

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 4, 2020, which denied the appellant's request for coverage of complete upper and lower dentures.

Specifically, the ministry found the appellant was not eligible for coverage of complete upper and lower dentures as:

- A denture service or supplement,
- As emergency dental service,
- As a supplement for persons facing a life-threatening health need.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation, sections 68, 68.1, 69, 70, 71, and 76

Employment and Assistance Regulation, Schedule C, sections 1, 4, 4.1, 5 and 6

Schedule of Fee Allowances – Dentist, Emergency Dental – Dentist.

## PART E – SUMMARY OF FACTS

The appellant is a recipient of income assistance.

### Summary of key dates:

- February 14, 2020 – the appellant advised the ministry that the doctor had said the appellant needed dentures and the dental office had informed the appellant there was no coverage. The appellant requested a reconsideration.
- February 19, 2020 – The appellant submitted a letter from the appellant’s doctor to the ministry which stated the appellant “Needs dentures to maintain (the appellant’s) health”.
- February 20, 2020 – The ministry reviewed the appellant’s claims history with Pacific Blue Cross (PBC). The claims history showed on February 9 PBC had denied the appellant’s request for complete upper and lower dentures.
- February 20, 2020 – The appellant submitted a Request for Reconsideration. In the request, the appellant wrote, “An essential part of the digestive process I require dentures to maintain health.”
- March 2, 2020 – The reconsideration officer contacted PBC to clarify the appellant’s dental history. PBC responded in an email stating “There is no record of dentures on this client’s history. There were extractions done under emergency on January 7, 2016 and November 16, 2016.”
- March 3, 2020 – The reconsideration officer confirmed with the appellant’s dentist office they had not done any extractions and both arches are already completely clear.

### Evidence before the ministry at the time of reconsideration:

- **Dental quotes** dated February 9, 2020 for 1,346 and 1,420 (upper and lower dentures) with a note the office was unable to pre-authorize this service.
- A **doctor’s note** dated February 14, 2020 which states: “Need dentures to maintain (the appellant’s) health.”

### Additional Information

- In the **Notice of Appeal** dated March 10, 2020 the following information was given:
  - Under “Reasons for Appeal”, the appellant states: “Dentures are essential for the digestive system...see previously sent Doctor’s note. I will also seek other avenues to help with this appeal in a timely manner.”
  - A **letter from the Constituency Assistant** of the appellant’s Member of the Legislative Assembly (MLA) which states:
    - The appellant had asked their office for assistance with the denial of dental coverage for both upper and lower dentures, even though a letter from the family doctor indicates the dentures are required to maintain the appellant’s overall health.

- Their office is concerned about the potential for further health issues and the associated costs.
- A **letter from the appellant** stating the reasons for the appeal which state:
  - The appellant is concerned about potential health issues and the associated costs.
  - The appellant has difficulty chewing food then digesting it causes difficulties with bowel movements.
  - Missing teeth can cause many other health problems including trouble with chewing, talking, and chronic headaches. Missing teeth can also increase the appellant's risk of oral infection causing more serious issues.
  - Oral health issues that accompany missing teeth can lead to more serious health issues if you let them lie. Untreated tooth decay or gum infections can lead to health problems like heart disease and endocarditis (infection of the inner lining of the heart).
  - Dentures bridges, or implants are the most common methods to fix missing teeth, dentures are usually by far the most cost effective method.
  - The appellant feels that addressing the dentures now will prevent any further health issues from arising and the costs associated with them.
- An **Appellant Submission** dated March 26, 2020 which contains a letter from the appellant's doctor written March 23, 2020 states:
  - The appellant requires dentures.
  - The appellant is unable to chew food with any consistency.
  - This makes it very difficult for a person on social assistance to get proper nutrition.
  - The appellant's protein intake is most probably deficient.
  - The appellant's doctor strongly recommends the appellant gets dentures to help with maintaining good nutrition.
- At the hearing the appellant's representative stated:
  - Both the appellant and the appellant's representative were not sure the ministry was unreasonable in its decision as they could see the appellant does not qualify under the current legislation.
  - The appellant feels discriminated against because of being on income assistance and that the ministry should consider the bigger health problems the appellant may face in the future.
  - The appellant's representative clarified the appellant does have 4-5 upper jaw teeth and that the appellant has not had teeth extracted over the past six months.
  - In closing, the appellant, with few teeth, will likely have health problems in the future as was noted by the appellant's doctor.
- At the hearing the ministry representative stated:
  - The ministry decision states the appellant was not eligible for payment of upper and lower dentures.
  - When asked by the appellant's representative if there were any other avenues the appellant may follow in order to obtain eligibility for denture coverage, the ministry representative suggested the appellant seek to be re-classified as a "Person with

Persistent Multiple Barriers”. The ministry representative cautioned the appellant’s representative, that if successful in a re-classification, the appellant may or may not be eligible for denture coverage and may become eligible for other assistance such as supplements for nutrition.

**Admissibility of additional information**

The panel finds that the additional information provided by the appellant in the submissions on appeal, including the doctor’s note, is relevant to the decision under appeal, because it tends to substantiate part of the appellant’s position relation to this request. The panel therefore admits this evidence under section 22(4) of the *Employment and Assistance Act*.

## PART F – REASONS FOR PANEL DECISION

### **Appellant's Position**

The appellant realizes the current legislation makes him in-eligible for coverage of payment for upper and lower dentures. The appellant is hopeful that through his appeal, he will be able to find a way to obtain coverage for upper and lower dentures as this will help prevent possible health problems in the future.

### **Ministry's Position**

The ministry recognizes the appellant is a recipient of income assistance, but has determined he is not a "Person with Persistent Multiple Barriers," is not under 19 years of age, and is not a "continued person" (as defined in EA Regulation, Sections 66.1 and 66.3). Therefore, the appellant is not eligible for coverage of basic dental services as per EA Regulation, Section 68 and Schedule C, Sections 1 and 4.

As well, the ministry determined the appellant was not eligible for coverage of denture services, emergency dental services and as a Life-Threatening Health Need as per EA Regulation, Sections 69, 70 and 76, and Schedule C, Sections 2,3,5 and 6.

### **Panel Finding**

**Basic Eligibility-** Section 68 of the EA Regulation states the minister may provide any health supplement set out in section 4 [*dental supplements*] of Schedule C to or for a family unit in receipt of income assistance, if the family unit includes a person who is a continued person who has persistent multiple barriers to employment or is under 19 years of age. As the appellant does not meet any of these three criteria, the panel finds the ministry was reasonable in denying the appellant's request for coverage of payment for upper and lower dentures under this section.

**Eligibility for Complete Upper and Lower Dentures as a "Denture Services-** Section 69(2)(b) of the EA Regulation states that to qualify for a denture supplement, the appellant must have had a tooth extraction that was performed in the last 6 months because of pain, resulting in a need for a full upper denture, a full lower denture or both. As neither the appellant's dentist or PBC have indicated that the appellant has had a tooth extraction within 6 months, the panel finds the ministry was reasonable in denying the appellant's request for coverage of payment for upper and lower dentures as a denture service.

**Eligibility for Complete Upper and Lower Dentures as "Emergency Dental Services-** The ministry may provide coverage for emergency dental services when necessary for the immediate relief of pain as set out in EA Regulation, Section 70 and Schedule C, Sections 1 and 6. The Schedule of Fee Allowances - Dentist lists denture repairs and adjustments in the section for emergency dental services. However, the Schedule of Fee Allowances - Dentist does not provide for coverage of dentures themselves in the section for emergency dental services. Therefore, the panel finds the ministry was reasonable in denying the appellant's request for

coverage of payment for upper and lower dentures coverage as an emergency dental service.

**Eligibility for Coverage as a Life-Threatening Health Need** - Section 76 of the EA Regulation states that the minister 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. As section 76 only applies to medical transportation, medical equipment / devices, and some types of medical supplies which do not include dental and denture supplements the panel finds the ministry was reasonable in denying the appellant's request for coverage of payment for upper and lower dentures coverage as a life-threatening health need.

## Conclusion

The panel finds that the ministry's reconsideration decision denying the appellant's request for coverage of complete upper and lower dentures is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. The appellant's appeal is thus not successful.

## Applicable Legislation

### **EMPLOYMENT AND ASSISTANCE ACT Delegation of minister's powers and duties**

**34** (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,
  - (b) the power to appoint members to the tribunal, and
  - (c) the power to enter into an agreement under section 30 (2) or (2.1), unless section 30 (2.2) applies in relation to the agreement.
- (2) A delegation of the powers, duties or functions of the minister must be in writing and may include any limits or conditions the minister considers advisable.

### **EMPLOYMENT AND ASSISTANCE REGULATION Definitions**

**66.1** In this Division:

#### **"continuation date"**

- (a) in relation to a person who is a main continued person under section 66.3 (1) [*access to medical services only*] or 66.4 (1) [*access to transitional health services*] as a result of having been part of a family unit on the date the family unit ceased to be eligible for income assistance, means that date, and
- (b) in relation to a dependent continued person under section 66.3 (2) or 66.4 (2) of a main continued person, means the continuation date of the main continued person;

#### **"continued person"** means

- (a) a main continued person under section 66.3 (1) or 66.4 (1), or (b) a dependent continued person under section 66.3 (2) or 66.4 (2);

**"qualifying federal benefit"** means a supplement under Part II or an allowance under Part III of the *Old Age Security Act* (Canada);

**"qualifying person"** means a person who

- (a) has persistent multiple barriers to employment, or
- (b) is a recipient of income assistance who is described in section 8 (1) [*people receiving special care*] of Schedule A.

### **Access to medical services only**

**66.3** (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 income assistance, and

(ii) a qualifying person on that date, and

(b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance.

(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

(b) the person is currently a dependant of that main continued person.

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

(a) on a date the family unit included 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*, or

(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.

(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 identified in subsection (3) (c).

(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 main continued person under subsection (1) meets the income test for a calendar month if,

(a) 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

(b) 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*.

(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 the calendar month in which the main continued person's continuation date occurs.

### **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.

### **Denture supplements**

**69** (1) Subject to subsection (2), the minister may provide any health supplement set out in section 5 [*denture supplements*] of Schedule C to or for

- (a) a family unit in receipt of income assistance, or
- (b) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

(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 68 [*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 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.

### **Orthodontic supplement**

**71** (1) The minister may provide orthodontic supplements to or for a family unit if the orthodontic supplements are provided to or for a person in the family unit who meets the conditions under subsection (2) and who is under 19 years of age. (B.C. Reg. 161/2017)

(2) For a child referred to in subsection (1) to be eligible for orthodontic supplements, the child's family unit must have no resources available to cover the cost of the orthodontic supplements and the child 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.

(3) Repealed (B.C. Reg. 313/2007)

## **SCHEDULE C Definitions**

**1** In this Schedule:

**"basic dental service"** means a dental service that

- (a) if provided by a dentist,
- (b) if provided by a denturist,
  - (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,
- (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. 88/2005)

**"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) **"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 April 1, 2010 and is on file with the office of the deputy minister, and (B.C. Reg. 314/2006) (B.C. Reg. 65/2010)



(ii) are provided at the rate set out for the service or item in that Schedule, and

(b) if provided by a dentist

(i) are set out under fee numbers 31310 to 31331 in the Schedule of Fee Allowances – Denturist that is effective April 1, 2010 and is on file with the office of the deputy minister, and (B.C. Reg. 314/2006) (B.C. Reg. 65/2010)

(ii) are provided at the rate set out for the service or item in that Schedule; (B.C. Reg 88/2005) “**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 dentist,

(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, including a child in a home of a relative, 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 68 [*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. 65/2010) (B.C. Reg. 48/2010)

(b) \$1000 each period, if provided to a person not referred to in paragraph (a). (B.C. Reg. 162/2005)

(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, other than a person who is a main continued person under section 66.3 (1) of this regulation as a result of having been part of a family unit identified in section 66.3 (3) (a) or a dependent continued person under section 66.3 (2) of that 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 (B.C. Reg. 145/2015)

(c) a person who has been a recipient of income assistance or disability assistance for at least 2 years or a dependant of that person requires replacement dentures. (B.C. Reg. 88/2005)

(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. 88/2005)

(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. 88/2005)

(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. 88/2005)

(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. 88/2005)

(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. 88/2005)

(b) that is set out in the Schedule of Fee Allowances – Crown and Bridgework, that is effective April 1, 2010 and is on file with the office of the deputy minister, (B.C. Reg. 88/2005) (B.C. Reg. 65/2010)

(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.C. Reg. 88/2005)

(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.

#### **Denture supplements**

**5** The health supplements that may be provided under section 69 [*denture supplements*] of this regulation are denture services.

#### **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.

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

**76** 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).

APPEAL NUMBER  
2020-00071

**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

Charles Schellinck

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/03/31

PRINT NAME

Anne Richmond

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/03/31

PRINT NAME

Joe Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/02