

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated December 13, 2019 where the ministry determined that the appellant was not eligible for the funding requested for dentures because:

1. The ministry is not authorized to provide coverage for fees in excess of the rates set out in the Schedule of Fee Allowances – Denturist as a basic or emergency dental service.
2. The ministry is not authorized to provide a crisis supplement to cover the appellant's portion of the cost of complete upper and partial lower dentures because these are described in in Schedule C and are a health care service and under Section 57(3) of EAPWDR, a crisis supplement may not be provided to obtain a supplement described in Schedule C or for any other health care goods and service.
2. The ministry is not authorized to provide coverage for dental services under the EAPWDR, Section 69, life-threatening health need.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 57
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 63
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 69

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration:

The appellant is in receipt of disability assistance and in August of 2019 requested funding by the ministry of a complete upper denture and a partial lower denture to be completed by a denturist at a quoted cost of \$1275.00 for the complete upper denture and \$1490.00 for the partial lower denture. On October 18, 2019 the ministry informed the appellant that the request was denied because the quoted fees were in excess of the ministry rates and noted reconsideration forms were required to be submitted by November 18, 2019. The appellant signed a request for reconsideration on November 15, 2019 in which the appellant's advocate asked that an extension of dates for forms beyond November 18, 2019 was required as the appellant was overwhelmed with anxiety and a meeting was needed that would delay his response.

The ministry noted the following background at reconsideration:

- The ministry approved a request for extension until December 13, 2019.
- On August 27, 2019, Pacific Blue Cross (PGC), the organization designated by the ministry to administer dental supplements under the authority of EAPWDA, Section 25, had approved \$643.10 relative to the application of the appellant. That approval allocated \$581.25 for the upper denture, being the maximum allowed under the fee schedule for that procedure, and \$61.85 for the lower denture which was lower than the maximum allowed for the procedure and was calculated to ensure the total amount requested did not exceed the appellant's 2 year (starting in odd years) \$1000 limit for basic dental services. That limit includes dentures.
- On December 6, 2019 the appellant provided a request for reconsideration which included a written submission from the appellant's advocate. The advocate's submission dated November 27, 2019 noted the appellant's ongoing mental stress, depression and isolation since PBC denied the request. The advocate outlined the applicant's medical history of having suffered a head injury which has led to an impaired short term memory and diminished his understanding of the legislation and understanding of how much the appellant could spend on teeth in a two year period. The advocate goes on to describe his need for dentures and the adverse affects on health that stem from a lack of ability to chew food. The advocate also attached a letter from a church committing \$200.00 in funding toward the cost of dentures.
- On December 12, 2019, a review by a ministry worker of the appellant's claim history revealed that as of that date the appellant had \$642.55 remaining on the 2 year \$1000.00 limit for basic dental services which includes dentures.

In its reconsideration decision dated December 13, 2019, the ministry confirmed that as a recipient of disability assistance, the appellant was eligible for coverage of basic dental services under EAPWDR Section 63. The ministry noted that the appellant has not previously worn dentures and therefore meets the requirement under EAPWDR Schedule C, sub-section 4(2) which covers eligibility of dentures as a basic dental service for a person who has never worn dentures.

The ministry noted that coverage of the full request from the appellant (\$2,765.00) would result in a request which exceeds the \$1,000.00 two year limit imposed by EAPWDR, Schedule C, section 4(1.1)(b), but, that EAPWDR Schedule C, Section 4(3)(b) provides that the limits may be exceeded if a partial denture is required to replace at least 3 contiguous teeth and at least one of the teeth were removed in the prior 6 months. The ministry confirmed that the appellant satisfies this requirement in the context of the lower partial denture based on their review of dental records available. On the basis of this analysis at reconsideration the ministry concludes that the appellant's approved coverage must increase to \$1,031.25 based on the Schedule of Fee Allowances – Denturist that is required to be followed for basic dental services by EAPWDR, Schedule C 1(b)(i).

The reconsideration decision then reviews eligibility for coverage of denture fees in excess of ministry rates (Schedule of Fee Allowances – Denturist) under EAPWDR, Schedule C 1(b)(i) as a basic dental service.

- The ministry notes that the appellant is not eligible for coverage of denture fees in excess of the ministry rates set out in the Schedule of Fee Allowances – Denture. The cost of the requested denture at \$2675.00 exceeds the rates set out in the schedule of \$1031.25.

- The ministry indicates that this provision requires that they may only provide coverage as outlined in the Schedule of Fee Allowances – Denturist up to the maximum rates in that schedule and there is no discretion allowed.

The reconsideration decision then considers eligibility of the appellant for coverage of denture fees in excess of ministry rates as an emergency dental service.

- The ministry notes that under EAPWDR, Section 64 and EAPWDR Schedule C, Sections 1 and 5, the ministry may provide coverage for emergency dental services provided by a dentist, denturist or dental hygienist. The regulation describes emergency dental services provided by a denturist as follows:

"emergency dental service" means a dental service necessary for the immediate relief of pain that,

(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.

- This definition requires the ministry to only provide coverage of basic dental services provided by a denturist as outlined in the Schedule of Fee Allowances – Denturist up to the maximum rates in that schedule and there is no discretion allowed.

The reconsideration decision considers eligibility for coverage of denture fees in excess of ministry rates as a life-threatening health need.

- The ministry notes the appellant is not eligible for coverage of dentist fees in excess of ministry rates as a life-threatening need citing EAPWDR Section 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).

- The ministry notes that this only applies to medical transportation, medical equipment/devices and some types of medical devices as described in EAPWDR Schedule C, subsections 2(1)(a) and 2(1)(a)(f) and Section 3. Dental and denture supplements are not contained in these sections.

The reconsideration decision finally considers eligibility for coverage of denture fees in excess of ministry rates as a crisis supplement.

- The ministry notes that 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 service. As the appellant's request is for dentures which are a health care service and are described in Schedule C as basic dental services, the appellant is not eligible to receive a crisis supplement.

In conclusion, the ministry notes that while they can approve the request of a partial lower denture over the limit otherwise imposed by the 2 year \$1000 limit, they must deny the appellant's request which would exceed the limits imposed by the rates contained in the Schedule of Fee Allowances – Denturist as a basic dental service and adds that the request is not covered as an emergency dental service, nor as a life-threatening need or crisis supplement.

The reconsideration decision included the following table showing what was approved:

	Tooth No.	Fee Code	Description	Denturist Fees	Amount Approved
1		31320	Complete Standard Dentures - Upper	\$1275.00	\$581.25
2		41620	Partial Lower Denture – acrylic with metal clasps	\$1490.00	\$450.00
			Total	\$2765.00	\$1031.25

Notice of Appeal

On January 10, 2020, the appellant signed a Notice of Appeal in which he noted that the appellant has tried to obtain dentures and cannot access them as no dentist will accept the appellant as a patient as the funding does not even cover their costs.

Hearing

On February 20, 2020 the panel conducted an oral hearing. In attendance at the hearing was the panel, ministry representative, the appellant, an advocate and an observer who attended with the consent of all parties.

In consideration of section 24 of the Employment and Assistance Act, the panel notes that there was no additions to the information that formed the basis for the reconsideration decision.

The appellant stated that he has had all but 5 of his teeth removed over the last 9 years and he is puzzled as to why the ministry was not prepared to provide funding for dentures. The appellant noted that as a result of a brain injury he cannot work, is dependant on assistance and is currently taking 7 different tablets a day to deal with his physical problems, some of which result from his inability to chew food. The appellant noted that he also suffers from depression, anxiety and cannot pursue a social life because of his lack of teeth. The appellant has attempted to obtain dentures and has a quote from his denturist that is well in excess of the amount the ministry allows and he wonders why the ministry would set rates so low. The appellant's advocate noted that all of the area denturists have been contacted and none will provide dentures for the appellant at rates that are allowed by the ministry and even with a \$200.00 donation from a local church there is not sufficient funds. The advocate, who is a community health nurse, indicated that this is a basic health question as the inability to chew is fundamental to good health and should be considered a basic human right. The advocate stated that it is beyond her understanding why the ministry rates, which she understands had been set in 2017, could be allowed to fall so far below the cost to have dentures obtained.

The ministry representative indicated there was sympathy to the appellant's situation but nevertheless confirmed the essence of the reconsideration decision in that the Schedule of Fee Services must be followed irrespective of the actual cost and they have no discretion.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's decision to deny the applicant's request for funding of full upper dentures and lower partial dentures at a total estimated cost of \$2675.00 is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the applicant.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION**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.

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.

Denture supplement

63.2 (1) Subject to subsection (2), the minister may provide any health supplement set out in section 4.2 [denture supplements] of Schedule C to or for a family unit in receipt of hardship assistance.

(2) A person is not eligible for a health supplement under subsection (1) unless

(a) the person is not eligible for a supplement under section 63 [dental supplements], and

(b) the person has had tooth extractions that were performed in the last 6 months because of pain and resulted in the person requiring a full upper denture, a full lower denture or both.

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 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 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 "denture services" means services and items that

(a) if provided by a dentist

(i) are set out under fee numbers 51101 to 51302 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) are provided at the rate set out in that Schedule for the service or item and the category of person receiving the service or item, and

(b) if provided by a denturist

(i) are set out under fee numbers 31310 to 31321 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) are provided at the rate set out in that Schedule for the service or item and the category of person receiving the service or item;

"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, 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]

- (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 dependent 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.

Denture supplements

4.2 The health supplements that may be provided under section 63.2 [denture supplement] of this regulation are denture services.

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

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).
- (2) For the purposes of subsection (1) (c),
- (a) "adjusted net income" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and
 - (b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit,

other than a dependent child.

Ministry Position

The ministry's position is that the appellant's request for funding of a complete upper denture and partial lower denture at a total quoted cost of \$2,765.00 by a denturist must be considered in light of:

1. The 2 year limit of \$1000.00 imposed for basic dental services (including dentures) by EAPWDR, Schedule C, section 1.1, (b). The appellant's circumstance is that he qualifies for basic dental services including dentures but the \$2765.00 request and dental fees used to date in the 2 year period requires an approval over this limit. The PBC initial approval was limited so as not to exceed the \$1000.00 and the ministry acknowledges that the appellant could be approved above this limit, subject to the Schedule of Fee Allowances – Denturist which limits all requests for approved requests.
2. Dentures are described in EAPWDR Schedule C, section 4(2) as a basic dental service which, if provided by a denturist are provided at the rate set out in that Schedule for the service and the category of person receiving the service. As such the appellant's request is limited to \$1031.25
3. The appellant's request does not qualify as an emergency dental service in that EAPWDR, Schedule C section 1 and 5 stipulate that approvals must be limited to the maximum rates in the schedule and there is no provision for dentures themselves in the section for emergency dental services.
4. The appellant's request does not qualify under a life-threatening need. EAPWDR Section 69 applies to medical transportation, medical equipment/devices and some types of medical supplies as described in EAPWDR, Schedule C, section 2(1)(a), section 2(1)(a)(f) and Section 3, however none of these include dentures.
5. The appellant's request does not qualify as a crisis supplement. EAPWDR Section 57(3) states that the ministry may not provide a crisis supplement described in Schedule C or for any other health care goods or service. Dentures are a health care service and is described in Schedule C.

In light of these considerations, the ministry reconsideration denies the appellant's request for funding of \$2765.00 for the dentures but approves funding to the maximum rates proscribed of \$1031.25

Appellant Position

The appellants position is:

1. The appellant has attempted to obtain dentures and has not been able to do so because no local denturist will accept him as a patient as the ministry rates do not cover their cost.
2. The appellant's advocate (RN), in a note dated November 27, 2019, outlines in some detail the emotional and physical effects of being without the dentures the appellant is seeking. The advocates submission includes a letter from a church committing itself to fund \$200.00 of the cost.

Panel Decision

The panel notes that the reconsideration decision in effect consists of two decisions. The first decision changes the initial ministry decision which was based on a PBC assessment of eligibility That assessment was that the request exceeds the 2year \$1000 limit imposed by EAPWDR, Schedule C, section 1.1, (b) for dentures as a basic dental service for an applicant such as the appellant and limits the claim so that the \$1,000.00 limit is not exceeded. The reconsideration decision concludes that EAPWDR Schedule C, Section 4(3)(b) provides that the \$1,000.00 limits may be exceeded if a partial denture is required to replace at least 3 contiguous teeth and at least one of the teeth were removed in the prior 6 months. The ministry confirms that the appellant satisfies this requirement in the context of the lower partial denture based on their review of dental records available. Therefore, the ministry initial

position has been altered upon reconsideration and the maximum approval has been increased to \$1031.25 from \$643.08. The panel agrees with the ministry analysis and in addition the panel found that:

1. The Dental Supplements- Denturist Fee Schedule (Fee Schedule) provides for \$581.25 for fee code 31320 which is a complete mandibular denture. Though mandibular is the lower part of the jaw, the same amount is available under fee code 31310 which is a complete maxillary denture (the upper part).
2. The Fee Schedule provides \$450.00 for fee code 41620 which is a Mandibular – Acrylic Base with Clasps partial denture.
3. That the appellant had at least 3 missing teeth, side-by-side and at least one of them was removed in the last 6 months to relieve pain. This entitled the appellant to receive an amount more than allowed by the \$1000.00 limit.

The appellant under EAPWDR Schedule C, Section 4(3)(b) satisfies the legislated requirements and is eligible for dentures at a cost in excess of the 2 year \$1000 limit.

The second and more consequential decision lies in the ministry ultimately denying the appellant's request under the terms of EAPWDR Schedule C, section 4(2) which describes dentures as a basic dental service which, if provided by a denturist are provided at the rate set out in that Schedule for the service and the category of person receiving the service. The ministry notes, and the panel agrees that this provision limits the appellant's request to \$1031.25 being the indicated rates under the Schedule for these dentures. The panel also agrees with the ministry determination that there exists no discretion in the application of this limit. The language of the legislation is very clear.

Finally, the panel notes that the ministry has further considered the funding of the request as:

1. An emergency dental service. The panel notes that EAPWDR, Schedule C section 5 contains no provision for dentures themselves in the section for emergency dental services which would otherwise still be subject to prescribed rates. The panel therefore agrees with the determination that the appellant's request does not qualify as an emergency medical service.
2. A life-threatening need. The panel refers to EAPWDR Section 69 which applies to medical transportation, medical equipment/devices and some types of medical supplies as described in EAPWDR, Schedule C, section 2(1)(a), section 2(1)(a)(f) and Section 3, however none of these include dentures. The panel therefore agrees with the determination that the appellant's request does not qualify as a life-threatening need.
3. A crisis supplement. The panel notes that EAPWDR Section 57(3) states that the ministry may not provide a crisis supplement described in Schedule C or for any other health care goods or service. The panel agrees that Dentures are a health care service and is described in Schedule C therefore the appellant's request does not qualify for a crisis supplement.

Conclusion

The panel confirms the ministry reconsideration as it was a reasonable application of the legislation. The appellant is not successful upon appeal.

APPEAL NUMBER
2020-00011

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

Keith Lacroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Marnee Pearce

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)