

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's (ministry) reconsideration decision dated 30th December 2019, which determined that the appellant was not eligible, by legislation for coverage, for conscious sedation (nitrous oxide), as set out in the Schedule of Fee Allowances -Dentist and Emergency Dental-Dentist. The ministry further determined that:

- there are no exceptions in policy and the ministry has no discretion relating to providing coverage to the appellant for conscious sedation;
- it is not authorized to provide coverage for conscious sedation to persons over 19 years of age under the *Life-Threatening Health Need Provisions* of EAPWDR, Section 69 and Schedule C, as dental and denture supplements are not set out in the said Sections; and
- it is not authorized to provide a *crisis-supplement* for conscious sedation to persons over 19 years of age, because *dental work* is a *health care service* and is described in EAPWDR, Section 57(3) and Schedule C as *basic dental services* and *emergency dental services*, as a result of which the appellant was not to receive a *crisis supplement to cover conscious sedation.*"

PART D – RELEVANT LEGISLATION

-Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) - Sections 57, 63, 64, 65 and 69
-Employment and assistance for Persons with Disabilities Regulation (EAPWDR) - Schedule C, Section 1, 4 and 5
-Regulations and Schedule of Fee Allowances – Dentist, Emergency Dental - Dentist – Effective 1st September 2017

PART E – SUMMARY OF FACTS

The relevant information and evidence before the ministry at reconsideration included the following:

1. An Account Statement dated 27th November 2019 for \$202.99 from a dental clinic for nitrous oxide used for the appellant;
2. Two Pacific Blue Cross (PBC) Claim Records dated 27th November 2019 confirming (i) a PBC payment of \$177.11 against a claim of \$305.00 (for Permanent Bicuspid Bonded Four surfaces- Balance \$127.89) and (ii) no payment from PBC against a claim of \$75.00 for nitrox oxide. In aggregate the unpaid sum amounts to \$202.99 (\$127.89 + \$75.00);
3. A letter dated 12th December 2019 from the appellant's mother that amongst other matters stated that:
 - A completed Request for Reconsideration was attached to the said letter; and
 - As the appellant has autism (a severe mental disability), the appellant qualified for in-office sedation under the following clause:

“GA or IV sedation (in office) will only be considered for coverage for children under 19 years of age where necessary for safe performance of dental treatment, and children and adults with severe mental and physical disability that prevents a dentist from providing necessary treatment without the administration of sedation”
4. A handwritten “Request for Reconsideration” dated 12th December 2019 signed by the mother of the appellant that amongst other matters stated that:
 - The appellant is autistic and has dental abnormalities caused by his medical condition. Consequently, the appellant requires cleaning 3 times a year and is unable to handle dental procedures such as fillings or extractions due to anxiety issues;
 - When the appellant lived in another Province, the cleanings were always done by a dental surgeon in-office under anesthetic;
 - After the appellant moved to British Columbia, the appellant's family was informed that this was not an option and that the procedure would have to be done at a local hospital as a day surgery;
 - In 2013, the appellant had 2 fillings done at a hospital, which was very stressful for him as protocol required an IV inserted, plus several injections. The appellant refused to go back again;
 - Since moving to his hometown in BC, the appellant has been a patient at a local clinic where a doctor suggested that the appellant try to do a filling using in-office nitrous oxide sedation, which was very successful at a cost of \$202.99;
 - The ministry's decision not to cover the cost of in-office sedation for someone with autism is incorrect and should be reviewed -especially as the hospital alternative costs 10 times more;
 - Consideration should also be given to the fact that the appellant's parents (the appellant's caregivers) are retired on fixed incomes, which makes it difficult for them to subsidize these procedures/treatments; and
 - GA or IV sedation (in office) will only be considered for coverage for children under 19 years of age where necessary for safe performance of dental treatment, and children and adults with severe mental and physical disability that prevents a dentist from providing necessary treatment without the administration of sedation.

5. Dental Supplement -Dentist Schedule of Fee Allowance – Dentist, Emergency Dental - Dentist – Effective 1st September 2017.

In addition to the information and evidence described above, the panel reviewed the following additional information in the record of appeal:

1. Ministry’s reconsideration decision dated 30th December 2019, which amongst other matters, noted and stated as follows:

Background

- The Pacific Blue Cross (PBC) claims indicated that on 27th November 2019, a dentist performed a restoration of tooth number 34. The dentist charged \$305.00 for the restoration and the ministry paid \$177.11 for this service. The dentist also charged \$75.10 for nitrous oxide, which was used to facilitate the completion of restoration. The dentist filed a claim for nitrous oxide, which the ministry did not pay, as this treatment is not a covered benefit under the appellant’s plan;
- An Account Statement was submitted to the ministry confirming that the following services were provided and paid for on November 27, 2019.

Description:	Dentist’s Fee	Ministry Rate
White Colored Restoration	\$305.00	\$177.11
Nitrous Oxide	\$75.10	\$00.00
TOTAL	\$380.10	\$177.11
Patient portion: \$202.99 (paid)		

- On 27th November 2019 the appellant’s mother requested reconsideration of the decision to deny coverage for the nitrous oxide. The ministry prepared a reconsideration request for completion by the appellant, but it was mailed to a wrong address;
- On 12th December 2019, the ministry received the appellant’s signed Request for Reconsideration, which had been completed on behalf of the appellant by his mother, who provided the following information:
 - The appellant is autistic and has dental abnormalities caused by his medical condition. Consequently, the appellant requires cleaning 3 times a year and the appellant was unable to handle dental procedures such as fillings or extractions due to anxiety issues;
 - When the appellant lived in another Province, these were always done by a dental surgeon in-office under anesthetic;
 - After the appellant moved to British Columbia, the appellant’s family was informed that this was not an option and that the procedure would have to be done at a local hospital as a day surgery;
 - In 2013, the appellant had 2 fillings done at a hospital, which was very stressful for the appellant as protocol required an IV inserted, plus several injections. The appellant refused to go back again;
 - Since moving to his hometown in BC, the appellant has been a patient at a local clinic where a doctor suggested that he try to do a filling using in-office nitrous oxide sedation, which was very successful at a cost of \$202.99;
 - The ministry’s decision not to cover the cost of in-office sedation for someone with autism

is incorrect and should be reviewed -especially as the hospital alternative costs 10 times more;

- Consideration should also be given to the fact that the appellant's mother and her husband (the appellant's caregivers) are retired on fixed incomes, which makes it difficult to subsidize these procedures/treatments; and
- GA or IV sedation (in office) will only be considered for coverage for children under 19 years of age where necessary for safe performance of dental treatment, and children and adults with severe mental and physical disability that prevents a dentist from providing necessary treatment without the administration of sedation.
- The appellant's mother also provided a letter in which she stated:
 - As someone with autism (a severe mental disability), the appellant qualified for in-office sedation under the following clause:

“GA or IV sedation (in office) will only be considered for coverage for children under 19 years of age where necessary for safe performance of dental treatment, and children and adults with severe mental and physical disability that prevents a dentist from providing necessary treatment without the administration of sedation”

- The appellant was years of age and a recipient of disability assistance. Therefore, he was eligible to receive dental supplements under EAPEDR, Sections 63 and 64 and Schedule C, Sections 4 and 5. This eligibility included General Anesthetic (GA) and IV sedation in a dental office, but no eligibility for conscious sedation (nitrox oxide);
- The appellant was eligible for GA and IV sedation (in-office), as set out in the Preamble to the Schedule of Fee Allowances -Dentist – Dental (page (iv)):
 - Limited coverage for GA/IV sedation in office is available under fee code 92215, as detailed in the information and restrictions noted under fee code 92215 in the Schedule of Fee Allowances – Dental -Dentist. Eligibility for this service must be confirmed prior to treatment (as set out in Eligibility information section on page (v));
 - The parameters for provision of GA/IV sedation in office are set out in Schedule of Fee Allowances- Dental-Dentist on page 10 under the heading Anesthesia. These services are provided under fee code 92215.
- A “Note” under the said section states:

GA or IV sedation (in office) will only be considered for children under 19 years of age where necessary for safe performance of dental treatment and children and adults with a severe mental or physical disability that precludes a dentist from providing necessary treatment without administration of GA or sedation.

- However, the appellant was not eligible for conscious sedation, as a Note under the relevant Section, which describes the parameters for the provision of conscious sedation, as set out on page 22 of the ministry's Schedule of Fee Allowances – Dentist and on page 10 of the Schedule of Fee Allowances – Emergency Dental – Dentist states:

Conscious sedation is only covered for children under 19 years of age and only when necessary for the performance of dental treatment or when the dentist is prevented from providing necessary treatment without sedation.

- The appellant's PBC Claims History indicated that the dentist administered 2 units of nitrous oxide on 27th November 2019 (fee code 92412).
- Conscious Sedation is provided by the ministry as a *basic dental service*.
- The ministry may provide coverage for *basic dental services* as set out in EAPWDR, Section 63 and Schedule C, Sections 1 and 4. The ministry may provide coverage for *emergency dental services* as set out in EAPWDR, Section 64 and Schedule C, Sections 1 and 5.
- The EAPWDR, Schedule C, Section 1 defines *basic dental services* provided by a Dentist as follows:
 - (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.
- The EAPWDR, Schedule C, Section 1 defines *emergency dental services* provided by a Dentist as follows:

“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.
- The above definitions indicate the ministry may only provide coverage for *basic dental services* and *emergency dental services* (provided by Dentists) as set out in the ministry Schedules of Fee Allowances – Dentist and Emergency Dental-Dentist.
- The Notes in the ministry's Schedules of Fee Allowances set out the parameters under which basic and emergency dental services may be provided. They describe who is eligible for these services, as well as the frequency and financial limits associated with each.
- The Notes describing the parameters under which conscious sedation may be provided indicate that these services are only available to persons under 19 years of age. It was noted that the appellant was not under 19 years of age. Therefore, the ministry does not have the legislative authority to provide the appellant with funding for this service.
- There are no exceptions in policy and the ministry has no discretion in this matter.
- For the reasons cited above, the appellant's request for coverage for conscious sedation was denied.

Eligibility for Coverage of Fees in Excess under Life-Threatening Health Need

- The appellant was not eligible for coverage of conscious sedation as a *life-threatening health need*.

- Section 69 of the EAPWDR states that the ministry may provide medical transportation, medical equipment / devices, and some types of medical supplies, to or for a person who is *otherwise not eligible* for the health supplement under this regulation, 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) the person's family unit is receiving 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)
- The ministry acknowledged that the appellant had difficulties receiving dental care without conscious sedation. However, section 69 only applies to medical transportation, medical equipment / devices, and some types of medical supplies (as described in EAPWDR, Schedule C, subsections 2(1)(a), 2(1)(a)(f), and Section 3).
- *Dental and denture supplements are not set out in these sections.* Therefore, the ministry is unable to provide coverage for conscious sedation under Section 69 as a life-threatening health need.

Eligibility for crisis supplement to cover conscious sedation

- Section 57(3) of the EAPWDR states that the ministry may not provide a crisis supplement to obtain a supplement described in Schedule C or for any other health care goods or services. The minister noted that dental work is a health care service and is described in Schedule C as basic dental services and emergency dental services (Appendix B). As a result, the appellant is not eligible to receive a crisis supplement to cover conscious sedation.

CONCLUSION:

The ministry was sympathetic with the circumstances of the appellant's case. However, the ministry determined the following:

- The ministry is not authorized by legislation or policy to provide coverage for conscious sedation to persons over 19 years of age, as set out in the Schedules of Fee Allowances – Dentist and Emergency Dental-Dentist.
 - The ministry is not authorized by legislation or policy to provide coverage for conscious sedation to persons over 19 years of age under Life-Threatening Health Need legislation.
 - The ministry is not authorized by legislation or policy to provide a crisis supplement for conscious sedation to persons over 19 years of age, because dental services are described Schedule C and they are a health care service.
2. An email dated 5th January 2020 from the appellant's mother, which amongst other matters stated as follows:

- a. The ministry reconsider/review the ruling and extend coverage for conscious sedation to adults with mental disabilities;
 - b. Conscious sedation is only covered for children under 19 years of age and only when necessary for the safe performance of dental treatment or when the dentist is prevented from providing necessary treatment without sedation;
 - c. The year old appellant was being denied coverage for conscious sedation for a recent dental procedure (a filling) simply because he's over the age of 19 – regardless of the fact he didn't "outgrow" his autism when he turned 19;
 - d. Although autistics never "age out" of the need to be sedated for dental procedures, it should never be necessary for them to be subjected to a more risky form of sedation than is required (like GA or IV) and nor should any dentist be forced to resort to those when that dentist determined that in-office nitrous oxide sedation is adequate for him/her to safely carry out the procedure in question;
 - e. In 2013, the appellant had 2 fillings done under GA at a hospital - which was an extremely stressful experience for him (IV plus multiple injections as required by their day surgery protocols) and a very expensive one for taxpayers. In-office IV sedation also carried some risks and is quite costly while nitrous oxide – which allows the dentist to carry out the necessary procedure with the lowest possible risk to the patient – is less risky and costs very little;
 - f. The decision/recommendation as to what type of sedation is required to carry out any dental procedure should be a professional one made by the dentist (not by the government or an insurance company) and any sedation should be the least risky/intrusive available – which is why the request was being made for consideration of extension of coverage for conscious (nitrous oxide) sedation beyond the age of 19 years for persons with mental disabilities.
3. Notice of Appeal filed by the appellant dated 6th January 2020, which amongst other matters, stated that:
- "Persons with autism don't age out of the need for sedation, which should be least risky possible."*
4. An email dated 9th January 2020 from the appellant's mother to the Tribunal, attaching a duly executed "Release of Information" form authorizing the appellant's mother, as a "Family Member" and as the "Legal Representative" of the appellant, based upon a Representative Agreement dated 11th May 2011 filed with the ministry, to represent the appellant at the hearing of this appeal.

Based on the foregoing, the panel makes the following findings of facts:

1. The appellant, who is years of age, is a recipient of disability assistance. As such, he is eligible to receive dental supplement under EAPWDR, Sections 63 and 64 and Schedule C, Sections 4 and 5;
2. The appellant's request to the ministry related to coverage for conscious sedation (nitrous oxide) administered by a Dentist, as set out in the Schedule of Fee Allowances -Dentist and Emergency Dental-Dentist, a dental treatment provided to the appellant by a dental clinic on 27th November 2019 for a fee of \$202.99.
3. The ministry's reconsideration decision refers to regulations and Schedule of Fee Allowances for Dentists

PART F – REASONS FOR PANEL DECISION

The issues in this appeal are whether the following four determinations of the ministry are reasonably supported by evidence or a reasonable application of the applicable enactment in the circumstances of the appellant:

- the appellant was not eligible by legislation for coverage for conscious sedation (nitrous oxide), as he is a person over 19 years of age, as set out in the Schedule of Fee Allowances -Dentist and Emergency Dental-Dentist;
- there are no exceptions in policy and the ministry has no discretion relating to providing coverage to the appellant for conscious sedation;
- it is not authorized to provide coverage for conscious sedation to persons over 19 years of age under the *Life-Threatening Health Need Provisions* of EAPWDR, Section 69 and Schedule C, as dental and denture supplements are not set out in the said Sections; and
- it is not authorized to provide a *crisis-supplement* for conscious sedation to persons over 19 years of age, because *dental work* is a *health care service* and is described in EAPWDR, Section 57(3) and Schedule C as *basic dental services* and *emergency dental services*, as a result of which the appellant was not to receive a *crisis supplement to cover conscious sedation*.”

Relevant legislation in this context provides as follows:

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATIONS

Crisis supplement

57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if

- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
- (b) the minister considers that failure to meet the expense or obtain the item will result in
 - (i) imminent danger to the physical health of any person in the family unit, or
 - (ii) removal of a child under the *Child, Family and Community Service Act*.

(2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

(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.

(4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:

- (a) if for food, the maximum amount that may be provided in a calendar month is \$40 for each person in the family unit,

(b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of

(i) the family unit's actual shelter cost, and

(ii) the maximum set out in section 4 of Schedule A or Table 2 of Schedule D, as applicable, for a family unit that matches the family unit, and

(c) if for clothing, the amount that may be provided must not exceed the smaller of

(i) \$100 for each person in the family unit in the 12-calendar month period preceding the date of application for the crisis supplement, and

(ii) \$400 for the family unit in the 12-calendar month period preceding the date of application for the crisis supplement.

(5) Repealed. [B.C. Reg. 248/2018]

(6) Repealed. [B.C. Reg. 248/2018] evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

(7) Despite subsection (4) (b), a crisis supplement may be provided to or for a family unit for the following:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro.

Definitions

61.01 In this Division:

"continued person" means

- (a) a main continued person under section 61.1 (1), or
- (b) dependent continued person under section 61.1 (2);

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was
 - (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and
 - (ii) a person with disabilities on that date,
- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and
- (c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

(2) Subject to subsection (6), a person is a dependent continued person if

- (a) the person was a dependant of a main continued person under subsection (1) on the main

continued person's continuation date and is currently a dependant of the main continued person, or
 (b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

- (a) on a date the family unit includes a person aged 65 or older,
- (b) as a result of a person in the family unit receiving an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act*,
- (c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,
- (d) as a result of a person in the family unit receiving employment income,
- (e) as a result of a person in the family unit receiving a pension or other payment under the *Canada Pension Plan (Canada)*,
- (f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or
- (g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*.

(4) Subject to subsection (5), a person's status as a main continued person under subsection (1) is suspended for a calendar month if

- (a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and
- (b) the person's continuation date is before those immediately preceding 12 calendar months.

(5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit described in subsection (3) (c) or (g).

(6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).

(7) For the purposes of subsection (4),

- (a) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (a), (b), (d) or (f) meets the income test for a calendar month if,
 - (i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and
 - (ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another

person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and

(b) a person who is a main continued person under subsection (1) as a result of having been part

of a family unit identified in subsection (3) (e) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit receives a pension or other payment under the *Canada Pension Plan (Canada)*.

(8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(9) Despite this Division, a person is not eligible, as a dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for a calendar month in which the main continued person's continuation date occurs.

Dental supplement

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 [B.C. Reg. 161/2017]

(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.C. Reg. 161/2017]

(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 - 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 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*; (B.C. Reg. 65/2010)

"dental technician" Repealed (B.C. Reg. 94/2005)

"dentist" means a dentist registered with the College of Dental Surgeons of British Columbia continued under the *Health Professions Act*; (B.C. Reg. 421/2008)

"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;

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, 2009, 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. (B.C. Reg. 65/2010)

(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) \$2000 each period, if provided to a person under 19 years of age, and (B.C. Reg. 161/2017)
- (b) \$1 000 each period, if provided to a person not referred to in paragraph (a), (B.C. Reg. 163/2005)
- (c) Repealed (B.C. Reg. 163/2005)

(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. (B.C. Reg. 94/2005)

(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.C. Reg. 94/2005)
- (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. (B.C. Reg. 94/2005)

(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 to 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.C. Reg. 94/2005)
- (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. (B.C. Reg. 94/2005)

(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.C. Reg. 94/2005)
- (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, 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.C. Reg. 94/2005)
- (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. (B.C. Reg. 430/2003)

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.

General health supplements

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation:

(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required for one of the following purposes:
 - (A) wound care;
 - (B) ongoing bowel care required due to loss of muscle function;
 - (C) catheterization;
 - (D) incontinence;
 - (E) skin parasite care;
 - (F) limb circulation care;

(ii) the supplies are

- (A) prescribed by a medical practitioner or nurse practitioner,
- (B) the least expensive supplies appropriate for the purpose, and
- (C) necessary to avoid an imminent and substantial danger to health;

(iii) there are no resources available to the family unit to pay the cost of or obtain the supplies;

(a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:

- (i) lancets;
- (ii) needles and syringes;
- (iii) ventilator supplies required for the essential operation or sterilization of a ventilator;
- (iv) tracheostomy supplies;

(a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required to thicken food;
- (ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;

(b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

(c) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,

Medical equipment and devices

3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if

- (j) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and
- (k) all of the following requirements are met:
 - (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
 - (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
 - (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

POLICY AND PROCEDURE MANUAL

Dental & Orthodontic Services

Overview

Emergency dental services for the relief of pain are provided to all recipients of income assistance, disability assistance, and hardship assistance. Dentures are provided to recipients who meet specific

eligibility criteria.

Basic dental services, such as restorations, extractions, and preventative services are provided to recipients of income assistance and disability assistance who are eligible for general health supplements. Basic dental services are also provided to children in receipt of BC Employment and Assistance. Orthodontic services may be available to children in receipt of income assistance or disability assistance and adults with the Persons with Disabilities (PWD) designation who have severe maxio-facial dental deformities.

Crown and bridge services may be available to persons with PWD designation or who meet the Persons with Persistent Multiple Barriers (PPMB) criteria who have a dental condition that cannot be corrected through basic dental services and have a medical condition that prevents the use of a removable denture.

These services are available under the Employment and Assistance Regulation and Employment and Assistance for Persons with Disabilities Regulation.

Eligibility Criteria

Table: Dental, Orthodontic, Crown and Bridgework and Dental Supplements

<p>Conscious sedation</p>	<ul style="list-style-type: none"> • Conscious sedation may be used in a dental office as a less invasive option to general anaesthetic or intravenous sedation. • Coverage for conscious sedation may be provided for children under 19 years of age and children enrolled in the Healthy Kids Program where necessary for the safe performance of dental treatment.
<p>General Anaesthetic or intravenous sedation</p>	<ul style="list-style-type: none"> • General anaesthetic or intravenous sedation performed in a dental office may be provided in the following situations: <ul style="list-style-type: none"> o for children under 19 years of age where necessary for the safe performance of dental treatment o for children and adults with the PWD designation with severe mental or physical disabilities that necessitate general anaesthetic/IV sedation • The Provincial Health Services Authority (PHSA) manages general anaesthetic or intravenous sedation at private facilities through the BC Children’s Hospital (BCCH) under the Community Dental Partners Program. The determination of eligibility for general anaesthetic or intravenous sedation at private facilities is between the dentist and the BCCH. • Children and adults with the PWD designation who require anaesthetic in a hospital or PHSA approved private facility may be eligible for an additional \$1000/year of dental treatment when performed under anaesthetic

Conscious Sedation, General Anaesthetic or Intravenous Sedation

Effective: September 1, 2017

Coverage for conscious sedation may be provided to children under 19 years of age in specific circumstances as outlined in the Schedule of Fee Allowances - Dentist.

Coverage for general anesthetic or intravenous sedation performed in a dental office may be provided in specific circumstances outlined in the Schedule of Fee Allowances.

Panel Decision

At the hearing, the appellant's representative argued that the ministry should have reviewed the extended coverage for the appellant for conscious sedation, as he is an adult with mental disabilities. The appellant did not outgrow autism when he turned 19, which is a severe mental disability. It should never be necessary for the appellant to be subjected to a more risky form of sedation than is required (like GA or IV), nor should any dentist be forced to resort to those risky forms of sedation when a dentist determines that an in-office nitrous oxide sedation is adequate to safely carry out the procedure in question. In 2013, the appellant had 2 fillings done under GA at a hospital - which was an extremely stressful experience for him (IV plus multiple injections as required by their day surgery protocols) and very expensive one for the appellant's parents. In-office IV sedation also carried some risks and is quite costly while nitrous oxide – which allows the dentist to carry out the necessary procedure with the lowest possible risk to the patient – is less risky and costs very little. The decision/recommendation as to what type of sedation is required to carry out any dental procedure should be a professional one made by the dentist (not by the government or an insurance company) and any sedation prescribed for a dental patient should be the least risky/intrusive available – which is why the appellant's request was made for consideration of extension of coverage for conscious (nitrox oxide) sedation beyond the age of 19 years for persons with mental disabilities. The appellant's representative acknowledged that the reconsideration decision was in consonance with the applicable legislation, but the applicable law needs to change as it is "*unfortunate, unfair and arbitrary*". The appellant's representative indicated that she plans to work with their MLA to change the existing law to make it more humane.

The ministry argued that under the current BC legislation, conscious sedation is limited for children under the age of 19 years and therefore, the appellant, who is years of age is not eligible, by law or policy, for conscious sedation (nitrous oxide in office) under EAPWDR. Furthermore, the appellant was not eligible for coverage of conscious sedation:

- (l) as a "*life threatening health need*", as such coverage is limited for medical transportation, medical equipment/devices and some types of medical supplies described in EAPWDR, Schedule C; and
- (m) as a "*crisis supplement*", as dental work is a *health care service* and is described in EAPWDR, Schedule C as basic dental services and emergency services in Dental Supplement – Dentist Schedule of Fee Allowance – Dentist, Emergency Dental -Dentist (effective 1st September 2017), which does not cover conscious sedation for persons over the age of 19 years.

Panel Decision

The panel considered the following applicable legislation to the facts and evidence before it to the circumstances of the appellant.

Basic Eligibility and Eligibility for Conscious Sedation

The ministry's reconsideration decision acknowledged that the disputant, who is years of age and a recipient of "*disability assistance*", is eligible:

- to receive "*dental supplement*" under **Sections 63 and Section 64 and Schedule C, Section 4 and 5 of the EAPWDR**; and

- for general anesthetic and IV sedation (in-office), as set out in the Schedule of Fee Allowances – Dentist and Emergency Dental -Dentist

However, the ministry determined that the appellant was not eligible for conscious sedation (nitrox oxide).

In the context of said determination, the panel noted and considered the following:

- **EAPWDR, Section 63 and 63(1)** provides that:
 - a. the minister may provide (i) *“any health supplement”* set out in **Section 4 [dental supplements]** of Schedule C to a family unit in receipt of disability assistance and
 - b. a *“crown and bridgework”* supplement under **Section 4.1** of Schedule C to a family unit in receipt of disability assistance, if the supplement is provided to or for a person in a family unit who is a person with disabilities.
- **EAPWDR, Section 64** provides that the minister may provide any *“health supplement”* set out in **Section 5 [emergency supplements] of Schedule C** to or for, amongst others, a family unit in receipt of disability assistance.
- **EAPWDR, Schedule C, Section 1** defines *“basic dental services”* provided by a dentist is set out in the **Schedule of Fee Allowances -Dentist** (effective September 1, 2017) and EAPWDR defines *“emergency dental services”* provided by a dentist is set out in **Schedule of Fee Allowances – Emergency Dental – Dentist (effective September 1, 2017)**.
- **EAPWDR, Schedule C, Sections 4 (1)** provides that a *“health supplement”* in the form of a “dental supplement” can only be paid in *“respect of a person under 19 years of age.”*
- **EAPWDR, Schedule of Fee Allowances (under fee code 92215)** provides that the family unit (described above) is eligible for limited General Anesthetic (GA) and IV Sedation (in-office) and eligibility for this service must be confirmed prior to treatment.

Parameters for such eligibility are set out in the following **“Notes”** in the **Schedule of Fee Allowances**:

Notes on Page 22 - Schedule of Fee Allowances – Dentist - Effective September 1, 2017

- When delivering sedation and general anesthetic, dentist must meet the regulatory requirements set out by the College of Dental Surgeons of BC namely, “General Anaesthetic and Intravenous sedation (in-office)”;
- GA or VA sedation (in office) will only be considered for coverage for children under 19 years of age where necessary for the safe performance of dental treatment; and children and adults with a severe mental or physical disability that prevents a dentist from providing necessary treatment without the administration of GA or sedation.

Notes on Page 10 - Schedule of Fee Allowances -Emergency Dental – Effective September 1, 2017

- When delivering sedation and general anesthetic, dentist must meet the regulatory requirements set out by the College of Dental Surgeons of BC namely, “General Anaesthetic and Intravenous sedation (in-office)”;
- GA or VA sedation (in office) will only be considered for coverage for children under 19 years of age where necessary for the safe performance of dental treatment; and children and adults with a severe mental or physical disability that prevents a dentist from providing necessary treatment without the

administration of GA or sedation.

Having regard to the forgoing enactments, which describes the coverages for “basic dental services” and “emergency dental services” provided by Dentists, and the parameters outlined in the “Notes” in both the Schedule of Fee Allowances, and the fact that the appellant is over the age of 19 years, the panel finds that the ministry’s determination that it did not have the legislative authority to provide coverage for the appellant’s conscious sedation under EAPWDR Sections 63 and 64 and Schedule C is reasonably supported by evidence and a reasonable application of the applicable enactment in the circumstances of the appellant.

The ministry also determined in its reconsideration decision that there were no exceptions in the policy and the ministry has no discretion in this matter to provide conscious sedation coverage for the appellant under “**basic dental services**” and “**emergency dental services.**”

Having regard to the foregoing enactments and the ministry’s policies and the parameters outlined in the “Notes” in both the Schedule of Fee Allowances, the panel finds that the ministry’s determination that it did not have the legislative authority to provide coverage for the appellant’s conscious sedation under EAPWDR Section 69 is reasonably supported by evidence and a reasonable application of the applicable enactment in the circumstances of the appellant.

The ministry also determined that:

- the ministry was unable to provide coverage to the appellant for conscious sedation under EAPWDR, Section 69, as a “**life-threatening health need**”; and
- the appellant was not eligible to receive a “**crisis supplement**” to cover conscious sedation under EAPWDR, Section 57 (3).

In the context of such determination, the panel noted and considered the following:

- **EAPWD, Section 69** states that ministry may provide 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, subject to several other eligibility criteria. However, Sections 2 (1) (a) and (f) only refers to provision of medical transportation, medical equipment/devices and some types of medical supplies. It makes no reference to coverage for conscious sedation.

Having regard to the forgoing enactments, the panel finds that the ministry’s determination that it was unable to provide coverage to the appellant for conscious sedation as a life-threatening health need was reasonably supported by evidence and a reasonable application of the applicable enactment in the circumstances of the appellant.

- **EAPWDR, Section 57 (3)** states that a crisis supplement may not be provided for the purposes of obtaining (a) a supplement described in Schedule C and (b) any other health care goods or services.

Having regard to the forgoing enactments, the panel finds that the ministry’s determination that the appellant was not eligible to receive a crisis supplement to cover conscious sedation was reasonably supported by evidence and a reasonable application of the applicable enactment in the circumstances of the appellant.

The Panel confirms the ministry’s reconsideration decision dated 30th December 2019. Therefore, the appellant is not successful in his appeal.

The panel shares the ministry’s sympathy regarding the circumstances of the appellant’s case, at the end of its

reconsideration decision, as the existing relevant legislation or policy does not address the circumstances of adults with severe mental disabilities (e.g. the need for conscious sedation), as demonstrated by the facts of this appeal.

APPEAL NUMBER

2020-00002

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

Tajdin Mitha

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)