

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 24, 2020 which denied the appellant's request for coverage for replacement of upper and lower dentures (code fee 31310 and 31320) because the appellant did not meet the legislative requirements of the Employment and Assistance Persons With Disability Regulation (EAPWDR).

The ministry found that the appellant is a recipient of disability assistance and therefore is eligible for coverage under basic dental services, emergency dental services and crown/bridgework. Dentures are covered under basic dental services.

The ministry found that the appellant is ineligible for the request of replacement upper and lower dentures because:

- The appellant's most recently funded upper and lower dentures are not more than five years old and the ministry provided a one-time exception to this regulation on December 18, 2019 when it provided a replacement set of dentures (EAPWDR Schedule C section 4(2)(b)).
- Only repairs and adjustment to dentures is covered by Emergency Dental Services in the Schedule of Fee Allowances – Denturist.
- The ministry is not authorized to provide coverage for dentures under section 69 of the EAPWDR (Life-threatening Need).
- The ministry is not authorized to provide coverage for dentures under section 57(3) of the EAPWDR (Crisis Supplement).

PART D – RELEVANT LEGISLATION

Employment and Assistance Persons With Disability Regulation - (EAPWDR) – sections 57, 69 and Schedule C section 4.
Schedule of Fee Allowances – Denturist, Emergency Dental – Denturist.

PART E – SUMMARY OF FACTS

Evidence at Reconsideration

1. Pacific Blue Cross (PBC) claims history as of March 24, 2020, which indicated that following:
 - Replacement for upper and lower dentures rejected by PBC on January 8, 2020.
 - Coverage previously provided for replacement for upper and lower dentures placed on December 18, 2018.
2. Request for Reconsideration (RFR), signed and dated March 10, 2020, which stated, in part, the following:
 - Dentures are needed to chew food properly so that food does not have to be swallowed whole which causes digestive problems and strong stomach pain.
 - When digestive problems and strong stomach pain is experienced food must be thrown back up.
 - The appellant had surgery and the open wound became infected.
 - The appellant was diagnosed with Type II diabetes and is of the opinion that dentures will better help manage diet.
3. Letter from the appellant's Medical Practitioner (MP), signed and dated March 4, 2020, which in part stated "Please consider this patient for new dentures, she unfortunately lost her last pair. She required dentures for management of her chronic health problems".
4. Undated note from the appellant, which stated, in part, the following:
 - "I need my dentures so that I can eat an assortment of food, not just soft foods".
 - "Without teeth, I cannot chew food properly which wreaks havoc on my digestive system. This causes me to regurgitate my food frequently and almost impossible to eat healthy nutritious food on a regular basis."
 - "As I have also been recently diagnosed with Type 2 diabetes, having dentures would help me to eat the foods I need, be able to digest them properly and help me to get my health back where it needs to be."

Evidence on Appeal

Notice of Appeal (NOA), signed and dated June 12, 2020, which stated "I absolutely must have dentures in able to maintain my chronic health conditions. My Type 2 diabetes is out of control without my ability to maintain a healthy diet. I am unable to eat foods that have been recommended without teeth and as a result, my diabetes has gone uncontrolled. While I understand that I am not eligible for replacement dentures at this time, they have become a life threatening health need".

The panel found that the NOA contains the appellant's argument.

Evidence at the Hearing

At the hearing, the appellant and her representative stated that they did not receive the Tribunal's appeal package. Each of the documents in the appeal package were listed to the appellant. The appellant and the representative stated that they had all the documents and requested to proceed with the hearing.

At the hearing, the appellant's representative read out a letter from the MP dated April 1, 2020. It indicated the following:

- The appellant lost her dentures and as a result her diet is limited.
- She has been diagnosed with Type II diabetes which is poorly controlled without her dentures.
- Not having dentures directly limits her ability to control the disease.

At the hearing, the appellant reiterated her arguments found in the RFR, NOA, and the MP's letters, and added, in part, the following:

- Not having dentures has been life altering.
- She is limited to eating rice, starches, and blended food. It is difficult to eat vegetables which she needs to control her Type II diabetes.
- Her Type II diabetes medication has been increased because she cannot control it through diet.
- Fruit will increase her sugar level, so vegetables are best.
- She must make separate meals for her and her child because she cannot eat the same foods.
- She lost her replacement dentures at a restaurant. She went to the washroom to deal with a cough. She thought the dentures were in her purse but realized when she got home that they were left on the table and cleared by the server when she was in the washroom. When she called the restaurant to find the dentures, the employee refused to search for them in the trash bin.
- She asked her mom for money to help pay for the new dentures, but her mom is unable to help.
- She tried to work out a payment plan with the dentist, but that service is not available.
- This situation is causing stress and depression.
- 3 years ago she had surgery and has an open wound. A regular healthy diet was healing this wound but since losing her dentures the healing has reversed.
- The inability to chew food properly is causing abdominal pain causing her to regurgitate her food. This also limits the nutrition she receives.
- She is normally independent but this situation has caused her to reach out for help.

At the hearing, the ministry relied on its reconsideration decision.

Admissibility of Additional Information

The ministry did not object to the admission of the MP's letter dated April 1, 2020.

In this case, the panel determined that the April 1, 2020 letter from the MP is admissible because the information in the letter allows for full and fair disclosure of all matters related to the issue on appeal. Accordingly, the panel has admitted this new information in accordance with s. 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's decision which denied the appellant's request for replacement upper and lower dentures was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that it cannot authorize the coverage for upper and lower dentures because the most recently funded dentures are not more than five years old, the ministry authorized a one-time exception to this regulation December 18, 2018, the coverage is not authorized as a life-threatening health need and the coverage is not authorized as a crisis supplement.

The legislation provides as follows in the EAPWDR:

Crisis supplement

57 (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.

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

69 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).

Schedule C:

Dental supplements

4 (2) Dentures may be provided as a basic dental service only to a person

- (a) who has never worn dentures, or
- (b) whose dentures are more than 5 years old.

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.

The Appellant's Position

The appellant argued that the replacement of the upper and lower dentures is necessary to be able to chew food properly which is necessary to manage nutrition, diet and Type II diabetes.

The Ministry's Position

The ministry argued that the appellant did not meet the criteria as set out in the legislation and therefore does not qualify for funding to cover the cost of replacement upper and lower dentures. Specifically, the appellant is not eligible for replacement upper and lower dentures as:

- a basic dental service because the appellant's most recent upper and lower dentures were provided on December 18, 2018 and are not more than five years old,
- an emergency dental service because the Schedule of Fee Allowances – Denturists covers only repairs and adjustments to dentures,
- a life-threatening health need because dentures are not medical equipment/device, medical transportation or medical supplies,
- a crisis supplement because supplements described in Schedule C or any other health care goods or services are not eligible for a crisis supplement.

Panel Decision

In its reconsideration decision, the ministry stated that "in the case of dental supplement, the minister's powers, duties or functions are delegated to Pacific Blue Cross".

In its reconsideration decision, the ministry stated that the dentures are requested from a Denturist therefore reference will be made to the regulations and Schedule of Fee Allowance for Denturists and not the regulations and Schedule of Fee Allowance for Dentists.

Section 4(2)(b) of Schedule C – Basic Dental Service

Section 4(2) of Schedule C of the EAPWDR states that 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. In this case, the appellant received replacement dentures in December 2018. Since the dentures that the appellant lost were not more than 5 years old and she has worn dentures before, she is not eligible for a replacement set under this section. The appellant did not dispute this.

The ministry noted that pursuant to its policy, it can provide replacement of dentures within the 5 years period mentioned above but this is a one-time exemption. The ministry argued that the dentures provided in December 2018 were a replacement set for a pair that the appellant previously lost. Since this is a one-time exemption, the ministry cannot provide another set until 2023 or 5 years after the latest set was provided. The appellant did not dispute that she lost her replacement set of dentures.

The panel finds that the ministry reasonably determined that the appellant does not meet the eligibility requirements for replacement upper and lower dentures as a basic dental service pursuant to Schedule C subsection 4(2) (b) of the EAPWDR.

Emergency Dental Services

Schedule C of EAPWDR states that "emergency dental service means a dental service necessary for immediate relief of pain". In this case, the dentures are not necessary for the immediate relief of pain. Schedule C of Fee Allowances – Denturists allows of the repair and adjustment of dentures as an emergency services and not the replacement of dentures. The appellant did not argue that she is in pain or that her dentures need repair of adjustment.

The panel finds that the ministry reasonably determined that the appellant does not meet the eligibility requirements for replacement upper and lower dentures as an emergency dental service pursuant to the Schedule of Fee Allowance – Denturist.

Section 69 – Life Threatening Health Need

Section 69 of the EAPWR states that the ministry may provide items listed as medical transportation, medical equipment/devices and some medical supplies to someone who is otherwise not eligible, if the person faces a direct and imminent life threatening need. However, dental and denture supplements are not listed in these sections as supplements that can be provided. Furthermore, the panel finds that the evidence does not establish that the appellant faces a direct and imminent life-threatening need. The information provided by the MP indicated that the appellant is has difficulty chewing and controlling her Type II diabetes and did not indicate that the loss of the dentures directly causes an immediate threat to her life. However, the panel finds that by the appellant's admission, she is eating rice, pasta and receiving nutrition from blended foods. The panel understands that it is difficult to eat but appellant is eating and receiving nutrients. Also, there is no indication that the appellant has tried and cannot meet her dietary needs through other supplements such as vitamins, Boost or Ensure. Without substantive information, it is difficult to determine a direct and imminent life threatening need for dentures.

The panel finds that the ministry reasonably determined that the appellant does not meet the eligibility requirements for replacement upper and lower dentures as a life-threatening health need pursuant to section 69 of the EAPWDR.

Section 57(3) – Crisis Supplement

Section 57(3) of the EAPWDR states that a crisis supplement cannot be provided for items listed in Schedule C or any health care goods or services. The replacement of dentures is listed in Schedule C section 4 and therefore is not eligible for a crisis supplement. The ministry also determined that a set of dentures is a health care goods or services. The appellant did not dispute this. The panel finds that dentures are categorized as health care goods as they are tangible goods, devices or objects provided in conjunction with dental care which is a health care service. As such, dentures cannot be provided as a crisis supplement.

The panel finds that the ministry reasonably determined that the appellant does not meet the eligibility requirements for replacement upper and lower dentures as a crisis supplement pursuant to section 57(3) of the EAPWDR.

Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for replacement of upper and lower dentures because the appellant did not meet the legislative requirements pursuant to sections 57(3), 69 and Schedule C subsections 4(2) (b) of the EAPWDR, was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant. The appellant is not successful in the appeal.

APPEAL NUMBER
2020-00158

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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/07/16

PRINT NAME

Patrick Cooper

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/07/16

PRINT NAME

Robert Kelly

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/07/16