

APPEAL NUMBER:

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated June 14, 2019 in which the ministry denied the appellant coverage for complete replacement dentures. The ministry found it is not authorized to pay for dentures under section 4(2)(b) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") when the person's dentures are less than 5 years old. The ministry also found that the appellant was not eligible for replacement dentures as a life-threatening health need under section 69 of the Regulation.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR, sections 63 and 69, and Schedule C, sections 1, 4, and 5

EAPWDR - *Schedules*

Dental Supplement - Denturist, including *Schedule of Fee Allowances - Denturist Effective September 1, 2017*

Emergency Dental Supplements - Denturist, including *Schedule of Fee Allowances - Emergency Dental - Denturist Effective September 1, 2017*

PART E – SUMMARY OF FACTS

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

1. Information from the ministry's record of decision which indicates:

- On December 19, 2018, the ministry received a fax from the appellant's medical clinic indicating that Pacific Blue Cross ("PBC") had rejected the appellant's request for coverage of complete replacement dentures (fee code 31310 and 31320) because the appellant had already received a one-time exception to the ministry's 5-year replacement policy on May 29, 2018.
- On May 18, 2019, the ministry received a fax from the appellant's medical clinic indicating that PBC had again rejected the appellant's request for replacement dentures because the appellant had already received funding for complete replacement dentures on May 29, 2018. PBC authorized coverage for a dental examination.
- On June 1, 2019, the appellant submitted a Request for Reconsideration explaining that his dentures were stolen and that he has complex medical conditions and is experiencing health risks without his dentures. The appellant provided a supporting letter from his physician.
- Under the ministry's denture policy, PBC may authorize a *one-time exception* to the five-year replacement regulation if the following requirements are met:
 - The person is currently a recipient with Persons with Disabilities ("PWD") designation and has been in receipt of income assistance or disability assistance for at least two years;
 - the dentures being replaced were lost or damaged beyond repair, and the loss or damage was beyond the person's control; and
 - failure to provide replacement dentures would result in compromised health.

[*Panel note:* the minister was satisfied that the appellant met these requirements].

2. A Request for Reconsideration ("RFR") signed by the appellant on May 29, 2019 with a typed submission in which the appellant provides his argument and explains that his dentures were stolen when he attended the medical clinic to receive his daily prescribed medication. Just before his dentures were stolen, the appellant's medication was switched to a granular form that necessitated removing the dentures in order to successfully take the medication without discomfort and pain. The appellant explains that he discreetly removed his dentures, wrapped them in tissue and placed them at his side while he was waiting for the nurse to administer the medication. After he finished taking the medication he realized that his dentures had been stolen. The appellant reports that the clinic staff investigated the theft but it was not captured on the security camera. The appellant describes the mental and physical distress he has experienced from not having his dentures, including unhealthy weight loss due to not being able to eat nutritious foods and withdrawing from social routines due to embarrassment.

3. A letter from the appellant's physician dated May 31, 2019, provided in support of the appellant's request for replacement dentures. The physician reports a significant decline in the appellant's mental and physical health since the dentures were stolen and notes that the appellant needs dentures in order to consume proper nutrition and manage his significant health conditions. The physician states that the appellant's health is at imminent risk for further deterioration if the appellant is unable to have the dentures replaced.

4. A predetermination from PBC dated May 14, 2019, indicating that the appellant's request for replacement dentures cannot be approved because he already used his "one time exception" in 2018. The predetermination indicates that out of the total claim for \$1,178.50, the eligible amount is \$16 for a dental examination.

5. A letter and predetermination from PBC dated November 22, 2018, indicating that \$0.00 was approved out of the total submitted, \$1,178.50. The notes state that the appellant's "coverage maximum has been reached" and PBC is unable to approve the request for replacement dentures as the appellant already used his one-time exception on May 29, 2018.

6. *AdminNet* statement from Pacific Blue Cross dated June 13, 2019, indicating the following payments on the appellant's behalf:

- \$581.25 for service date May 29, 2018, complete standard dentures, maxillary
- \$581.25 for service date May 29, 2018, complete standard dentures, mandibular
- \$16 for service date May 7, 2018, specific nature examination, partial dentures
- \$581.25 for service date October 30, 2017, complete standard dentures, maxillary
- \$581.25 for service date October 30, 2017, complete standard dentures, mandibular

Additional information

Subsequent to the reconsideration decision, the appellant filed a Notice of Appeal with his hand-written statement which the panel accepts as argument. On July 12, 2019, the Tribunal received an 11-page submission from the appellant (Appendix A) comprised of the following documents:

1. A letter from the appellant's social workers dated July 11, 2019, providing argument on appeal and describing a case from the same medical clinic the appellant attends for his medication. In this recent case, the ministry approved replacement dentures for a client ("Client B") whose dentures had been stolen despite the client already receiving replacement dentures. The social workers explain that the medical clinic works with 160 participants at once and at times, similar situations occur in which clients have to remove their dentures in order to take the granular medications that are administered at the clinic.

2. A letter from the ministry to Client B dated June 18, 2019, stating that upon review of Client B's RFR of the decision to deny funding for replacement upper and lower dentures, the ministry "has made an exception in the unique circumstances of your case." The letter states that Client B will not be eligible for another pair of dentures until July 2024 and the ministry has advised the dentist by letter that the request for replacement dentures has been confirmed.

3. A copy of the ministry's reconsideration decision for Client B dated June 18, 2019. The reconsideration decision indicates:

- On April 30, 2019, Pacific Blue Cross denied coverage for replacement dentures because "the five-year time limit for replacement dentures had not passed."
- On May 21, 2019, Client B requested reconsideration and the ministry received the signed RFR on June 6, 2019 with an attached letter in which Client B indicates:
 - they received an exception in the past, getting replacement dentures "before my 5 years is up";
 - their dentures were recently stolen and without dentures, their health is at imminent risk of further deteriorating. Just before the dentures were stolen, Client B was prescribed a new medication that is very granular. It was necessary to remove the dentures in order to

successfully receive the medication without pain and discomfort. Client B discretely placed the dentures on an adjacent counter while waiting for the nurse to come back with the medication. After taking the medication, Client B realized that the dentures had been stolen. The clinic staff investigated but the area where Client B was sitting did not show up well on the security camera. Client B describes the significant mental and physical distress they experience from going without dentures, including weight loss which is a concern in light of their complex medical issues. Client B states that without dentures they are unable to eat nutritious food and are withdrawing from regular social routines due to embarrassment.

- PBC advised that Client B received upper and lower dentures on May 9, 2012 and on April 18, 2016 and the one-time exception had therefore been utilized.
- Under the ministry's denture policy, Client B meets the following requirements for replacement dentures:
 - has been in receipt of disability assistance for at least two years;
 - the dentures were lost due to circumstances beyond the person's control, and
 - failure to provide replacement dentures would result in compromised health.
 - The ministry also notes that Client B is eligible for replacement dentures.

4. A letter from Client B's physician dated June 5, 2019, provided in support of the request for replacement dentures. The physician reports a significant decline in Client B's mental and physical health since the dentures were stolen and notes that Client B needs dentures in order to consume proper nutrition for their significant health conditions. The physician states that Client B's health is at imminent risk for further deterioration if they are unable to have the dentures replaced.

5. A copy of the appellant's RFR submission, re-dated June 6, 2019.

Admissibility of additional information

The ministry raised no objections to the documents the appellant submitted for the appeal. Even though the additional submissions present argument based on new facts that were not before the minister at reconsideration, they are in support of the arguments raised at the reconsideration regarding exceptions to the denture replacement regulation under ministry policy.

The Client B scenario involves a different ministry client and not the appellant but the appellant could not have relied on Client B's case at the reconsideration because that case was decided after the reconsideration decision in the appellant's case. As the denture policy was before the minister at the reconsideration, the panel admits the appellant's submissions under section 22(4) of the *Employment and Assistance Act* as additional evidence in support of the information and records that were before the minister when the decision being appealed was made.

The appellant attended the hearing with an advocate. At the hearing, both parties provided argument and did not submit new evidence.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry reasonably concluded that the appellant was not eligible for replacement dentures under section 4(2)(b) of Schedule C and section 69 of the EAPWDR. On reconsideration, the ministry found that the regulatory criteria were not met and that the appellant was not eligible for an exception under ministry policy.

The ministry based the reconsideration decision on the following legislation:

Pursuant to 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

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 Health Supplements**Definitions**

1 In this Schedule:

"basic dental service" means a dental service that

- (b) if provided by a dentist,
- (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

Dental supplements

4 (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.

(4) Subsection (2) (b) does not apply with respect to a person described in subsection (3) (a) who has previously had a partial denture.

(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.

Ministry policy

The relevant sections of the policy that is included with the ministry record of decision, are the following:

Dental Supplement - Denturist

Part A - Preamble - Dental Supplements - Denturist

Denture Policy

Initial Placement - Complete Denture(s)

As Ministry clients, including those with Emergency Dental Supplement coverage only, are eligible for a single complete denture (upper or lower), or complete dentures if the dentures are required as a result of extractions for the relief of pain resulting in full clearance of the arch/arches.

The denture fee items are restricted to 31310, 31311, 31320, and 31321.

Note: Coverage for dentures is normally limited to once per arch every five years, however, payment of a **partial** denture within the past five years will not preclude provision of a complete denture as a result of full clearance. Conversely, partial dentures should not be used as provisional or temporary appliances.

Replacement Dentures (partial or complete) in excess of the 2-year basic dental limit

It is important to note that not all Ministry clients qualify for replacement dentures. Eligible clients must have 2 years continuous Ministry coverage.

The Ministry will pay for denture(s) only once every five years.

Note: an exception to this would be if the current denture(s) was a partial and the replacement denture(s) is complete in conjunction with full clearance of teeth (see above under Initial Placement – Complete Dentures).

Payment Process

Claims under the Ministry's Dental Supplements will be paid in accordance with the *Schedule of Fee Allowances - Denturist* and these fees represent the maximum amount the Ministry can pay for the services billed.

Schedule of Fee Allowances - Denturist Effective September 1, 2017

COMPLETE DENTURES

Note: Dentures are an eligible item once every five years. The replacement of dentures within five years of original insertion will normally not be paid by the Ministry. Refer to Denture Policy in Part A – Preamble to Dental Supplements - Denturist.

31310 Complete Maxillary Denture	Adult	581.25
31320 Complete Mandibular Denture	Adult	581.25

Panel majority analysis

Section 4(2)(b) of Schedule C EAPWDR

Based on the appellant's PWD designation the ministry accepts that the appellant meets the basic eligibility for dentures under section 63 of the EAPWDR. The specific eligibility criteria in section 4(2)(b) of Schedule C must also be met. Under this section the ministry is only authorized to provide dentures as a basic dental service *to a person whose dentures are more than 5 years old*. The ministry argues that the appellant is not eligible for replacement dentures under Schedule C of the Regulation because it has been less than 5 years since the appellant received a complete set of dentures.

Ministry policy

The ministry explains that the replacement dentures the appellant received in May 2018 were covered under ministry policy as "a one-time exception to the five-year replacement regulation." The ministry explains that PBC is authorized to grant an exception when the person meets certain requirements. The

ministry accepts that the appellant met those requirements because he has PWD designation and had satisfied the ministry that the loss of the dentures was beyond his control and that failure to obtain replacement dentures would result in his compromised health.

The appellant explains that he received the replacement dentures in May 2018 after his dentures were stolen from the medical clinic he attended for his medication. The appellant explains that unfortunately, his dentures were stolen again (later in 2018) under similar circumstances when he removed his dentures and placed them at his side in order to receive the granular medication from the nurse.

The appellant testified that he does not know how or why the theft occurred once, and especially twice, but the granular medication was a new part of his routine; changes to his routine can be difficult to manage in light of his medical conditions; he never expected anyone to steal dentures, and he has finally learned to be more careful at the clinic. The advocate testified that thefts from the clinic are always taken seriously and investigated but the security footage does not show every situation as there can be people or objects in the way. The advocate testified that the clinic can take no responsibility for lost or stolen property as the clinic's insurance does not cover those situations.

The ministry's *Dental Supplement - Denturist* policy, included with the record of decision, indicates that "coverage for dentures is normally limited to once per arch every five years" but an exception is made when a partial denture needs to be replaced by complete dentures. The ministry's *Schedule of Fee Allowances - Denturist* states that complete dentures *are an eligible item once every five years. The replacement of dentures within five years of original insertion will normally not be paid by the ministry.*

Neither the denture policy nor the associated fee schedule describes an exception for full dentures or the requirements that must be met for an exception to be made. The ministry explains the exception in the reconsideration decision but has not included any other policy documents that cover a complete set of replacement dentures.

Additional submissions

Regarding the appellant's additional evidence which the panel has admitted, the appellant argues that the ministry has the authority to grant exceptions "outside of the *one-time only* set out in legislation." The advocate relies on the case of Client B who was approved for replacement dentures twice under the ministry's policy. The advocate argues that the appellant and Client B have very similar circumstances "but using very similar information, the Ministry approved one case and denied another."

The advocate notes that the ministry accepts that both clients have been in receipt of ministry assistance for at least two years; that the theft of each of their dentures was beyond the client's control, and that failure to provide replacement dentures would result in compromised health for both the appellant and Client B. Additionally, the ministry found that Client B was "eligible for replacement dentures."

In response to questions at the hearing, the ministry explained that requests for dental supplements are decided on a case by case basis. The ministry stated that a further exception can be made "in very unique life-threatening circumstances" and on the basis of other factors but for the most part, the ministry will apply the policy to authorize a one-time exception only. In response to a further question, the ministry explained that the "one-time exception" is an internal policy that applies within any five year period.

Panel majority decision - Section 4(2)(b) of Schedule C EAPWDR

Based on the evidence provided for the reconsideration, the majority of the panel finds that the ministry reasonably determined it was not authorized to cover the cost of replacement dentures as requested by the appellant in late 2018. The statement from PBC dated June 13, 2019 indicates the appellant received complete upper and lower dentures on October 30, 2017 at a cost of \$581.25 each (fee codes 31310 and 31320 in the *Schedule of Fee Allowances - Denturist*). Therefore, under section 4(2)(b) of Schedule C the ministry was not authorized to cover another set of dentures until October 31, 2022 despite providing the appellant with replacement dentures as a policy exception in May 2018.

After considering the appellant's additional evidence which the panel has admitted, the majority of the panel finds that the reconsideration decision is still reasonably supported by the evidence. The ministry denied the appellant's request for replacement dentures on June 14, 2019 and approved Client B's request on June 18, 2019 (despite similar circumstances and similar supporting documentation) but the majority of the panel finds that there are enough factual differences between the appellant's situation and that of Client B to explain the ministry's arguably uneven application of its denture policy.

For example, while both clients had their dentures stolen at the same medical clinic while waiting to receive a granular medication, the additional submissions indicate that Client B would have been eligible for dentures prior to 2019 even if the ministry had not approved a replacement set of dentures in the June 18, 2019 reconsideration decision. The ministry's record of decision indicates that Client B received upper and lower dentures on May 9, 2012 and utilized the "one-time exception" when a replacement set of dentures was provided in April 2016. Under the five-year period set out in section 4(2)(b) of EAPWDR Schedule C, Client B would have been eligible for replacement dentures as of May 10, 2017. In the result, the second use of an exception by Client B occurred after Client B was eligible for a replacement set of dentures.

By contrast, the appellant received his dentures on October 30, 2017 (as confirmed by the PBC *AdminNet* statement) and used the ministry's one-time policy exception for the replacement dentures he received on May 29, 2018. Thus, the appellant would not be eligible for another set of dentures until October 31, 2022. Based on the reconsideration record in the appellant's case as well as the additional submissions regarding Client B, the majority of the panel finds that the ministry's reconsideration is reasonably supported by the evidence as applied to the Regulation.

Panel majority analysis - Section 69 EAPWDR

Section 69 of the Regulation authorizes the minister to provide certain health supplements for persons who are otherwise not eligible for health supplements under the EAPWDR if the minister is satisfied that the person faces a direct and imminent life threatening health need and the health supplement is necessary to meet the need. Section 69 includes other requirements as well, and the only health supplements the minister is authorized to provide under this section of the Regulation are the supplements set out in section 2(1)(a) [medical supplies], section 2(1)(f) [medical transportation], and section 3 [medical equipment and devices] of Schedule C.

The ministry argues that it is not authorized to cover replacement dental services under section 69 because the appellant has not provided any information to indicate that he faces a direct and imminent life-threatening health need. The ministry argues that in any event, dental and denture supplements are not set out in this section of the Regulation.

The appellant argues he has provided sufficient information to demonstrate that he has an imminent, life threatening health need for replacement dentures. The appellant describes serious limitations to his dietary intake as he is not able to chew nutritious foods without dentures. The appellant reports weight loss that presents a health risk and states that he has choked on food on three occasions and one of these occasions was serious enough to require a hospital visit.

The appellant reports that he is not sleeping well "due to the stress and anxiety being without teeth" and he has withdrawn from his regular social routines due to embarrassment. The appellant's physician, as well as his social workers (in the submissions on appeal), report a significant decline in the appellant's mental and physical health since the dentures were stolen.

The physician confirms that without dentures the appellant is "unable to eat proper and varied nutrition and his health is at imminent risk of further deteriorating if he is unable to have his dentures replaced." The ministry acknowledges in the reconsideration decision that "failure to provide replacement dentures would result in your compromised health."

Panel majority decision – section 69

The panel unanimously finds that the ministry reasonably determined the appellant was not eligible for replacement dentures as a life threatening health need under section 69. There is sufficient evidence from the appellant and his health team to establish that replacement dentures are necessary to meet a direct and imminent life-threatening need but as noted by the ministry, section 69 does not apply to dental supplements.

Under section 69, the minister is authorized to provide the medical supplies, medical transportation, and medical equipment and devices set out in Schedule C of the Regulation as long as other legislative requirements for these supplements are met. The panel is sympathetic to the appellant's circumstances but unfortunately dental supplements including dentures are not available under section 69 and are not included with the medical equipment and devices described therein. The panel unanimously finds the ministry reasonably applied the legislation in determining that the appellant is not eligible for replacement dentures under section 69 of the Regulation.

Panel majority conclusion

The ministry determined the appellant is not eligible for replacement dentures under section 4(2)(b) of Schedule C and section 69 of the EAPWDR. Based on the information and records that were before the minister at the reconsideration as well as the appellant's additional submissions on appeal, a majority of the panel finds that the reconsideration decision was reasonably supported by the evidence and was a reasonable application of the legislation. The panel majority confirms the decision. The appellant is not successful on appeal.

Dissenting Reasons

One panel member would rescind the ministry decision for the following reasons. The additional evidence, unanimously allowed by the panel, gave rise to questions about how the ministry makes decisions, specifically regarding the Pacific Blue Cross policy which allows "one-time exceptions" to the five year replacement period. The ministry representative confirmed that ministry staff relies heavily on legislation, regulations and policy in determining decisions. The ministry representative confirmed such reliance ensures equity, consistency, and fairness in decision making. The ministry representative acknowledged he was not involved in either the reconsideration decision of the appellant of this appeal or the reconsideration decision of another Ministry client who had very similar circumstances to that of the appellant.

The additional evidence refers to a case whereby a Ministry client's claim was approved on June 18, 2019 for a set of new dentures despite the fact that this same client received a "one time exception" in 2016 for a new set of dentures, which is less than the required five years stipulated in EAPWD Regulation Scheduled C, Section 4(2)(b). The request was made in 2019 because the client had lost the dentures dispensed in 2016. He met all other requirements. However, the appellant's claim was denied on June 14, 2019 because "you already received a 'one time' exception to the ministry's 5-year replacement regulation on May of 2018." The appellant met all other requirements, including the requirements outlined in s 69 of the Employment and Assistance for Persons with Disabilities Regulations.

In the June 14, 2019 reconsideration decision of the appellant the ministry stated:

Ministry Policy allows for PBC to authorize a one-time exemption to the five-year replacement regulation if your request meets the following requirements:

- You are currently a recipient with PWD designation and have been in receipt of income assistance or disability assistance for at least two years.
- The dentures being replaced were lost or damaged beyond repair, and the loss or damage was beyond your control.
- Failure to provide replacement dentures would result in your compromised health.

The minister finds the circumstance in which your dentures were lost was beyond your control and your doctor has confirmed that failure to provide you with replacement dentures would result in your compromised health. However as PBC has confirmed you have already been granted an exception to the 5-year replacement regulation on May 29, 2018 the ministry is not permitted to authorized further exception to the regulation because policy allows a "one-time" exception only."

The ministry representative was asked if the "one time exception" is a lifetime exemption or an exemption once every five years. The ministry representative responded that he was not 100% sure, but he did not think it was a lifetime exemption. The exemption is not part of legislation or regulation but is part of a Pacific Blue Cross policy. The panel did not have access to this policy. It appears a great deal of weight is given to this policy in how the ministry made its decision. Although the two cases are very similar, the outcomes of the decisions are very different: one claim was approved, the other was denied.

Because of the apparent inequity and inconsistency in how the Ministry arrives at decisions in these cases, I consider the decision made by the Ministry to be unfair to the appellant and therefore an unreasonable application of the applicable enactment in the circumstances of the appellant and would rescind the decision.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input type="checkbox"/> UNANIMOUS <input checked="" 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 checked="" type="checkbox"/> or Section 24(1)(b) <input 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	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019-07-16

PRINT NAME Diane O'Connor - Dissenting	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019-07-16
PRINT NAME Adam Shee	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019-07-16