

APPEAL NUMBER
2020-00037

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration dated January 14, 2020 which held that the appellant was not eligible for coverage for the replacement of a full upper denture.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 5, 25, 26;
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 63 and Schedule C, ss 1 and 4.

PART E – SUMMARY OF FACTS

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

1. The appellant is a recipient of disability assistance;
2. On November 2, 2018, the appellant was provided coverage for complete standard dentures, maxillary (upper arch) and complete surgical standard dentures, mandibular (lower arch);
3. The coverage for a complete upper denture in 2018 was provided for under a 1-time exception to the 5-year replacement policy because the appellant's previous dentures were broken;
4. On June 25, 2019, Pacific Blue Cross (the delegate of the minister's relevant powers under section 25 of the EAPWDA) denied the appellant's request for full upper and lower dentures;
5. On January 2, 2019, the appellant informed the ministry that their dentures had been stolen and the appellant:
 - a. could not eat solid foods;
 - b. struggled to speak and carry on conversations;
 - c. had lost weight;
 - d. felt physically weak; and
 - e. that the appellant thought their health and welfare was immediately jeopardized.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision that the appellant was not eligible for coverage for the replacement of a full upper denture was reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstance. The determination was that it was not covered as a basic dental service, as an emergency dental service, or a life-threatening need.

The panel notes that the ministry approved coverage for the replacement of the appellant's full lower denture under a ministry policy that permitted a "1-time exception to the ministry's 5-year replacement regulation." Consequently, the entitlement to the replacement of the full lower denture is not an issue in dispute and was not before the panel.

Employment and Assistance for Persons with Disabilities Act (EAPWDA)

The EAPWDA, section 26, provides the Lieutenant Governor in Council with the authority to make regulations that provide certain forms of assistance to individuals.

EAPWDA, section 5, provides the minister with the authority to provide the disability assistance as authorized by the regulations.

EAPWDA, section 25, permits the minister to delegate its authority to provide disability assistance to any person.

For the purposes of this appeal, the Lieutenant Governor in Council has authorized assistance for basic dental services, and the ministry has delegated its authority to provide basic dental services to Pacific Blue Cross.

EAPWDA

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

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.

Power to make regulations

26 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) specifying forms of assistance for the purpose of the definition of "supplement";

...

(h) prescribing rules for determining the rate or amount of disability assistance, hardship assistance or a supplement;

(i)regulating the time and manner of providing disability assistance, hardship assistance and supplements;

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)

The EAPWDR, section 63, permits the minister to provide a health supplement to a family unit in receipt of disability assistance as specified in Schedule C of the EAPWDR. Section 64, permits the ministry to provide “emergency dental supplements” to a family unit in receipt of disability assistance as specified in Schedule C of the EAPWDR.

The panel notes the EAPWDR, section 63.2, permits the minister to provide a denture supplement to a family unit not in receipt of disability assistance but this provision is not applicable in this appeal because the appellant is in receipt of disability assistance.

EAPWDR, section 69, permits the minister to provide “general health supplements” or a supplement for “medical equipment and devices” to a family unit that is not otherwise eligible if:

- a. the person faces a direct and imminent life-threatening need;
- b. the person’s family unit has no resources available;
- c. the health supplement is necessary to meet the life-threatening need; and
- d. no person in the family unit has an income that exceeds a specified amount.

Schedule C defines a “basic dental service” as a dental service that is set out in the Schedule of Fee Allowances. The Schedule of Fee Allowances includes dentures and therefore dentures are a basic dental service. Schedule C, section 4(2) authorizes the minister to provide dentures to a person “who has never worn dentures” or “whose dentures are more than 5 years old.”

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.

Health supplement for persons facing direct and imminent life threatening health need

69 (1)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)the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, 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

Dental Supplements

4(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.

The Appellant's Position

The appellant did not appear at the hearing. After confirming that the appellant had been notified of the hearing, the panel proceeded as allowed under section 86(b) of the *Employment and Assistance Regulation*.

In their Notice of Appeal the appellant wrote: "receiving lower dentures without upper dentures will not resolve my inability to eat healthy foods and will therefore adversely affect my immediate health and long term wellness."

In the Request for Reconsideration, the appellant wrote "my health and welfare is immediately jeopardized by not having any teeth...causing my physical and mental health to deteriorate at a rapid pace."

The Ministry's Position

At the hearing, the ministry confirmed that although there is a different fee schedule applicable to basic dental services depending on if the services are provided by a dentist or a denturist there is no difference in the entitlement to basic dental services based on whether they are provided by a dentist or a denturist. Consequently, the ministry's determination that the appellant was not eligible for a full upper denture would have been the same if the appellant requested that services to be provided by a dentist rather than a denturist.

The ministry also stated that it understood that if the appellant only had a full lower denture without a full upper denture that it would not provide a complete solution to the concerns raised by the appellant regarding their ability to eat healthy foods and maintain their long term wellness.

The ministry also provided the panel with some background on the ministry policy referred to in the reconsideration decision. The 'exemption' policy is as described in the reconsideration decision:

1. A person who is not entitled to a basic dental service because their dentures are less than five years old may be considered eligible for coverage if:
 - a. The person has not previously benefitted from the exemption policy;
 - b. The dentures were lost or damaged beyond repair;
 - c. The loss or damage was beyond the person's control; and
 - d. The failure to provide coverage for replacement dentures would result in the person experiencing compromised health.

The ministry could not explain to the panel the legislative authority for the implementation of the policy that provided an 'exemption' to EAPWDR Schedule C, section 4(2).

The Panel's Decision

As stated above, the panel notes that the ministry at reconsideration determined that the appellant was eligible for coverage of a full lower denture as a basic dental service and that eligibility is not before the panel. This eligibility was because of a ministry policy permitting a "one-time exemption" to the requirements of Schedule C, section 4(2)(b). At the hearing, the ministry could not tell the panel the legislative basis for this policy providing an exemption.

The issues before the panel are:

1. Is the appellant entitled to coverage for a full upper denture as a basic dental service;
2. Is the appellant entitled to coverage for a full upper denture as an emergency dental services; and
3. Is the appellant entitled to coverage for a full upper denture as a life threatening health need.

Coverage as a Basic Dental Service

In the context of the appellant's entitlement to coverage for a full upper denture, the panel finds that a person with disabilities is entitled to coverage for a full upper denture as a basic dental service if they meet the legislative requirements contained in EAPWDA section 26, and EAPWDR section 63 and Schedule C, sections 1 and 4.

The first issue before the panel is whether the appellant qualifies under Schedule C, section 4. That section requires the appellant to have never worn dentures or to have dentures that are more than five years old. The panel finds that there is no dispute that the appellant has worn full upper dentures and that those dentures were created in November 2, 2018, which is less than five years ago. Consequently, the panel finds the appellant is not eligible for coverage under Schedule C, section 4.

Coverage as an Emergency Dental Service

The second issue is whether the appellant is entitled to coverage for the replacement of a full lower denture as an emergency dental service under EAPWDR section 64. Section 64 only applies to health supplements specified in Schedule C, section 5, which means that the dental service must be "necessary for the immediate relief of pain" and set out in the Schedule of Fee Allowances – Emergency Dental. There is no information before the panel that the appellant requires a full upper denture for the immediate relief of pain and therefore section 64 does not apply to the appellant's request. Furthermore, the Schedule of Fee Allowances – Emergency Dental does not include the provision of dentures and is limited to adjustments and relining of dentures. Consequently, the panel finds the appellant is not eligible for coverage under EAPWDR section 64.

Coverage as a Life-Threatening Health Need

The third issue is whether the appellant is entitled to coverage for the replacement of a full lower denture as a life threatening health need. EAPWDR section 69, is applicable only to general health supplements and medical equipment and devices as specified in Schedule C, sections 2(1)(a), 2(1)(f) and 3. Practically speaking, section 69 provides an entitlement to coverage for:

1. medical or surgical supplies;
2. transportation; and
3. breathing devices.

An entitlement to dentures is not identified in Schedule C, sections 2(1)(a), 2(1)(f) and 3(1)(b) to 3.12; nor was there evidence that any of the other provisions under EAPWDR section 69 were met. Consequently, the panel finds the appellant is not eligible for coverage under EAPWDR section 69.

Conclusion

The panel finds the ministry decision of January 14, 2020 was reasonably supported by the evidence and is a reasonable application of the enactment in the appellant's circumstance.

The panel confirms the ministry's reconsideration decision and the appellant is not successful on appeal.

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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/Feb/25

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Feb/25

PRINT NAME

Neena Keram

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Feb/25