

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") reconsideration decision of May 24, 2019 (the "Reconsideration Decision"), which denied the Appellant's request for coverage for various dental treatments that were not provided for in the Schedule of Fee Allowances- Dentist (the "Fee Schedule"), as set out in Schedule C to the *Employment and Assistance For Persons With Disabilities Regulation* ("EAPWDR").

**PART D – RELEVANT LEGISLATION**

Sections 63 and 64 of the EAPWDR  
Sections 1, 4, and 5 of Schedule C to the EAPWDR

**PART E – SUMMARY OF FACTS**

The Appellant is a recipient of disability assistance.

The information before the Ministry at the time of the Reconsideration decision included:

- A letter from a dental specialist, dated October 22, 2018 (the “Specialist Letter”), in which the specialist indicates that:
  - The Appellant’s tooth #16 (the “Tooth”) is critical for the Appellant’s function as it is the last molar on the upper right hand side;
  - The Tooth will require endodontic treatment;
  - The Appellant sustained complications and possible blockage from a previous treatment;
  - There is evidence of infection at the tips of all three roots of the Tooth
  - Retreatment and surgery is the recommended course of action;
- A cost estimate, dated October 19, 2018 (the “Estimate”) for the following procedures:
  - CBCT Scan;
  - X-Ray Peripheral;
  - Endodontic Exam; and
  - Codes 01801 (Exam and Diagnosis), 02111 (Radiograph/Intraoral – Periapical/Single Film), and 07011 (Radiograph/CBCT/Small Field of View);
- A Pacific Blue Cross predetermination, dated November 20, 2018 (the “Predetermination”) for the following procedure codes:
  - 04312 (Test and Lab Exams/Biopsy/Soft Tissue – By Incision);
  - 23321 (Tooth Coloured Restoration/Permanent Teeth/Bonded – Molars/One Surface);
  - 33145 (Root Canal/Retreatment of Previously Completed Therapy);
  - 34131 (Periapical Services/Apicoectomy/Maxillary Molar/One Root); and
  - 34232 (Periapical Services/Retrofilling Performed in Conjunction With Apical Surgery/Two Canals);
- An undated patient fees form for the procedures referenced in the Predetermination;
- The Appellant’s Request for Reconsideration, dated April 25, 2019 (the “RFR”), in which the Appellant requested an extension for her reconsideration;
- The Ministry’s “Dental Supplement Dentist” booklet, which contains the schedules referenced in Schedule C to the EAPWDR for dental services and procedures;

Following the Reconsideration, a letter, dated May 24, 2019, was delivered from the reconsideration officer who authored the Reconsideration Decision to the Appellant’s dentist, setting out that, following reconsideration, the Ministry was authorizing the following procedure codes:

- 04312 (Test and Lab Exams/Biopsy/Soft Tissue – By Incision);
- 23321 (Tooth Coloured Restoration/Permanent Teeth/Bonded – Molars/One Surface);
- 34131 (Periapical Services/Apicoectomy/Maxillary Molar/One Root); and
- 34232 (Periapical Services/Retrofilling Performed in Conjunction With Apical Surgery/Two Canals); and
- 02111 (Radiograph/Intraoral – Periapical/Single Film);

In her Notice of Appeal, filed July 2, 2019, the Appellant described the history of the Tooth which included a root canal which resulted in complications. The Appellant describes having had a file broken off during a previous root canal treatment on the Tooth. The Appellant also described having spent the previous 8 months suffering from pain because of the lack of any coverage for the recommended treatment of the Tooth and the fact that the Tooth has become infected.

The Appellant also described being at a loss to understand the Ministry's decision to deny coverage by reference to fee schedules and maximum dollar amounts.

At the hearing of the appeal, the Appellant repeated some of the lengthy history of her efforts to obtain coverage from the Ministry for treatment of the Tooth. She also described some of the efforts that she had made to get the dentist who had originally performed the procedure on the Tooth to fix the complications and that she had received advice that there was likely no way to pursue a claim against that dentist due to the fact that the complications she has suffered were considered an "acceptable risk" of the procedure.

When asked if there were other potential treatments that had been discussed, the Appellant advised that the Tooth may need to be extracted in the future, in any event, and that an extraction and implant was the optimal solution.

The Appellant described feeling like the situation with the Tooth has been slipping through the cracks for 8 years.

The Panel admits the information contained in the Notice of Appeal and provided by the Appellant at the hearing of the appeal as written and oral testimony, respectively, in support of information that was before the Ministry at the time of the Reconsideration Decision, in accordance with section 22(4) of the *Employment and Assistance Act*.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant was not eligible for coverage for requested dental treatments that were not provided for in the Fee Schedule, as set out in Schedule C to the EAPWDR.

**Applicable Legislation**

Section 63 of the EAPWDR authorizes the Ministry to pay dental supplements set out in section 4 of Schedule C 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,
- (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.

Section 64 of the EAPWDR authorizes the Ministry to pay the emergency dental supplements set out in section 5 of Schedule C to the EAPWDR:

**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.

Section 1 of Schedule C to the EAPWDR contains the definitions used in the provisions of Schedule C:

**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 hygienist"** means a dental hygienist registered with the College of Dental Hygienists established under the *Health Professions Act*;

**"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*;

**"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

(b) if provided by a denturist,

- (i) is set out in the Schedule of Fee Allowances — Emergency Dental — 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 the person receiving the service;

...

Section 4 of Schedule C to the EAPWDR describes what dental supplements are available under 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 relining or a rebase of dentures may be provided as a basic dental service only to a person who has not had a relining or rebase of dentures for at least 2 years.

Section 5 of Schedule C to the EAPWDR sets out that the supplements under section 64 of the EAPWDR are emergency supplements:

**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.

**Panel Decision**

As a recipient of disability assistance, the Appellant is a person entitled to both dental supplements and emergency dental supplements, pursuant to sections 63 and 64 of the EAPWDR, provided that she meets the criteria set out in those sections and in sections 4 and 5 of Schedule C to the EAPWDR.

Section 4 of Schedule C to the EAPWDR sets out that dental supplements may be paid for requested basic dental services, which are defined in section 1 of Schedule C as services set out in the "Schedule of Fee Allowances — Dentist" if the requested service is provided by a dentist, the "Schedule of Fee Allowances — Denturist" if the requested service is provided by a denturist, or the "Schedule of Fee

Allowances — Dental Hygienist” if the requested service is provided by a dental hygienist. In order for a requested basic dental service to be eligible for coverage as a dental supplement, however, it *must* be provided for in one of the above described schedules.

Likewise, section 5 of Schedule C to the EAPWDR sets out that emergency dental supplements may be provided for emergency dental services. As defined in section 1 of Schedule C, an emergency dental service is one that is necessary for the “immediate relief of pain” *and* is set out in the “Schedule of Fee Allowances — Emergency Dental — Dentist” if the service is provided by a dentist or the “Schedule of Fee Allowances — Emergency Dental — Denturist” if the service is provided by a denturist. Like a basic dental service, in order for a requested emergency dental service to be eligible for coverage as an emergency dental supplement, it *must* be provided for in one of the above described schedules, in addition to being necessary for the “immediate relief of pain,” a criterion that the Appellant almost certainly meets.

The fee codes for which dental supplements and emergency dental supplements were denied to the Appellant by the Ministry are 01801 (Exam and Diagnosis), and 07011 (Radiograph/CBCT/Small Field of View), and 33145 (Root Canal/Retreatment of Previously Completed Therapy). Upon a review of the schedules described under the definitions of “basic dental services” and “emergency dental services”, the panel notes that none of the above fee codes are referenced. There is simply *no* legislative discretion afforded to the Ministry to provide coverage for services that are not set out in those schedules. In effect, the Ministry is statutorily unable to provide supplements in respect of the treatments for which the Appellant was denied coverage.

In view of the foregoing, the panel finds that the Reconsideration Decision reasonably applied the relevant legislation. In actual fact, the Reconsideration Decision was the only decision that the Ministry was legislatively authorized to make. The Appellant is not successful in this appeal.



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  
Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)  
2019/09/17

PRINT NAME  
Kevin Ash

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)  
2019/09/16

PRINT NAME  
David Roberts

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)  
2019/09/17