

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 September 6, 2019 (the “Reconsideration Decision”), which denied the Appellant’s request for a dental supplement as the requested items, replacement upper and lower dentures, had previously been provided to the Appellant within the past five years, making the Appellant ineligible, pursuant to section 4(2) of Schedule C to the *Employment and Assistance For Persons With Disabilities Regulation* (“EAPWDR”).

PART D – RELEVANT LEGISLATION

Sections 63, 64, and 69 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:

- the Dental Supplement: Denturist schedule of fees, which includes the Schedule of Fee Allowances — Denturist and the Schedule of Fee Allowances — Emergency Dental — Denturist, setting out the coverages available to recipients of disability assistance under the Pacific Blue Cross plan to which the Ministry subscribes;
- a PBC claim form for:
 - two specific nature exams on April 3, 2019 and February 15, 2019;
 - a complete maxillary denture tissue reconditioning on April 3, 2019; and
 - a complete mandibular denture tissue reconditioning on April 3, 2019;
- a Standard Dental Claim Form- Denturist from the Appellant's dentist, requesting coverage for the following fee codes:
 - 10104, which corresponds to a "specific exam"
 - 31310, which corresponds to a "complete maxillary denture"; and
 - 31320, which corresponds to a "complete mandibular denture";
- the Appellant's request for reconsideration ("RFR"), dated August 22, 2019, which included:
 - lab test results from July 5, 2019 and August 15, 2019, which show, among other things, that the Appellant's ferritin level was 12, indicating an iron deficiency; and
 - a handwritten note from the Appellant setting out that the Appellant:
 - had been suffering from pain in his dentures for several weeks;
 - had gums pain even from eating watermelon;
 - was experiencing disruptions in sleep and having emotional and mental issues;
 - because of the Appellant's dietary changes, caused by the denture pain, the Appellant was having difficulty passing solids;
- a letter from the Appellant's doctor, dated August 26, 2019, in which the doctor wrote that the Appellant "requires urgent reconsideration of (the Appellant's) dentures due to extreme dental pain that is causing worsening of (the Appellant's) overall health condition."

In the Appellant's Notice of Appeal, dated September 16, 2019, the Appellant stated that "my physical, mental, and emotional health is deteriorating daily" and that "it is painful to try chewing even bananas or watermelon (examples)."

Subsequent to filing the Notice of Appeal, the Appellant submitted another letter from the Appellant's doctor, dated October 2, 2019 (the "October 2 Letter"), which reiterated that the Appellant "requires urgent reconsideration for renewal of (the Appellant's) dentures due to severe dental pain that is limiting (the Appellant's) ability to eat and causing worsening of (the Appellant's) overall health condition."

At the hearing of the appeal, the Appellant submitted three additional documents for the panel's consideration:

- a letter, dated September 4, 2019 (the "September 4 Letter"), from the Appellant's dentist, in which the dentist stated:

- that the Appellant was experiencing a lot of trouble with the Appellant's dentures;
- that many steps had been taken to alleviate the Appellant's pain, none of which had succeeded in doing so; and
- that, in the opinion of the dentist, only a replacement set of dentures would solve the Appellant's ongoing pain;
- a letter, dated October 16, 2019 (the "Ministry Letter"), from the Ministry, denying the Appellant a supplement for additional protein to be added to the Appellant's diet; and
- a letter, dated January 12, 2018 (although it appears to have been misdated, based on the timeline given by the Appellant in respect of the issues caused by the dentures), from a doctor who had been treating the Appellant, prescribing a protein drink for the Appellant which was to be taken three times per day, to deal with what was described as the Appellant's chronic malnutrition related to ongoing dental health issues.

At the hearing of the appeal, the Appellant stated that the Ministry authorized and covered the cost of dentures in or about late 2015 for which the Appellant was grateful. Initially, the Appellant stated, the dentures did not cause pain and that it took approximately 3 years before the Appellant started to experience pain. The Appellant indicated that the pain may have started in late 2018 or early 2019. The Appellant also stated that it is not clear what is causing the pain but that adjustments undertaken by the Appellant's dentist has not alleviated the pain or the issues with the dentures. The Appellant also described the anxiety around adjustments caused by a fear that the adjustments will not solve the problem.

The Appellant described a number of different types of foods which, when eating, cause pain. In addition to watermelon, the Appellant also indicated that, in order to eat an apple, it must be sliced into extremely thin slices. The Appellant also described experiencing pain when eating other foods, including crackers. The Appellant advised that the dentist has indicated that a replacement set of dentures should alleviate the problems and pain that the Appellant is experiencing, which is consistent with the opinion of the dentist set out in the September 4 Letter.

The representative of the Ministry set out that the Ministry was relying on the Reconsideration Decision.

The panel admits the oral evidence of the Appellant as oral testimony in support of the records which were before the Ministry at the time of the Reconsideration Decision, pursuant to section 22(4) of the *Employment and Assistance Act* (EAA").

Likewise, the panel admits into evidence the September 4 Letter, the October 2 Letter, and the letter, which was dated January 12, 2018, as written testimony in support of the records which were before the Ministry at the time of the Reconsideration Decision.

The panel does not admit the Ministry Letter, which pertained to a request by the Appellant for an entirely different health supplement and is not in support of the records before the Ministry for this Reconsideration Decision.

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 a dental supplement for replacement dentures by application of section 4(2) of Schedule C to the EAPWDR, which provides for a five year waiting period for replacement dentures, and because replacement dentures are also not provided for in the Schedule of Fee Allowances — Emergency Dental — Denturist.

Applicable Legislation

Section 63 of the EAPWDR authorizes the Ministry to provide dental supplements to persons who meet the criteria 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 provide 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 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;

...

Section 4 of Schedule C to the EAPWDR describes the dental supplements that are available under Schedule C to the EAPWDR:

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.

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.

Section 69 of the EAPWDR authorizes the Ministry to provide emergency health supplements in specific circumstances:

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).

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 the criteria set out in sections 4 and 5 of Schedule C to the EAPWDR is met.

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. The Appellant's request for dentures is provided for in section 4(2) of Schedule C to the EAPWDR which limits the provision of dentures as a "basic dental service" to persons who have either "never worn dentures" or "whose dentures are more than 5 years old. The five year limit is referenced again in the "Schedule of Fee Allowances — Denturist." Neither the EAPWDR nor the Schedule of Fee Allowances — Denturist grant the Ministry any discretion to provide dentures, as a basic dental service, on any basis other than that set out in section 4(2) of Schedule C to the EAPWDR. In the result, the panel finds that the Reconsideration Decision was a reasonable application of section 4(2) of the EAPWDR given the Appellant's evidence that the Ministry had originally approved dentures in or about late 2015.

The Reconsideration Decision also referenced a Ministry policy that provides for a one time exemption to the five year replacement policy where an applicant has been in receipt of disability assistance for at least two years, the dentures are required to replace dentures that were lost or damaged through no fault of the applicant, and that a failure to replace the dentures would result in the applicant's health being compromised. Although this policy is not provided for in the EAPWDR, the Ministry determined that the Appellant had met all of the above criteria except that the Appellant's current dentures were neither lost nor damaged. The panel finds that the Ministry reasonably applied this policy as well, given that the Appellant's dentures were not lost and there is no reference to the dentures having been damaged in any of the letters provided by the Appellant's doctor or denturist.

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. However, the fee codes for which dental supplements were denied to the Appellant by the Ministry are all ones that fall under the “Schedule of Fee Allowances — Denturist”. None of the services requested had codes which were covered under the “Schedule of Fee Allowances — Emergency Dental — Denturist.” While the evidence suggests strongly that the Appellant would satisfy the criteria that an emergency supplement is necessary for the “immediate relief of pain”, the “Schedule of Fee Allowances — Emergency Dental — Denturist” does not provide for replacement dentures and, instead, only provides for denture relines, repairs, and adjustments. Although the Ministry never specifically addressed whether the Appellant could be eligible for replacement dentures as an emergency dental service in the Reconsideration Decision, the panel finds that the Ministry did not have the authority to authorize replacement dentures as an emergency dental service either.

Finally, the Ministry considered the applicability of section 69 of the EAPWDR, which authorizes it to provide health supplements for persons facing a direct and imminent life threatening need. However, as noted in the Reconsideration Decision, the supplements which may be provided for under section 69 of the EAPWDR are limited to the medical equipment and devices listed in sections 3.1 through 3.12 of Schedule C to the EAPWDR, the medical and surgical supplies specifically described in section 2(1)(a)(i) of Schedule C to the EAPWDR, and transportation costs described in section 2(1)(f) of Schedule C to the EAPWDR. In the result, in addition to the fact that section 69 of the EAPWDR only applies to persons who are not otherwise eligible for supplements (and, in this case, the Appellant is otherwise eligible for health supplements), the list of supplements which may be provided under section 69 of the EAPWDR does not include items that would ordinarily be provided as basic or emergency dental services.

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/October/28

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/October/28

PRINT NAME

Julie Iuvancigh

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/October/28