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**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated December 31, 2018 which denied the appellant's request for full coverage for dental services because the ministry is not authorized to provide coverage for services that are not set out in the Schedule of Fee Allowances– Dentist or for fees in excess of the rates set out in that Schedule pursuant to Section 63 and schedule C Sections 1 and 4 of the Employment and Assistance for Persons With Disabilities Regulation.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 63  
Schedule C, Section 1 and 4  
Schedule of Fee Allowances - Dentist

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**PART E – SUMMARY OF FACTS**

With the consent of the parties, the appeal hearing was conducted in writing in accordance with Section 22(3)(b) of the *Employment and Assistance Act*.

**The evidence before the ministry at reconsideration consisted of the following documents:**

A Treatment Plan Proposal dated August 22, 2018 from an Oral and Maxillofacial Surgeon which includes an estimate for the total cost of the appellant's surgery. The letter indicates that the estimate will be provided to his dental insurance to "predetermine" the amount of coverage that can be expected. It adds that on the day of surgery, payment is requested for the amount not being covered by the appellant's insurance plan. It further describes the associated fees under each dental code and indicates the total charges for dental services as \$2085.00. The insurance coverage was indicated as \$571.76 leaving a balance of \$1513.24 for the appellant.

<u>Code</u>	<u>Description</u>	<u>Dr. Fee (Total Charge)</u>	<u>Insurance Charge</u>	<u>Patient Charge</u>
72211	Tooth #18	\$460.00	\$165.28	\$294.72
71101	Tooth #28	\$155.00	\$ 75.92	\$ 79.08
72211	Tooth #38	\$460.00	\$165.28	\$294.72
72211	Tooth #48	\$460.00	\$165.28	\$294.72
92304	Anesthesia, Deep Sedation – 4 units	\$500.00	\$ 0.00	\$500.00
01602	Exam & Diag, Surgical, Specific	\$ 50.00	\$ 0.00	\$ 50.00
<b>TOTAL</b>		<b>\$2,085.00</b>	<b>\$571.76</b>	<b>\$1,513.24</b>

A letter dated October 12, 2018 signed by the appellant's Oral Surgeon providing a clinical and radiograph evaluation of the appellant's molar teeth (#18, #28, 38 and #48). "Currently three of the four third molars are associated with some type of pathology. The fourth molar (#28) while not currently pathologic, will continue to be difficult to clean over time and will super-erupt. Removal of all four third molar teeth is advised."

A Request for Reconsideration (RFR), dated December 3, 2018 and signed by the appellant which states that the appellant has special needs and is on a very limited income and having to pay over \$1500.00 for his dental work is a real hardship. Because of his disability, he required anesthetic which he wasn't expecting to pay for as well as for the surgery. This is an unexpected and very debilitating expense for him. He has had to borrow money to pay the dental surgeon and is now in debt. The appellant is requesting a review of the decision to determine if he is eligible for additional funds to help cover the expense.

A copy of a claim form from Pacific Blue Cross (PBC) records, the appellant's insurer, dated December 31, 2018 outlining the amount charged and the amount paid for dental services provided on November 4, 2018 which matches the estimates above given in the Treatment Plan Proposal.

The Notice of Appeal (NOA), signed and dated January 11, 2019 by the appellant indicates that he disagrees with the coding for the anaesthetic.

## PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision which denied the appellant's request for full coverage for dental services because the ministry is not authorized to provide coverage for services that are not set out in the Schedule of Fee Allowances– Dentist or for fees in excess of the rates set out in that Schedule pursuant to Section 63 and schedule C Sections 1 and 4 of the Employment and Assistance for Persons With Disabilities Regulation was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

### Legislation

The applicable legislation is from the 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, (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.

### 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,***

***(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;***

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

## **Appellant's Position**

The appellant's position is that he has special needs and is on a very limited income and having to pay over \$1500.00 for his dental work is a real hardship. Because of his disability, he required anesthetic which he wasn't expecting to pay and he disagrees with the coding for the anaesthetic. The appellant states that this is an unexpected and very debilitating expense for which he has had to borrow money to pay the dental surgeon and is now in debt.

## **Ministry's position**

The ministry's position is that the appellant as a recipient of disability assistance is eligible for dental supplements under Section 63 and Schedule C, Section 4 of the EAPWDR. The ministry through PBC, provided coverage at the rates specified including an additional 10% for the Specialist's rate. These rates are set out in the Schedule of Fee

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Allowances – Dentist. While the ministry accepts that the appellant is eligible for coverage for anaesthetic, the claims for services pertaining to fee code 92304 for - Deep Sedation, Anesthesia, Four units and fee code 01602 for – Examination and Diagnosis, Surgical Specific are not set out in the ministry's Schedule of Fee Allowances – Dentist and were not paid. The appellant's oral surgeon charged fees that were in excess of ministry rates set out for the services and as a result the ministry is not authorized to provide funding in the amount of \$1,513.24 which represents the difference between what the ministry was authorized to pay by the legislation and what was charged by the appellant's oral surgeon. There are no exceptions in policy and the ministry has no discretion in this matter.

### **Panel Decision**

Section 63 of the EAPWDR stipulates the minister may provide health supplements set out in Section 4 of Schedule C which are "basic dental services". A "basic dental service" is defined in Section 1 of Schedule C, EAPWDR, as a dental service that if provided by a dentist is set out in the Schedule of Fee Allowances – Dentist, effective April 1, 2010 and is on file with the office of the deputy minister and is provided at the rate set out for the service in that Schedule.

The panel finds that the ministry was reasonable to determine that the appellant, who is a disability recipient, is eligible for basic dental services pursuant to Section 63 of the EAPWDR. Section 4 of Schedule C of the EAPWDR lists the dental supplements that can be provided by the ministry and states that recipients are limited to these supplements.

The panel recognizes that while the appellant is eligible for coverage for general anaesthetic or intravenous sedation which may be provided under special circumstances and is listed under fee code 92215, the oral surgeon chose to administer Deep Sedation, Anesthesia, Four units under the fee code 92304 which is not listed as a supplement in the Schedule. Also, the oral surgeon provided fee code 01602 for Examination and Diagnosis, Surgical Specific, which is not an item in the Schedule. The panel finds that the ministry reasonably determined that these dental services cannot be provided by the ministry as they are not set out in Schedule of Fee Allowance – Dentist, which is the definitive guide to the ministry.

The panel also finds that the fees charged by the oral surgeon were clearly in excess of the allowable ministry rates that included an additional 10% for specialist rates and that the ministry reasonably determined that the minister has no authority or discretion, even under the exceptional circumstances of the appellant as described in his appeal, to provide additional financial assistance or coverage for dental services not specifically set out in Schedule C of the Regulation.

The panel therefore finds that the ministry reasonably determined that there is no authority to provide funding in the amount of \$1,513.24, which represents the difference between what the ministry was authorized to pay and what was charged by the appellant's oral surgeon in excess of ministry rates as set in the Schedule Fee Allowance - Dentist.

### **Conclusion**

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for full coverage for dental services because the ministry is not authorized to provide coverage for services that are not set out in the Schedule of Fee Allowances– Dentist or for fees in excess of the rates set out in that Schedule pursuant to Section 63 and Schedule C Sections 1 and 4 of the Employment and Assistance for Persons With Disabilities Regulation was reasonably supported by the evidence and confirms the decision. The appellant's appeal, therefore, is not successful.

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**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

Lynn Twardosky

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/Feb/25

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/Feb/25

PRINT NAME

Marnee Pearce

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/Feb/25