

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision dated July 8, 2019, made by the Ministry of Social Development and Poverty Reduction (the ministry), which determined that the appellant was not eligible to receive coverage for replacement of complete upper dentures on the grounds that the ministry is not authorized to provide coverage for dentures if coverage has been received within the past five years.

PART D – RELEVANT LEGISLATION

The relevant legislation is sections 61.01, 61.1, 63, 64, and 69 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and sections 1, 4, and 5 of Schedule C to the EAPWDR.

PART E -- SUMMARY OF FACTS

The appellant is designated as a Person with Disabilities but was transitioned to Medical Services Only in 2017 as he began receiving federal pensions. In 2017 the appellant became homeless. In August of that year the appellant received funding from the ministry through Pacific Blue Cross for complete upper and lower dentures. Early in 2018 the appellant was diagnosed with cancer and underwent two abdominal surgeries. In April 2018 the appellant received funding from the ministry through Pacific Blue Cross for complete upper dentures. Later that month funding for a re-fit to his upper dentures were funded, and in October 2018 repairs were funded. In May 2019 the appellant contacted the ministry to inform them that he had been denied coverage by Pacific Blue Cross for replacement of his dentures.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's decision finding the appellant was not eligible to receive coverage for replacement of complete upper dentures on the grounds that the ministry is not authorized to provide such coverage more than once in 5 years and the appellant had already received a one-time only policy exemption that had allowed a replacement within the five year period.

The relevant legislation is sections 61.01, 61.1, 63, 64, and 69 of the EAPWDR and sections 1, 4, and 5 of Schedule C to the EAPWDR:

Definitions

61.01 In this Division:

"**continuation date**",

- (a) in relation to a person who is a main continued person under section 61.1 (1) [*access to medical services only*] as a result of having been part of a family unit on the date the family unit ceased to be eligible for disability assistance, means that date, and
- (b) in relation to a dependent continued person under section 61.1 (2) of a main continued person, means the continuation date of the main continued person;

"**continued person**" means

- (a) a main continued person under section 61.1 (1), or
- (b) a dependent continued person under section 61.1 (2);

"**maintenance**", "**maintenance agreement**" and "**maintenance order**" have the same meanings as in section 16;

"**nutrition-related supplement**" means any of the following supplements:

- (a) a supplement under section 66 [*diet supplement*];
- (b) a supplement under section 67 [*nutritional supplement — monthly*], other than a supplement for vitamins and minerals;
- (c) a supplement under section 67.001 [*nutritional supplement — short-term*];
- (d) a supplement under section 67.01 [*tube feed nutritional supplement*];
- (e) a supplement under section 2 (3) of Schedule C that is related to nutrition;

"**qualifying federal benefit**" means a supplement under Part II or an allowance under Part III of the Old Age Security Act (Canada).

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was
 - (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and
 - (ii) a person with disabilities on that date,
- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and
- (c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

- (2) Subject to subsection (6), a person is a dependent continued person if
- (a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date and is currently a dependant of the main continued person, or
 - (b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).
- (3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance
- (a) on a date the family unit includes a person aged 65 or older,
 - (b) as a result of a person in the family unit receiving an award of compensation under the Criminal Injury Compensation Act or an award of benefits under the Crime Victim Assistance Act,
 - (c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,
 - (d) as a result of a person in the family unit receiving employment income,
 - (e) as a result of a person in the family unit receiving a pension or other payment under the Canada Pension Plan (Canada),
 - (f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or
 - (g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the Child, Family and Community Service Act.
- (4) Subject to subsection (5), a person's status as a main continued person under subsection (1) is suspended for a calendar month if
- (a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and
 - (b) the person's continuation date is before those immediately preceding 12 calendar months.
- (5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit described in subsection (3) (c) or (g).
- (6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).
- (7) For the purposes of subsection (4),
- (a) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (a), (b), (d) or (f) meets the income test for a calendar month if,
 - (i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and
 - (ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit is eligible to receive premium assistance under the Medicare Protection Act, and
 - (b) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (e) meets the income test for a calendar month if,
 - (i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and
 - (ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit receives a pension or other payment under the Canada Pension Plan (Canada).
- (8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(9) Despite this Division, a person is not eligible, as a dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for a calendar month in which the main continued person's continuation date occurs.

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.

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.

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).

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;

"dentist" means a dentist registered with the College of Dental Surgeons of British Columbia continued under the Health Professions Act;

"denturist" means a denturist registered with the College of Denturists of British Columbia established under the Health Professions Act;

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

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.

At the hearing, the appellant stated that due to his being homeless the first set of dentures had been stolen. He lost the second set of dentures after being discharged from the hospital following his surgery. He stated he was discharged onto the street with nowhere to stay and still on painkillers. The appellant also stated that the second set of dentures never fit properly — despite being refitted — so that they were uncomfortable, and he took them out often which led to their being broken and eventually lost. The appellant has subsequently found a place to stay and is looking for work. The appellant stated that he felt dentures were essential for his appearance in his search for employment and as well as for his nutrition; it is essential that he have dentures in order to secure work.

At the hearing, the ministry simply referred the panel to the reconsideration decision. In that decision the ministry states that:

"Section 63 of the EAPWD Regulation says that the ministry may provide health supplements set out in section 4 of Schedule C. The health supplements that the minister may provide under section 4 Schedule C are "basic dental services". Section 1 of Schedule C defines a "basic dental service" as 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.*

EAPWD Regulation Schedule C, section 4(2) explains that the ministry may provide dentures as a basic medical service only to a person who has never worn dentures or whose dentures are more than five years old. It should be noted that dentures are not included in the Schedule of Fee Allowances — Emergency Dental — Dentist."

Based on this analysis, the ministry concluded that as the appellant received complete dentures in August 2017, he is not eligible to receive another set of dentures until August 2022. Furthermore, the ministry notes, the appellant did receive replacement dentures in April 2018. This was done in accordance with a ministry policy that allows a one-time only exception to the legislated 5-year replacement rule in specific circumstances. As this is a

one-time exception, it is not available again to the appellant.

Immediately following this analysis, the ministry considered whether the appellant's request could be approved under section 69 if he were "facing direct and imminent life-threatening health need". The ministry found that the appellant did not qualify under this section for two reasons: (i) the appellant had not provided any information that this might be the case, and (ii) dentures are not covered by this section. At the hearing, when asked if he considers that not receiving new dentures would mean he would be "facing direct and imminent life-threatening health need" he replied, "No". Section 69 applies to "medical supplies, medical transportation and medical equipment and devices". According to the legislation, dentures are a "dental supplement" and so not covered by section 69.

At the hearing the appellant did not contest either the ministry's interpretation of the legislation or its account of the facts. Neither did the appellant contest the ministry's finding that not receiving replacement dentures will lead to the appellant "facing direct and imminent life-threatening health need". Rather, the appellant's position is that the theft and loss of his dentures were due to his troubled circumstances and that now he is healthy and housed it is essential that he have a new set of dentures so that he can find work.

The panel considers that the ministry's analysis in the reconsideration decision is flawed in two ways. First, in its analysis of the application of section 63 it cites the incorrect subsection of the definition of "basic dental service" in section 1 of Schedule C. Where the ministry cites subsection (a) – "services provided by a dentist" – it should have referred to subsection (b) – "services provided by a denturist".

The second flaw in the ministry's reconsideration decision is its complete failure to consider the appellant's request under section 64 of the EAPWDR – Emergency dental and denture supplement. This section refers to section 5 of Schedule C, which refers to the definition of "emergency dental service" in section 1 of Schedule C, which, in turn, in subsection (b), refers to the *Schedule of Fee Allowances – Emergency Dental – Denturist*.

Whether anything turns on these flaws is not for the panel to determine. But it is certainly the case that unless the ministry fully considers the appellant's request in light of all the relevant legislation, its decision cannot be considered "reasonable".

For the sake of completeness, the panel finds that the ministry's determination under section 69 was reasonable given that the appellant himself is not claiming to fall under it and that the legislation does not cover dentures.

Based on this analysis, the panel finds that, according to the relevant legislation, the ministry did not reasonably determine that the appellant is not currently eligible to receive replacement dentures because it did not correctly and completely consider the appellant's request in light of all the relevant legislation.

Accordingly, the panel finds that the Ministry's decision to deny the appellant coverage for replacement of complete upper dentures was not a reasonable application of the relevant legislation and rescinds the Ministry's reconsideration decision.

APPEAL NUMBER

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

Marcus Hadley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/08/16

PRINT NAME

Carl Gorham

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/08/16

PRINT NAME

Joe Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/08/16