

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated December 13, 2019, in which the ministry determined that the appellant:

- was not eligible for coverage of dental fees above the ministry rates for full upper dentures due to the funding limit imposed by section 1 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), and
- was not eligible for dental implants because they are not one of the services listed in the Schedule of Fee Allowances for basic, emergency, or crown and bridgework dental services.

The ministry also considered the appellant's request under section 57 of the EAPWDR [crisis supplements] and section 69 of the EAPWDR [life-threatening health need], concluding that neither section allowed for the provision of dental services.

PART D – RELEVANT LEGISLATION

EAPWDR – sections 57, 63, 63.1, 64, and 69 and sections 1, 4, 4.1, and 5 of Schedule C
Schedule of Fee Allowances (Dentist, Emergency Dental – Dentist, and Crown and Bridgework)

PART E – SUMMARY OF FACTSInformation before the ministry at reconsideration

The appellant is a recipient of disability assistance.

The appellant's dentist submitted a claim for coverage for an upper denture and two dental implants to Pacific Blue Cross (PBC). The ministry has delegated its powers, duties and functions respecting dental supplements to PBC in accordance with section 34 of the *Employment and Assistance Act*. The claim set out the service codes and dentist fees for the upper denture and implants.

Additional documentation provided in support of the requested dental services included an August 21, 2019 letter from the dentist, a November 18, 2019 letter from the appellant's physician, and the appellant's November 29, 2019 Request for Reconsideration submission. The physician, dentist and appellant explain why they believe that implant support is required for the upper denture – due to bone loss and abnormal bone growth on the roof of the appellant's mouth, the two implants are required to retain and stabilize the denture which would otherwise move around while the appellant was eating.

The dental service codes and the dentist's fees are set out in the table below. Additionally, the ministry rates as identified in the reconsideration decision are listed.

	Tooth No.	Fee Code	Description	Dentist Fees	PBC Rate
Date submitted to PBC: November 26, 2019					
1		51101	Complete Upper Denture	\$1279.00	\$757.50
2	14	79931	Implant Max/Screw & Tri Pin.	\$1500.00	\$0
3	24	79931	Implant Max/Screw & Tri. Pin	\$1500.00	\$0

Information provided on appeal

The appellant's Notice of Appeal (NOA) dated December 19, 2019, which again described the reasons why the implants are required with the upper denture.

At the hearing, the appellant's witness and the appellant described difficulties that the appellant has when eating without an upper denture and with an upper denture that does not stay still, including choking on food and having hard food cut into the appellant's gums. The appellant recognizes that implants are expensive but notes that only two are being requested and that they are needed in order for the denture to function properly and enable the appellant to obtain proper nutrition.

As the information provided on appeal reiterated information available at reconsideration, the panel did not consider it to be additional evidence and therefore a determination as to admissibility under section 22(4) of the Employment and Assistance Act was not required.

At the hearing, the ministry explained the reconsideration decision but did not provide additional evidence.

The arguments of both parties are set out in Part F of this decision.

PART F – REASONS FOR PANEL DECISION**Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant coverage at the dentist's rate for an upper denture and to deny any coverage for dental implants was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Relevant Legislation - EAPWDR**Crisis supplement**

- 57** (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or
 - (b) any other health care goods or services.

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

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

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

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.....

Schedule C - Health Supplements**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....

"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 person receiving the service....

Dental supplements

4 (1.1) The health supplements that may be paid under section 63 [*dental supplements*] are basic dental services.....

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 minister,

(c) that is provided at the rate set out for the service in that Schedule.....

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.

Schedule of Fee Allowances – Dentist**PROSTHODONTICS – REMOVABLE****Adult****Child****Note:**

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

Lab fees are included in the listed fee unless otherwise indicated.

COMPLETE DENTURES

Includes:

- impressions
- initial and final jaw relation records
- try-in evaluation and check records
- insertion
- adjustments (includes 6 months post-insertion care)

51101	Complete Maxillary Denture	757.50	957.20
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Positions of the Parties

The appellant's position is that although approved for an upper denture, the ministry's funding is insufficient to cover the cost of the denture and furthermore, without being secured by two dental implants, the denture will not function properly. The ministry's position is that the legislation sets out limits regarding what dental services are funded and limits on the amount of funding. The ministry maintains that the maximum amount of funding for an upper denture, as set out in the Schedule of Fee Allowances – Dentist, has been approved and that there is no ability to provide funding at the dentist's higher rate. Regarding the dental implants, the ministry's position is that because basic, emergency, and crown and bridgework dental services are defined as being the services listed in the respective Schedule of Fee Allowances, none of which list dental implants, a supplement cannot be provided for dental implants.

Panel's Analysis**Upper Denture**

Section 63 of the EAPWDR enables the ministry to provide funding for an upper denture when certain legislated requirements are met. In the appellant's case, the ministry was satisfied that the requirements were met and funding was approved for an upper denture. However, even when someone is eligible to receive an upper denture, there are legislated limits as to the amount of funding. Specifically, section 4(1.1) of Schedule C provides that the basic dental services that may be provided are those provided at the rate set out in the Schedule of Fee Allowances – Dentist [emphasis added]. The panel notes that the requested upper denture is not listed in the Schedule of Fee Allowances for emergency or crown and bridgework dental services. In this case, the appellant's dentist set the fee for the upper denture at \$1,279.00 whereas the Schedule of Fee Allowances – Dentist sets the fee rate at \$757.50. As the ministry has no discretion and must apply the legislation, the panel concludes that the ministry was reasonable when determining that the funding for the upper denture was limited to \$757.50 and that the appellant was not eligible for funding at the dentist's rate.

Dental Implants

The panel finds that dental implants are not a listed dental service in any of the Schedules of Fee Allowances and therefore are not basic or emergency dental services as defined in section 1 of Schedule C of the EAPWDR or crown and bridgework dental services as defined in section 4.1(1) of Schedule C of the EAPWDR.

Because Schedule C - sections 4 (dental supplements), 4.1 (crown and bridgework supplement) and 5 (emergency dental supplements) – only allow for health supplements for dental services that are included in one of those definitions, the ministry was reasonable in determining that a health supplement could not be provided for dental implants.

Eligibility for dental services as a crisis supplement or a health supplement for an imminent life-threatening need

The ministry also considered whether the appellant was eligible for the requested funding for the upper denture and dental implants under section 57 [crisis supplement] and section 69 [health supplement to meet a direct and imminent life-threatening need]. Section 57(3) states that a crisis supplement may not be provided for a supplement described in Schedule C or any other health care goods or services. Because dental services, whether or not they are described in Schedule C, are considered health care goods or services, the ministry was reasonable in concluding that the appellant was not eligible for the requested funding under this section. Similarly, as health supplements under section 69 may only be provided for certain supplements listed under sections 2 and 3 of

Schedule C, not the sections that deal with dental supplements (sections 4, 4.1 and 5 of Schedule C), the ministry was reasonable in concluding that the appellant was not eligible for the requested funding under section 69 of the EAPWDR.

Conclusion

While the appellant has provided compelling information respecting the need for the upper denture and dental implants, the ministry's reconsideration decision denying the requested coverage for the dental services was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the 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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/01/09

PRINT NAME

Wesley Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/01/09

PRINT NAME

Joseph Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/01/09