

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated April 4, 2019 which denied the appellant's request for dental fees in excess of ministry rates and coverage of a dental treatment not set out in the Schedule of Fee Allowances-Dentist, (for the appellant's daughter), in accordance with sections 1 and 4 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation, sections 62,63 and 65
Employment and Assistance for Persons with Disabilities Regulation, Schedule C, sections 1 and 4
Schedule of Fee Allowances- Dentist, Emergency Dental-Dentist, Crown & Bridgework

PART E – SUMMARY OF FACTS

The appellant is a recipient of disability assistance and is eligible for dental supplements under sections 63, 63.1, 64 and 65 and Schedule C, sections 4, 4.1, and 5 of the Employment and Assistance for Persons With Disabilities Regulation.

January 20, 2019- the ministry received:

- a letter from the appellant's husband dated January 20, 2019 which noted her daughter's severe pain in her jaws, teeth and severe headaches. The appellant requested assistance as the treatment by a Dental Specialist (referred to by her dentist) is not covered nor is the consultation fee.
- A referral note written by the appellant's dentist dated January 16, 2019 which states "Pt in pain both sides jaw radiates to head. Please consult & treat if necessary."

March 13, 2019- the ministry received:

- Ministry message sent to the appellant via the appellant's online "My Self-Serve Account" dated January 23, 2019 which provided instructions to the appellant to contact the specialist to pursue the requested dental treatments. The message also indicated should the dental insurance carrier deny coverage the appellant can request a reconsideration.

March 26, 2019- the ministry received a signed request for reconsideration.

- Statement/Section 3 (dated March 26, 2019) states the appellant's daughter's severe pain in her jaws, teeth and severe headaches. The appellant requested assistance as the treatment by a Dental Specialist (referred to by her dentist) is not covered nor is the consultation fee.

The information before the ministry at the time of reconsideration included the following:

- Ministry note to appellant dated January 23, 2019- (Details above).
- Insurance carrier claim form which notes:
 - Procedure 02601- 100% coverage @ \$53.70
 - Procedure 41224- 0% coverage
- Insurance carrier Dental Predetermination Summary statement which notes the coverage of \$53.70 of the \$495.00 claimed by the appellant.
- Letter from the appellant's husband dated January 20, 2019 (details above).
- Appellant's dentist referral dated January 16, 2019, (details above).
- The appellant's Request for Reconsideration dated March 26, 2019, where the appellant wrote: Their daughter was referred to a dental specialist but they were told that MSP does not cover treatment and the consultation fee. The appellant asked for assistance.
- The appellant's Notice of Appeal dated March 3, 2019, where she wrote:
 - Her daughter suffers from severe headaches and jaw pain
 - MSP will not cover the consultation fee or treatment
 - She and her husband are both on disability assistance and are unable to afford the fees.

At the hearing, the appellant stated:

- She took her daughter to the dentist because of jaw pain and headaches. The dentist gave the daughter a night guard to address the issue.
- The night guard did not help, the daughter was referred to a specialist.
- The secretary told the appellant the consultation fee of \$495 was not covered by the ministry or the insurance carrier.
- The appellant is worried about her daughter's physical and psychological issues.
- She did this appeal in hopes to obtain a solution to her issue.
- When asked if she understood the documents she received in terms of the appeal, the appellant stated she had read the documents and understood the fees (specialist) were not covered.
- She feels the legislation is not fair and that exceptions should be made when clients cannot pay for needed procedures.

At the hearing the ministry stated:

- Payments covered in the legislation were paid to the appellant.
 - Code 41224 submitted for a specialist consultation is not covered by the legislation and the ministry does not have the authority to pay.
 - The appellant must understand, not all supplements are covered, to be eligible, the supplement must be in the legislation.
 - The ministry reviewed the appellant's application and checked to see if any other sections of the legislation would cover some or all the costs but none were applicable.
 - The ministry does review legislation and will bring concerns of fairness forward to the Member of the Legislative Assembly (MLA).
 - When asked if the appellant should approach her MLA, she noted it was up to the appellant.
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PART F – REASONS FOR PANEL DECISION

Issue under appeal

The issue under appeal is whether the ministry decision, dated April 4, 2019, which held that the appellant is not eligible for coverage for dental fees in excess of ministry rates and coverage of a dental treatment not set out in the Schedule of Fee Allowances-Dentist, (for the appellant's daughter), in accordance with sections 1 and 4 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Relevant Legislation

Employment and Assistance Regulation

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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

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,
- (b) a family unit in receipt of hardship assistance, 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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

Orthodontic supplement

65 (1) Subject to subsection (2), the minister may provide orthodontic supplements to or for

- (a) a family unit in receipt of disability assistance, if the orthodontic supplements are provided to or for a person in the family unit who is
 - (i) under 19 years of age, or
 - (ii) a person with disabilities, or

- (b) a family unit, if the orthodontic supplements are provided to or for a person in the family unit who
- (i) is a continued person, and
 - (ii) meets any of the following criteria:
 - (A) the person is under 19 years of age;
 - (B) the person was, on the person's continuation date, a person with disabilities.
- (2) For a person referred to in subsection (1) to be eligible for orthodontic supplements, the person's family unit must have no resources available to cover the cost of the orthodontic supplements and the person must
- (a) have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations, and
 - (b) obtain prior authorization from the minister for the orthodontic supplements.
- (2.1) and (2.2) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 5 (b).]
- (3) Repealed. [B.C. Reg. 313/2007, s. 2 (e).]

Schedule C

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.

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.

Schedule of Fee Allowances- dentist, September 1, 2017

September 1, 2017 Dentist – Part A 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

September 1, 2017 Dentist - Part B

FEE NO.	FEE DESCRIPTION	FEE AMOUNT
2601	Panoramic Film.	48.82

Film Fee item 02601 is limited to once in a three-year period. Not included in the two year radiograph limit for children under 19 years of age.

Appellant's Position

The appellant understands the ministry decision is based on the current legislation. She believes there should be exceptions made to meet the needs of assistance recipients who are unable to afford the expenses of specialist fees. The appellant believes the ministry should be flexible in its application of the legislation and that people who have the need should be served.

Ministry's Position

Eligibility for fees in excess of ministry rates/fee code 02601

The ministry's position is the appellant has received the allowable fee payment for code fee 02601 which allows a 10% increase above the regular dental rate. As the specialist invoiced the carrier for \$110.00, the appellant was only reimbursed \$53.70 (dental rate of 48.82 plus 10%).

Eligibility for coverage of periodontal services (fee code 41224) as a basic dental service

The ministry provides coverage for periodontal services as set out in the Fee Allowances-Dentist. However, the service the appellant requested (fee code 41224) is not set out in the Schedule. As a result, the ministry is not able to provide the funding requested.

Eligibility for coverage of periodontal services (fee code 41224) as an Orthodontic Supplement

The ministry in its reconsideration decision addressed the possibility of funding through an Orthodontic Supplement as per the EAPWD Regulation, Section 65(2)(a). EAPWD Regulation, Section 65(2)(a) sets out that a person is eligible for orthodontic supplements if the person has severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations. As neither the appellant's dentist or the specialist indicated the appellant's daughter has a severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations she is not eligible for this funding.

Panel Decision

Section 63 of the EAPWD Regulation stipulates that the ministry may provide health supplements set out in Section 4 of Schedule C. The health supplements that may be provided under Section 4, Schedule C are "basic dental services". In accordance with the Schedule of Fee Allowances-dentist, the appellant received the appropriate coverage as the ministry does not have the authority to provide additional coverage to cover the difference between what the specialist charged and the allowable rate.

The ministry provides coverage for "basic dental service" as outlined in Schedule C Section 4(1.1) and "emergency dental services" as outline in Section 5 Schedule C. The ministry is not authorized to provide coverage for services that are not set out in the Schedule of Fee

Allowances. As fee code 41224 is not set out in the Schedule, funding cannot be provided. The ministry does not have exceptions in policy and therefore has no discretion in this decision.

The panel found the ministry reasonable to conclude that the appellant did not qualify for an Orthodontic Supplement as per Section 65(2)(a) of the EAPWD Regulation as no evidence was given to establish that the daughter of the appellant has severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations,

Conclusion

The panel finds that in determining the appellant is not eligible for dental fees in excess of ministry rates and coverage of a dental treatment set out in the Schedule of Fee Allowances-Dentist, (for the appellant's daughter), the ministry was reasonably applied sections 1 and 4 of Schedule C of the EAPWDR in terms of the appellant's situation. The ministry's reconsideration decision is confirmed.

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 Charlers Schellinck	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/05/03

PRINT NAME Barbra Thompson	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/05/04
PRINT NAME Joan Cotie	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/05/03