

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 March 3, 2020 in which the ministry determined that, in accordance with the definitions in section 1 of Schedule C of the Employment and Assistance Regulation (EAR), the appellant was not eligible for coverage of dental services that are not set out in the Schedule of Fee Allowances – Dentist (“the Dental Fee Schedule”) or the Schedule of Fee Allowances - Emergency Dental - Dentist (“the Emergency Dental Fee Schedules”) or for coverage of fees in excess of the rates set out in those Schedules.

The ministry also considered the appellant’s request under section 59 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

EAR – sections 59, 72 and 76, Schedule C, sections 1 and 7 [see Appendix A]
Schedule of Fee Allowances – Dentist (“the Dental Fee Schedule”)
Schedule of Fee Allowances - Emergency Dental-Dentist (“the Emergency Dental Fee Schedule”) [see Appendix B]

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The appellant is a dependent child in a family unit receiving MSP Premium Assistance and is therefore eligible for basic and emergency dental services through the Healthy Kids Program in accordance with section 72 and Schedule C, sections 1 and 7, of the EAR.

On or about January 27, 2020, the appellant’s parent requested coverage for multiple dental services for the appellant. The request was processed by Pacific Blue Cross (PBC), to which the ministry has delegated its powers, duties and functions respecting dental supplements in accordance with section 34 of the *Employment and Assistance Act*.

PBC approved coverage for the dental services listed Chart 1 as explained in the accompanying Notes.

Chart 1

	Tooth No.	Fee Code	Description	Dentist Fees	Amount approved by PBC
Date: January 27, 2020					
1		02112	Radiographs, periapical two images	\$23.70	\$19.35
2		02142	Radiographs, bitewing, two images	\$23.70	\$19.35
3		11112	Scaling, two units	\$91.00	\$68.55
4		11101	Polishing, one unit of time	\$38.30	\$29.95
5	13	20141	Pulp capping first tooth	\$38.80	\$29.38
6	16, 17	22311	Restorations, pre-fab metal	(2)\$225.00	(2)\$167.32
7	11, 12, 13, 21, 22	23113	Restorations permanent anterior 3 surfaces	(5)\$193.00	(5)\$151.00
8	23	23113	Restorations permanent anterior 3 surfaces	\$193.00	\$88.46
9	14, 15	23313	Permanent bicuspid bonded 3 surfaces	(2)\$248.00	(2)\$194.26
			TOTAL:	\$2319.50	\$1733.20

Notes:

1. Certified specialists, including oral surgeons may receive an additional 10% on services billed from the Schedule of Fee Allowances – Dentist. As your dentist is a specialist, you received the additional 10% of coverage.
2. Line item [8] was only covered to \$88.46 because [the appellant] had reached his \$2000 limit for basic dental services.

PBC rejected the items listed in Chart 2 (next page) because the \$2,000, 2-year limit for basic dental services was reached and because fee code 92228 is not included in the Dental Fee Schedule.

On February 21, 2020, the parent submitted a request for reconsideration together with a February 12, 2020 letter written by the parent, a letter from a social worker, and an Estimated Cost Summary of Proposed Dental Treatment dated January 9, 2020. The appellant’s parent wrote that the appellant is experiencing significant pain

and both the parent and social worker describe difficulties in providing dental services to the appellant due to the appellant's medical conditions. The parent also states that due to the need for total anaesthesia when providing dental services for the appellant, the appellant's teeth are fixed every 3 or 4 years, the last time being 2016, and therefore, the appellant does not use the \$2,000 basic dental coverage every two year period.

On reconsideration, the ministry determined that the appellant was not eligible for coverage for the services listed in Chart 2 as basic dental services because the \$2,000 limit for the current 2-year period had been reached. However, the ministry found the appellant eligible for all but one of the dental services in Chart 2 as emergency dental services needed for the immediate relief of pain. Noting that the appellant's PBC claims history confirms no restorations in the previous two years, the ministry determined that the appellant was eligible for coverage at the maximum rate listed in the Emergency Dental Fee Schedule, including the additional 10% for services provided by dental specialists. Coverage for Fee Code 92228 was denied because it is not listed in the Emergency Dental Fee Schedule.

Chart 2

	Tooth No.	Fee Code	Description	Dentist Fees	Ministry approved amount
Date requested: January 27, 2020					
1	26, 27, 34, 35, 36, 37, 44, 45, 47	22311	Restorations Pre-fab metal	(7)\$225.00	7(\$167.32)
2	33,43	22312	Restoration Permanent bonded two surfaces	(2)\$153.00	2(\$120.79)
3	24, 25	23313	Permanent Bicuspid, bonded, 3 surfaces	(2)\$248.00	2(\$194.26)
4	18, 28, 38, 48	72211	Extraction impacted tooth involving tissue or both – single tooth	(4)\$373.00	4(\$301.18)
5		92228	Provision of Dental and Anaesthetic/Facilities Equipment 8 units	\$1104.00	\$0.00
TOTAL:				\$5423.00	\$3340.70

Additional information

On March 10, 2020 the parent submitted a Notice of Appeal to the tribunal, as well as a 2-page letter dated March 7, 2020 and a March 12, 2020 email. The parent explained that past funding available through the "Healthy Kids" and "At Home" programs had not been used and requested that the ministry release the appellant's accumulated funding in a lump sum payment to cover the full amount of the dentist's fees or, in the alternative, approve increased funding under its policy for emergency dental services. The parent states that the total amount of unused Healthy Kids resources is \$3,733 (from 2017 to present) and that the accumulated At Home funding is "\$2800 x 3) per year x two years." The parent reiterates that the appellant's special needs and anxiety prevent the provision of dental services more frequently.

By email, on April 7, 2020, the ministry indicated that its submission is the reconsideration summary provided in the Record of Ministry Decision.

The panel admitted the information in the parent's appeal submissions in accordance with section 22(4) of the *Employment and Assistance Act* on the basis that they directly relate to the request for funding for dental services for the appellant and are therefore reasonably required for a full and fair disclosure of the matter on appeal.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant coverage for dental services not set out in the Dental Fee Schedule or Emergency Dental Fee Schedule and above the rates set out in those Schedules was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Additionally, was the ministry reasonable in concluding that the appellant was not eligible for the requested coverage of dental services as a crisis supplement or a health supplement to meet a life-threatening need?

Panel Decision

Positions of the Parties

On behalf of the appellant, the parent argues that full coverage of the dentist's fees is available from the unused accumulated Healthy Kids and At Home funding. The ministry should either use this funding to cover the dentist's costs or apply its policy respecting emergency dental services, consistent with the ministry's practice of non-discrimination against children with special needs.

The ministry's position is that "basic dental services" and "emergency dental services" are defined as services that are set out in the Dental Fee Schedule and Emergency Dental Fee Schedule, respectively. Therefore, the ministry cannot provide coverage for dental services that are not set out in those Schedules, specifically Fee Code 92228 (dental and anaesthetic/facilities equipment) or coverage for the amount that is in excess of the limits and amounts set out those Schedules. In determining the amounts for which the appellant is eligible, the ministry approved the additional 10% provided for dentists who are specialists. The ministry notes that general anaesthetic and IV sedation (Fee Code 92215) may be covered if a dentist requests coverage for that specific fee code and provides information to establish that the requirements related to that dental service are met.

The ministry also concluded that the appellant was not eligible for dental services as a crisis supplement or as a health supplement to meet an imminent life-threatening need.

Panel Analysis

Eligibility for dental services under the Healthy Kids program

Section 72 of the EAR authorizes the ministry to provide dental supplements as part of the Healthy Kids program in accordance with section 7 of Schedule C, which allows the minister to pay for basic dental services to a maximum total of \$2,000 for each 2 year period beginning on January 1st in an odd numbered year and to pay for emergency dental services with no maximum total. Because section 7(2)(a) states that the maximum \$2,000 for basic dental services is "for each 2-year period," and for "dental services provided to the child during the period," any unused funds cannot be carried over to exceed the \$2,000 limit of a subsequent 2-year period. It is also important to note that funding through the At Home program is through the Ministry of Children and Family Development and is not within this ministry's jurisdiction. While the inability to carry over unused or accumulated funds is implicit in the reconsideration decision there was no further elaboration or direct statement to that effect, which may have aided the parent's understanding of the ministry's decision.

Although there is no ability to apply unused Healthy Kids or At Home funding, the panel again notes that there is no maximum limit on the total amount of money that may be provided for emergency dental services.

However, for both basic and emergency dental services, the amount that the ministry may pay for each dental service is limited by the definitions of “basic dental service” and “emergency dental service” found in section 1 of Schedule C. Both definitions limit dental services to those set out in the Dental or Emergency Dental Fee Schedule and limit the amount that may be paid for a dental service to the rates set out in those Schedules. The ministry has no ability to provide funding beyond those limits. Therefore, even though there is no maximum limit on the total amount that may be paid for emergency dental services in a two year period, the ministry cannot pay more than the amount set out in the Dental or Emergency Dental Fee Schedule for any specific dental service.

Therefore, even if the appellant had received the dental services gradually over the past 2-year periods and requested funding at that time, the amount the ministry could have paid for each dental service (radiograph, restoration etc.) would not have been at a rate higher than that listed in the Dental or Emergency Dental Fee Schedules, regardless of whether or not past dental or other funding had not been fully used.

In the appellant’s case, the panel finds that the ministry has accurately identified the fee for all of the dental services listed in the Dental and Emergency Dental Fee Schedules, applying both the higher rate for services provided to a child and the 10% top-up for specialists. Additionally, the panel finds that dental service 92228 does not appear in either Fee Schedule and therefore concludes that the ministry reasonably determined that coverage for that dental service cannot be provided. Accordingly, the panel concludes that the maximum amount of funding for the dental services has been approved by the ministry and that the appellant is not eligible for funding of the dentist’s rates in excess of these amounts.

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 dental services under section 59 [crisis supplement] and section 76 [health supplement to meet a direct and imminent life-threatening need]. Section 59(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 section 7 which deals with dental supplements that may be provided to the appellant, the ministry was reasonable in concluding that the appellant was not eligible for the requested funding under section 76 of the EAR.

Conclusion

The panel finds that the ministry’s reconsideration decision, which determined that the appellant was not eligible for coverage for dental services not included or beyond the limits set out in the Dental and Emergency Dental Fee Schedules or for dental services under sections 59 and 76 of the EAR was a reasonable application of the legislation in the circumstances of the appellant. The reconsideration decision is confirmed and the appellant is not successful on appeal.

APPENDIX A – 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

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.
- (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 and optical supplements — healthy kids program

- 72** The minister may provide a health supplement in accordance with section 7 [dental and optical services — healthy kids program] of Schedule C to or for a family unit if the supplement is provided to or for a person in the family unit who is under 19 years of age and who is not eligible to receive the supplement under another provision of this Division or under Division 4 [Health Supplements] of Part 5 of the Employment and Assistance for Persons with Disabilities Regulation.

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....

Schedule C – Health Supplements

Definitions

Section 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 the category of person receiving the service....

“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 . . .

Dental and optical services — healthy kids program

7 (1) In this section, “period” means a 2 year period beginning on January 1, 2017, and on each subsequent January 1 in an odd numbered year.

(2) Subject to the following limits, the minister may pay under section 72 [dental and optical supplements — healthy kids] of this regulation for the following health care services for a person in the family unit who is under

19 years of age and who, when the service was provided, was eligible for supplemental services under section 10 (1) (c), (e) or (f) of the Medical and Health Care Services Regulation, or had been determined to be eligible for those services under section 11 of that regulation

- (a) basic dental services, to a maximum total of \$2 000 for each period for all basic dental services provided to the child during the period;
- (b) basic eyewear and repairs;
- (c) pre-authorized eyewear and repairs;
- (d) emergency dental services.

Appendix B – excerpts from the Emergency Dental Fee Schedule (and Preamble)

Note: rates for the provision of services to a child are in the right-hand column.

Specialist Referrals

Certified specialists, including oral surgeons may receive an additional 10% on services billed from the *Schedule of Fee Allowances – Dentist*. The Ministry contractor must have a record of the specialty on their billing system and the referring practitioner must be indicated on the claim form. If either of these is missing, the claim will be refused or reduced. If the referring practitioner is a Medical Doctor, please indicate this clearly on the claim form. As fee item 01601 – Examination and Diagnosis, Surgical by Oral Surgeon is restricted for use by Oral Surgeons only the additional 10% will not be applied to this fee item.

RESTORATIONS

Full Coverage Pre-fabricated Restorations

Child

22311	Stainless steel restoration (permanent posterior)	119.10	152.11
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Tooth Coloured – Permanent teeth

23112	Bonded - Anterior Two surfaces	90.56	109.07
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23313	Bonded – Bicuspid Three surfaces	144.04	176.60
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EXTRACTIONS (REMOVALS)

Impacted teeth (Unerupted)

72211	Single tooth	150.25	273.80
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APPEAL NUMBER
2020-00077

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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/04/22

PRINT NAME

Sandra Walters

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/22

PRINT NAME

Michael Skinner

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/22