

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration dated November 7, 2019 which held that the appellant was not eligible for coverage of dental fees that were in excess of the rates established in the Schedule of Fee Allowances – Dentist and Emergency Dental-Dentist.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 25;
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 63, 64.
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C.

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of reconsideration consisted of the following:

1. The appellant was a recipient of disability assistance;
2. The appellant was eligible for coverage for basic dental services, emergency dental services, and crown/bridgework as stated in the EAPWDA and EAPWDR;
3. On May 28, 2019 and June 5, 2019, the appellant received dental services from a dentist (the “Dental Services”);
4. The Dental Services were required as a prerequisite of the appellant’s eligibility for a serious health procedure;
5. The cost of the Dental Services was \$560.60; and
6. The ministry paid \$332.07 towards the cost of the Dental Services through Pacific Blue Cross.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision that the appellant was not eligible for coverage of dental fees that were charged in excess of the rates established by legislation was reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstance.

The relevant legislation is:

EAPWDA**Delegation of minister's powers and duties**

- 25** (1) Subject to the regulations, the minister may delegate to any person or category of persons any or all of the minister's powers, duties or functions under this Act except
- (a) the power to prescribe forms, and
 - (b) the power to enter into an agreement under section 21 (2) or (2.1), unless section 21 (2.2) applies in relation to the agreement.
- (2) A delegation of the powers, duties or functions of the minister must be in writing and may include any limits or conditions the minister considers advisable.

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.

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.

Schedule C

- 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,

"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

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.

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.

The panel notes that the Schedule of Fee Allowances — Dentist and Schedule of Fee Allowances — Emergency Dental — Dentist is published by the Ministry of Social Development and Poverty Reduction.

The Appellant's Position

The appellant's submission in the Notice of Appeal is that the dental work was required and was an emergency. The appellant's submissions during the hearing addressed the issues arising from their underlying medical condition and a requirement to undergo a serious health procedure. The appellant stated that the Dental Services relevant to this appeal, as well as other dental work and procedures, are required for the appellant to be eligible for surgery.

The appellant also submitted that because of their health they cannot undergo any form of sedation and the dentist that performed the Dental Service was the only dentist that was willing to perform the treatment without using sedation.

The appellant confirmed that the ministry had paid \$332.07 towards the cost of the Dental Services on behalf of the appellant and that this appeal involved only the \$228.53 that was outstanding.

The Ministry's Position

The ministry stated that it is very sympathetic to the appellant's situation.

The ministry's position was that it had no authority to authorize payments for dental work in an amount that exceeded the Schedule of Fee Allowances. The ministry provided the following chart in its reconsideration decision:

Fee Code	Description	Dentist Fees	Ministry Rate
02142	Radiographs, Bitewing, Two Images	23.70	13.59
01204	Examination and Diagnosis, Specific Examination and Specific Situation	38.90	21.75
23323	Permanent Molars, Bonded, Three Surfaces	294.00	174.08
23312	Permanent Bicuspid, Bonded, Two Surfaces	204.00	122.65
	Total	560.60	332.07

The ministry also stated that there were no other statutory provisions that permitted the payment of the difference between the amount invoiced for the Dental Services and the amount permitted under the Schedule of Fee Allowances.

The Panel's Decision

The panel notes that the Dental Services were required by the appellant and had to be provided under unusual circumstances because of the appellant's inability to undergo any form of sedation. The panel accepts that it is reasonable to expect that the provision of the Dental Services in this circumstance is more complicated and time consuming than the same procedure provided under more routine circumstances.

The panel notes that the Schedule of Fee Allowances permits payment of an additional 10% on services billed by a ministry contractor that has a record of specialty noted in the billing system (a Certified Specialist). The panel was told, on appeal, that the dentist in this situation is not a Certified Specialist.

After a detailed review of the legislative regime, the panel does not find that there is any provision that permits payment for dental work in excess of the Schedule of Fee Allowances.

The panel is satisfied that the ministry decision of November 7, 2019, that the appellant was not eligible for coverage of dental fees that were charged in excess of the rates established by legislation was reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstance. The panel therefore confirms the ministry's reconsideration decision and the appellant is not successful on 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

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/Jan/12

PRINT NAME

Don Storch

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Jan/12

PRINT NAME

Margarita Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/01/12