Analysis and panel decision

Under sections 63, 63.1, and 64 of the EAPWDR, the appellant is eligible for the dental supplements set out in sections 4, 4.1, and 5 of Schedule C as a person in receipt of disability assistance. These sections of Schedule C cover basic dental services, emergency dental services and crown and bridgework. The specific requirements for each type of supplement must also be met; in particular, the service must be set out in the ministry *Schedules of Fee Allowances* and services are only covered at the rate set out in those schedules.

The appellant argued he has continuous pain and infection which are exacerbated by his medical conditions - he needs urgent dental treatment. He stated he has no resources other than his limited income from disability assistance. The appellant argued that his dentist and his doctor have adequately explained why he needs the requested treatments in light of his health conditions but the ministry's process is confusing and difficult for a disabled person to navigate, especially considering the appellant's visual impairment. The appellant expressed his frustration, noting that there are so many different page numbers on the documents and even though he went back to the dentist to obtain a further explanation for the treatments, the ministry maintains that the dentist has not provided adequate justification for the crown work.

The appellant argued that the decision to deny his request for crown and bridgework violates section 8 of the BC *Interpretation Act* which requires enactments to be given "such fair, large and liberal construction and interpretation as best ensures the attainment of the object." The appellant argued that the minister unfairly applied a restrictive interpretation of the legislation to the detriment of his health.

Panel's decision - eligibility for basic dental services including services in excess of ministry rates

Under sections 4(1) and 4(1.1) of Schedule C, the ministry approved the appellant's request for basic dental services up to a maximum of \$1,000 for the prescribed two year period; specifically, \$68.08 was approved as the ministry had already paid \$931.92 on the appellant's behalf for the period ending December 31, 2018. The ministry noted that \$68.08 would be applied to the invoice of \$135 for three lab tests conducted at the endodontics clinic (fee code 04507 - Test and Lab exams/ Pulp Vitality Test/ Half Unit). The ministry argued it is not authorized to cover the full \$135 charge because the *Schedule of Fee Allowances - Dentist* sets a ceiling amount of \$22.91 per lab test under fee code 04507. The ministry paid the fee code rate of \$22.91 for two of the lab tests and a lower rate of \$22.26 for the third test to equal the appellant's available balance of \$68.08. The ministry argued that fee code 04507 could not be covered as an emergency dental supplement because that fee code is not listed in the *Schedule of Fee Allowances - Emergency Dental - Dentist*.

The panel finds that the ministry reasonably applied the legislation in its decision to cover only \$68.08 for fee code 04507. Under section 1 of Schedule C, basic dental services are covered at the rate set out in the corresponding fee schedule (\$22.91 per lab test under fee code 04507). The ministry record indicates that on July 12, 2018, PBC confirmed that the ministry had already covered \$931.92 for basic dental services for the 2 year period described in sections 4(1) and 4(1.1) of EAPWDR Schedule C. Therefore, the ministry was not authorized to cover more than \$68.08 in basic services. The panel finds that the ministry was also reasonable in denying fee code 04507 as an emergency dental service because as noted by the ministry, emergency services may only be covered when the fee code for the service is listed in the *Schedule of Fee Allowances - Emergency Dental - Dentist*.

Even where fee codes that qualify as basic dental services were requested, the ministry was not authorized to cover those services because the appellant had a zero balance left in his 2 year limit of \$1,000 for basic services after the endodontic lab fees were covered. The appellant argued that the

ministry must apply a large and liberal construction to the enactment, but aside from specific exceptions for dentures and emergency dental services, there is no discretion in the legislation to provide coverage for dental services outside of the time frame and rates set out in sections 1, 4(1) and 4(1.1) of Schedule C.

Panel's decision – eligibility for Fee codes not listed in Schedules of Fee Allowances

Section 1 and subsections 4(1.1)(a)(i), 4.1(1)(b) and 5(a)(i) of Schedule C authorize the ministry to cover only the fee codes that are set out in the *Schedules of Fee Allowances*, in this case, the schedules for: *Dentist, Crown and Bridgework, and Emergency Dental - Dentist*. While the ministry acknowledged that it provides coverage for crowns and root canal therapy under certain fee codes that are listed in the *Schedule of Fee Allowances - Dentist*, the ministry denied the request for these services under fee codes 33125, 33124, 33115, 39212, and 33145 as these codes are not listed in the corresponding fee schedule.

The PBC claims history document, the invoices from the endodontics clinic, and the claim forms from the dentist indicate that the services/ treatments requested included fee codes for re-contouring, root canals, 3D imaging, and crown-related services (codes 42341, 33125, 33124, 33115, 39212, 02801 and 33145) as well as unspecified services (fee code 29301). None of these fee codes are listed in the above-noted fee schedules and the panel therefore finds that the ministry's decision to deny coverage for these services was reasonable.

Panel's decision - eligibility for crown work [porcelain/ ceramic/ polymer glass or full cast metal]

The specific eligibility criteria for crown and bridgework are set out in section 4.1 of Schedule C. Pursuant to subsections 4.1(1)(b) and (c), the fee codes requested must be listed in the *Schedule of Fee Allowances - Crown and Bridgework* and the ministry can only cover the rates set out in that fee schedule. Section 4.1(2) of Schedule C states that the ministry may pay for crowns 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 "the dental condition precludes the provision of the Restorative Services section of the *Schedule of Fee Allowances - Dentist*" [subsection 4.1(2)(a)]. In addition, the ministry requires evidence of one of the circumstances set out in subsection 4.1(2)(b) which require the person to be precluded from using a removable prosthetic due to a dental condition, a physical impairment, an allergy to the materials used in a prosthetic, or a mental condition.

The ministry noted that the claim forms from the appellant's dentist included a request for porcelain/ ceramic/ polymer glass crowns (fee code 27211) and full cast metal (gold) crowns (fee code 27301). The ministry argued that the information provided at the initial request for dental services and RFR does not establish that the appellant's dental condition precludes the provision of basic dental services in the form of pre-fabricated restorations under fee codes 22201, 22211, 22301, 22311, 22401, and 22501 in the *Schedule of Fee Allowances - Dentist* and therefore the criteria in subsection 4.1(2)(a) were not met. At the hearing, the ministry noted that there was no request from the dentist for "pre-fabricated plastic crowns or stainless steel crowns" and the ministry therefore did not have information to assess why these "basic dental services" would not work for the appellant.

The claim forms indicate the appellant's dentist requested porcelain/ ceramic/ polymer glass or full cast metal crowns for sixteen different teeth and there was no request for basic restorative services under fee codes 22201, 22211, 22301, 22401, and 22501. While the ministry referred to these fee codes as "crowns", they are actually pre-fabricated stainless steel and plastic "restorations" under the *Schedule of Fee Allowances - Dentist*. In any event, the legislation requires evidence as to why the dental condition precludes the provision of "restorative services" pursuant to the above-noted fee codes in the *Schedule*

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of Fee Allowances - Dentist and the ministry found that the dentist's information was insufficient to establish the need for "fancier crowns."

The two letters from the dentist (May 28, 2018 and April 25, 2018) state that teeth with leaky margins or recurrent decay "can only be restored with new crowns...crowns are necessary (due to risk of fracture)" and without the necessary treatment (including crowns), the appellant's oral health "will continue to deteriorate, and in turn will have a dramatically negative effect on his overall systemic health." In the submission provided with the RFR, the dentist stated that the appellant "has a dental condition that cannot be corrected through the provision of basic dental services..." The ministry argued that the dentist's explanation was insufficient as it did not specifically detail why treatment could only be achieved with crowns made of porcelain/ ceramic/ polymer glass or full cast metal.

The dentist justified the appellant's need for "crowns" based on the condition of the appellant's teeth and the dental work that was previously performed. The dentist provided insufficient detail as to why the appellant requires deluxe crowns (porcelain/ gold) as opposed to the restorative services that are covered under the *Schedule of Fee Allowances - Dentist*. Other than indicating that crowns are necessary for the appellant's dental condition and overall health, the dentist did not detail why the appellant's dental condition precludes the use of "restorative services" per the *Schedule of Fee Allowances - Dentist*. The panel therefore finds that the ministry reasonably determined the criteria under EAPWDR subsection 4.1(2)(a) were not met.

Panel's decision - eligibility for emergency dental services

An emergency dental supplement is defined in section 1 of EAPWDR Schedule C as a dental service that is necessary for "immediate relief of pain". In addition, section 1 applies to emergency supplements set out in the *Schedule of Fee Allowances - Emergency Dental - Dentist* and authorizes coverage at the rates set out in that Schedule. As noted by the ministry, the preamble to the guide *Dental Supplement - Dentist* expands the definition of emergency dental service to include situations in which a person requires immediate attention to control infection or bleeding or when their health or welfare is otherwise immediately jeopardized. The ministry found that the appellant is eligible for \$1,208.99 of emergency services including fee codes for an emergency examination, tooth-coloured restorations, radiographs, and dental posts.

The ministry limited its coverage for radiographs to a maximum of two x-rays per emergency visit (fee code 02141). In the claim forms, the dentist requested four x-rays but the panel finds that the ministry's coverage of only two films was reasonable per the *Schedule of Fee Allowances - Dentist*. That schedule states that coverage of radiographs as an emergency dental supplement "is limited to a maximum of 2 intra-oral films per emergency visit."

Panel's decision - eligibility for coverage as a life-threatening health need

Section 69 of the EAPWDR authorizes the minister to provide the health supplements set out in Schedule C, sections 2(1)(a) and (f) and section 3, if the health supplement is provided to or for a person who is otherwise not eligible to receive these supplements. Among other requirements, the minister must be satisfied that the person faces a direct and imminent life-threatening health need, there are no resources available to meet the need, and the health supplement is necessary to meet the need.

The appellant argued that he is in urgent need of the dental services requested by his dentist because he has serious dental conditions that are exacerbated by his medical conditions. The appellant argued that the statements from his doctor and dentist (provided with his RFR) attest to the seriousness of his medical and dental conditions. The ministry argued the appellant is not eligible for dental services under

section 69 because that section applies to "medical supplies", "medical transportation" and "medical equipment and devices" and dental and denture supplements are therefore not covered under section 69.

Section 69 specifically references medical supplies and medical transportation (sections 2(1)(a) and (f) of Schedule C), and medical equipment and devices (section 3 of Schedule C). These sections do not include any type of dental service. The panel therefore finds that the ministry reasonably applied the legislation in determining the appellant is not eligible for a dental supplement as a life-threatening health need under EAPWDR section 69.


Conclusion

The panel finds that the ministry's reconsideration decision that found the appellant ineligible for a dental supplement for crown work, fee codes not listed in the ministry Schedules of Fee Allowances and services in excess of ministry rates 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 his appeal.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION: <i>Employment and Assistance Act</i> Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/> and Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Margaret Koren	
	DATE (YEAR/MONTH/DAY) 2018-08-14

PRINT NAME Anil Aggarwal	
	DATE (YEAR/MONTH/DAY) 2018-08-14

PRINT NAME Rob Nijjar	
SIGNATURE OF MEMBER 	DATE (YEAR/MONTH/DAY) 2018-08-14