

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“ministry”) Reconsideration Decision dated August 29, 2019, which denied the appellant’s application for replacement of full upper dentures. The ministry found that there is no authorization to provide coverage for dentures if coverage for dentures has been provided within the past five years. The ministry determined that the appellant received dentures in 2017 and was provided a replacement denture in 2018 as a one-time exemption to the five year replacement period, however there is no provision in ministry policy for a further exemption. The first appeal of this decision resulted in a decision by a Panel of the Employment and Assistance Appeal Tribunal (“EAT”) to rescind the ministry decision on the basis that the ministry did not take all relevant legislation into account. The ministry then provided a subsequent decision finding the appellant ineligible for the supplement on the original grounds that the appellant still did not meet the eligibility criteria, and stating that the rescinded decision did not mean that the appellant was approved for the supplement, but that a new decision was required.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 23, 62, 63, 63.1, 64, 69; Schedule C, sections 1, 4, 4.1, 5; Schedule of Fee Allowances – Dentist, Emergency Dental – Dentist, Crown & Bridgework.

PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- The appellant's Request for Reconsideration, dated June 17, 2019.
- The ministry's original Reconsideration Decision dated July 8, 2019.
- The appellant's original Notice of Appeal to the Tribunal, undated.
- An EAAT decision dated August 16, 2019, which rescinded the ministry decision "because it did not correctly and completely consider the appellant's request in light of all of the relevant legislation".

The appellant provided additional submissions before the appeal was heard:

- Written argument.
- A questionnaire completed by a physician dated October 16, 2019.
- A letter from the appellant dated October 24, 2019.
- A letter from the appellant's landlord "To Whom it May Concern" undated.
- Copies of ministry policy.

The ministry provided an additional submission before the appeal was heard:

- A letter from the Manager, Reconsideration, Appeals and Administrative Fairness Branch dated November 18, 2019, stating that ministry policy with respect to section 23(3.1) recently changed to provide a previously denied supplement if the EAAT rescinds a ministry decision to deny a supplement for any reason.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry reconsideration decision dated August 29, 2019, which denied the appellant's application for replacement of full upper dentures. The ministry found that there is no authorization to provide coverage for dentures if coverage for dentures has been provided within the past five years. The ministry determined that the appellant received dentures in 2017 and was provided a replacement denture in 2018 as a one-time exemption to the five year replacement period, however there is no provision in ministry policy for a further exemption.

Legislation**EAPWDR****Effective date of eligibility****23**

(3.01) If the minister decides, on a request made under section 16 (1) [*reconsideration and appeal rights*] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

- (a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and
- (b) the applicable of the dates referred to in section 72 of this regulation.

(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).

General health supplements

62 The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] 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.

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.

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.

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.

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.

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

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 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.

Dental Supplement – Dental – Dentist, Emergency Dental, Crown and Bridgework

Note: Relevant sections not reproduced here for brevity.

The appellant's position is that his appeal should be considered successful because the previous EAAT panel rescinded the ministry decision and he should be provided with the supplement.

The ministry's position is that the appellant is still ineligible for the requested supplement, however their policy has recently changed to interpret section 23(3.01) EAPWDR so that if the EAAT rescinds a ministry decision to deny a supplement, the ministry shall provide the supplement under s.23(3.1) EAPWDR regardless of whether eligibility criteria have been met.

The panel will not deal with the question of whether the appellant met the eligibility criteria for provision of the requested dental supplement nor the appellant's arguments concerning the application of discretion by the ministry but the matter of whether the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel notes the language of section 23(3.1) EAPWDR: "(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01)". There is no reference to the reasons for a tribunal rescinding a decision. The panel also notes that the ministry has changed their interpretation and the effect of a tribunal rescinding a decision of the minister refusing a supplement to the provision of the supplement under that circumstance.

The panel finds that the ministry's denial of the appellant's application for a dental supplement after an EAAT Panel had rescinded their decision was not a reasonable application of s. 23(3.1) EAPWDR in the circumstances of the appellant. The plain language reading of that section supports the recent ministry policy of providing a supplement when the EAAT rescinds the decision regardless of whether eligibility criteria have been met.

The panel rescinds the ministry decision.

The appeal is successful.

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

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 DEC 4

PRINT NAME

David Roberts

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 DEC 4

PRINT NAME

Adam Rollins

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 DEC 4