

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated January 23, 2020, in which the ministry determined that the appellant:

- was not eligible for coverage of basic dental services under Employment and Assistance Regulation (EAR) section 68 but was eligible for consideration of emergency dental services under EAR section 70;
- was not eligible for coverage of a crown, oral sedation, soft tissue re-contouring, root canal and crown-related restoration pursuant to EAR section 70 and Schedule C sections 1 and 6;
- was not eligible for a crown as a Crown and Bridgework Supplement, pursuant to EAR section 68.1 and Schedule C section 4.1; and
- was not eligible for Tooth Coloured Restorations, pursuant to EAR section 70 and Schedule C sections 1 and 6.

The ministry also considered the appellant's request under section 59(3) of the EAR [crisis supplements] and section 76 of the EAR [life-threatening health need], concluding that neither section allowed for the provision of dental services.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation sections 59(3), 68, 68.1, 70, 71 and 76
Employment and Assistance Regulation Schedule C sections 1, 4, 4.1 and 6
Schedule of Fee Allowances – Dental, Emergency Dental, Crown and Bridgework - Dentist

PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration consisted of:

- An un-dated letter from a dental clinic outlining the timelines of when the appellant was at the clinic and of their contacts with Pacific Blue Cross (PBC);
- An un-dated printout from the dental clinic showing the fee codes, that only \$21.75 of the \$2,594.90 was reimbursed and the explanations as to why;
- An emergency department form dated April 11, 2019 confirming that the appellant had emergency services regarding headaches;
- An emergency department form dated April 12, 2019 confirming that the appellant had received emergency services regarding headaches and for which a prescription was recommended;
- A letter from a physician dated May 2, 2019 confirming that the appellant has been referred to a specialist on May 10, 2019 and indicating that the appellant's "medical condition is adversely affecting the health of the fetus, the life of which is therefore threatened";
- A four-page document dated May 10, 2019 from a specialist which outlined the appellant's medical history and a treatment plan;
- An emergency department form dated September 15, 2019 which indicated that the appellant was experiencing dental pain and that a dental appointment was scheduled for the following week;
- An invoice from a dental clinic dated September 24, 2019 that outlined all the fees associated with the appellant's treatment. The total cost was \$2,722.50 and the receipt indicates payment by credit and debit cards was made for the total amount;
- A PBC Confirmation of Coverage for fee code 23322 in a two year period, showing that \$144.04 had been claimed and paid for work completed on May 23, 2018 and \$144.04 had been claimed with \$99.14 paid for work completed June 16, 2018, with the explanations "Eligible amount reduced due to eligible dollar maximum rule" and "We considered this expense up to the maximum amount allowed under your plan."
- Four pages of claim statements specifying the services claimed and the specific reasons for each of the items as follows:
 - Fee code 23322 – Permanent Molars, Bonded, two surfaces for tooth 46 – Claim of \$244.00 with \$0 Plan paid and an explanation that "This client is eligible for Emergency Services only. Please refer to the current Ministry Dental Fee Supplement regarding Emergency guidelines."
 - Fee code 42341 – Limited re-contouring of tissue per tooth for tooth 47 - Claim of \$105.00 with \$0 Plan paid and an explanation that "We are unable to provide reimbursement for this expense. It is not a covered benefit under your plan."
 - Fee code 33121 – Root Canal, Two canals for tooth 47 – Claim of \$604.00 with \$0 Plan paid and an explanation that "We are unable to provide reimbursement for this expense. It is not a covered benefit under your plan."
 - Fee Code 01204 – Examination and Diagnosis, Specific Examination and specific situation for tooth 47 – Claim of \$38.90 with \$0 Plan paid and an explanation that "This client is eligible for Emergency Services only. Please refer to the current Ministry Dental Fee Supplement regarding Emergency guidelines."
 - Fee Code 92424 – Oral Sedation, Four units – Claim of \$142.00 with \$0 Plan paid and an explanation that "We are unable to provide reimbursement for this expense. It is not a covered benefit under your plan."
 - Fee code 23602 – Restoration, Tooth Coloured, Bonded, Core, in Conjunction with Crown for tooth 47 – Claim of \$174.00 with \$0 Plan paid and an explanation that "We are unable to provide reimbursement for this expense. It is not a covered benefit under your plan."
 - Fee code 27201 – Crown, Porcelain/Ceramic/Polymer Glass for tooth 47 – Claim of \$1,287.00 with \$0 Plan paid and an explanation that "We are unable to provide reimbursement for this expense. It is not a covered benefit under your plan."
- Dental Supplement – Dentist, which provides details on the Ministry's Dental Supplements and information on how the dentist can confirm eligibility and obtain payment for services rendered. It includes the Schedule of Fee Allowances – Dentist, Schedule of Fee Allowances – Emergency Dental – Dentist and Schedule of Fee Allowances – Crown and Bridgework - Dentist.

On the Notice of Appeal form dated January 24, 2020 the appellant wrote that after two years of headaches that

kept sending them to the ER, the ER doctor informed them that the molar was infected and the appellant needed to see a dentist immediately. After travelling to the dental clinic, the appellant was informed that a root canal was necessary and that this process was covered under emergency dental so the appellant proceeded, got it fixed and the headaches are now gone. The appellant also wrote in an email dated January 24, 2020 that travel away from the home community was required because there were no local dentists who could do the work, plus they required a \$300 consultation fee, which the other dental clinic waived. The appellant writes that they did what had to be done to relieve the severe pain, that they care for three children and can't afford to be sick and in the hospital with pain.

The appellant did not attend the hearing. Upon confirming that the appellant was notified of the date and time the panel considered the appeal in the appellant's absence as it is authorized to do under section 86(b) of the EAR. The panel will reference the appeal record for the appellant's position.

At the hearing, the ministry reviewed the reconsideration decision and stated that the appellant had first contacted them on January 7, 2020 requesting assistance to pay a dental bill because they were no longer able to keep up the credit card payments. The ministry explained that the appellant is a recipient of regular income assistance who is not a Person with Persistent Multiple Barriers (PPMB), is not a "continued" person, and therefore is eligible for emergency dental services only, not basic dental services. The ministry explained a "continued" person meant a person who previously was on assistance and was now only receiving Medical Services Only benefits. The ministry stated that the appellant had used up all of the emergency coverage for services paid out on tooth 46 in July 2018 and November 2019 during the current two-year period, so PBC could reimburse only a portion of the exam expense. The ministry explained that because the appellant is not eligible for basic dental services that crown and bridge work is not covered, and would only be covered under basic dental services if there was evidence that the appellant was not able to use a removable prosthetic (i.e. dentures). The ministry stated that the legislation regarding a life-threatening health need cannot be used for dental services because the legislation specifically cites under what conditions it can be used, such as for medical transportation, medical equipment/devices and some types of specific medical supplies described in legislation and argues that dental supplements are not set out in those sections.

The panel sought clarification from the ministry as to who had informed the appellant that the dental work, which was to be done, would be covered as an emergency service. The ministry noted that a review of the case file shows no record of any prior contact from the appellant regarding the dental services provided in September 2019 so they are not aware of who informed the appellant that the service would be covered by PBC.

Admissibility of New Information

The panel admitted the appellant's written comments on the Notice of Appeal form in accordance with section 22(4) of the Employment and Assistance Act because the information was reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The ministry did not object to its admission.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry reasonably concluded that the appellant:

- was not eligible for coverage of basic dental services under Employment and Assistance Regulation (EAR) section 68 but was eligible for consideration of emergency dental services under EAR section 70;
- was not eligible for coverage of a crown, oral sedation, soft tissue re-contouring, root canal and crown-related restoration pursuant to EAR section 70 and Schedule C sections 1 and 6;
- was not eligible for a crown as a Crown and Bridgework Supplement, pursuant to EAR section 68.1 and Schedule C section 4.1; and
- was not eligible for Tooth Coloured Restorations, pursuant to EAR section 70 and Schedule C sections 1 and 6.

The relevant legislation is as follows:

Employment and Assistance Regulations**Crisis supplement**

59 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for income 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*.

...
(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

68 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 income assistance, if
 - (i) the family unit includes a person with persistent multiple barriers to employment, or
 - (ii) the health supplement is provided to or for a person in the family unit who is under 19 years of age,
- (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
 - (i) is a continued person, and
 - (ii) meets any of the following criteria:
 - (A) the person is under 19 years of age;
 - (B) the person was, on the person's continuation date, a person with persistent multiple barriers to employment or part of a family unit that then included a person with persistent multiple barriers to employment.

Crown and bridgework supplement

68.1 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 income assistance, if the supplement is provided to or for a person in the family unit who has persistent multiple barriers to employment, 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 persistent multiple barriers to employment.

Emergency dental and denture supplements

70 The minister may provide any health supplement set out in section 6 [*emergency dental supplements*] of Schedule C to or for

- (a) a family unit in receipt of income 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

76 (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**Definitions**

"basic dental service" means a dental service that

- (a) if provided by a dentist,
 - (i) is set out in the Schedule of Fee Allowances — Dentist that is effective September 1, 2017 and is published on the website of the ministry of the minister, and
 - (ii) is provided at the rate set out in that Schedule for the service and the category of person receiving the service,
- (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

"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

Dental supplements

4 (1) In this section, "period" means

- (a) in respect of a person under 19 years of age, including a child in a home of a relative, 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 68 [*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).

(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. . .

Crown and bridgework supplement

4.1 (1) In this section, "crown and bridgework" means a dental service

- (a) that is provided by a dentist,
- (b) that is set out in the Schedule of Fee Allowances — Crown and Bridgework, that is effective April 1, 2010 and is published on the website of the ministry of the minister,
- (c) that is provided at the rate set out for the service in that Schedule, and
- (d) for which a recipient has received the pre-authorization of the minister.

(2) A health supplement may be paid under section 68.1 of this regulation for crown and bridgework but only if the minister is of the opinion that the recipient 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) one of the following circumstances exists:

- (i) the dental condition precludes the use of a removable prosthetic;
- (ii) the recipient has a physical impairment that makes it impossible for him or her to place a removable prosthetic;
- (iii) the recipient has an allergic reaction or other intolerance to the composition or materials used in a removable prosthetic;
- (iv) the recipient 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.

Emergency dental supplements

6 The health supplements that may be paid for under section 70 [*emergency dental and denture supplements*] of this regulation are emergency dental services.

Appellant's Position

The appellant's position is that they were in severe pain so they attended a dental office where they were informed that a root canal would be necessary and that this would be covered under emergency services. The appellant proceeded with the treatment, the pain was relieved and they paid the bill in September 2019 using a credit card. They informed the ministry in January 2020 that they could not make the credit card payments and requested ministry assistance to pay the bill.

Ministry's Position

The ministry's position is that the appellant is eligible for emergency dental services only and that legislation and the Schedule of Fee Allowances set out what is covered and the amounts which can be paid. In the appellant's circumstance, the services provided are either not covered or are in excess of the authorized amount as explained in the Summary of Facts above.

Panel Decision**Eligibility for Basic Dental Services or Emergency Dental Services**

EAR section 68 sets out that the minister may provide basic dental services pursuant to Schedule C section 4 to a person who is eligible for PPMB or is a continued person. EAR section 70 sets out that the minister may provide emergency dental services pursuant to Schedule C section 6 to a person in receipt of income assistance. The ministry found, in the appellant's circumstance, that there is eligibility for emergency dental services, not basic dental services, because the appellant does not have PPMB designation nor is a continued person. The panel did not find any evidence in the appeal record with regards to the appellant having the PPMB or continued person designation so finds the ministry was reasonable to determine that the appellant is eligible to receive only emergency dental services.

The panel notes that the legislated definition of emergency dental services includes the requirement that the dental service be necessary for the immediate relief of pain that, if provided by a dentist, is set out in the Schedule of Fee Allowances – Emergency Dental – Dentist, and is provided at the rate set out in that Schedule for the service and the category of the person receiving the service. The panel reviewed the Schedule of Fee Allowances for Emergency Dental Services and note that this Schedule lists the eligible services and fees and also contains the rules, frequency and financial limits associated with each service. The panel reviewed each of the services that the appellant received to determine whether the ministry was reasonable in their decision.

Eligibility for coverage of a crown, oral sedation, soft tissue re-contouring, root canal and crown related restoration (fee codes 27201, 92424, 42341, 33121, and 23602) as an Emergency Dental Service

The Schedule of Fee Allowances – Emergency Dental – Dentist does not list any of these fee codes as being an eligible service therefore the panel finds that the ministry was reasonable in their decision that the appellant was not eligible for these services as an emergency dental service.

Eligibility for coverage of tooth coloured restorations for tooth 46 (fee code 23322) as an Emergency Dental Service

The Schedule of Fee Allowances – Emergency Dental – Dentist lists tooth coloured restorations as being an eligible service, however it also sets a limit on the amount that may be issued. The maximum set is for five surfaces or the dollar equivalent per tooth in a two-year period. In the appellant's circumstance, the evidence shows that the appellant received this service for tooth 46 on May 23, 2018 and PBC paid out the maximum amount for two surfaces, which was \$144.04. The evidence also shows the same service was received on June 16, 2018 for tooth 46 with \$99.14 being paid out. The total of the two services is \$243.18, which is set out in the Schedule as the maximum amount that is authorized. The appellant is requesting coverage for the same service on the same tooth done on September 24, 2019, which the panel has determined is within the same two-year period and for which the maximum amount has been paid out. The panel finds that the ministry was reasonable in their decision that the appellant is not eligible for further reimbursement of this dental service.

Eligibility for coverage of a crown for tooth 47 (fee code 27201) as a Crown and Bridgework Supplement

EAR section 68.1 sets out that the ministry may provide a Crown and Bridgework Supplement under section 4.1 of Schedule C to a family unit that is eligible for PPMB or is a continued person. EAR Schedule C section 4.1 further sets out that this supplement may only be paid if there has been pre-authorization from the ministry and that the dental condition precludes the use of a removable prosthetic. The panel has determined that the appellant is not designated as PPMB or continued person as required by EAR section 68.1 and there is no evidence in the record that confirms that prior authorization had been received nor is there any evidence regarding the requirements that the dental condition precludes the use of a removable prosthetic. Therefore, the panel finds that the ministry was reasonable in their decision that the appellant is not eligible for a crown as a Crown and Bridgework Supplement.

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

The ministry also considered whether the appellant was eligible for the requested funding for the dental services under section 57 [crisis supplement] and section 69 [health supplement to meet a direct and imminent life-threatening need]. Section 57(3) states that a crisis supplement may not be provided for a supplement described in Schedule C or any other health care goods or services. Because dental services, whether or not they are described in Schedule C, are considered health care goods or services, the ministry was reasonable in concluding that the appellant was not eligible for the requested funding under this section. Similarly, as health supplements under section 76 may only be provided for certain supplements listed under sections 2 and 3 of Schedule C, not the sections that deal with dental supplements (sections 4, 4.1 and 5 of Schedule C), the ministry was reasonable in concluding that the appellant was not eligible for the requested funding under section 69 of the EAPWDR.

Conclusion

For the reasons noted above, the panel concludes that the ministry's determination that the appellant is not eligible for the dental services requested is a reasonable application of the applicable legislation in the appellant's circumstances, and confirms the decision. The appellant is not successful in this appeal.

APPEAL NUMBER

2020-00027

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

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 February 14

PRINT NAME

Wesley Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 February 14

PRINT NAME

Linda Pierre

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 February 14