

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision of February 13, 2020 in which the ministry denied coverage for fees that exceeded ministry rates for a dental crown health supplement provided under Employment and Assistance Act for Persons with Disabilities Regulation (EAPWDR) Sections 62, 63, 63.1 and Schedule C, Section 4 and 4.1. The ministry also determined that:

- the requested coverage cannot be provided under the “direct and imminent life-threatening health need” provisions in EAPWDR Section 69 because the information provided did not establish that the appellant’s need was imminent and life-threatening, and coverage of excess fees under this section does not apply to a dental supplement; and
- the appellant is not eligible for a crisis supplement under EAPWDR 57 (3) because dental supplements are excluded from crisis supplements under this section.

PART D – RELEVANT LEGISLATION

EAPWDR:

- Sections 57 (3), 62, 63, 63.1
- Schedule C, Section 1, 4, 4.1

Employment and Assistance Act (EAA) – Section 24

Administrative Tribunals Act (ATA) – Section 14

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration included:

- Appellant’s request for reconsideration submitted to the ministry on January 30, 2020 with the following attachments:
 - January 23, 2020 letter from the appellant’s dentist (Dr. P) stating that the appellant’s dental needs could not be met through the ministry’s basic dental program for the following reasons:
 1. removal of the fractured tooth would cause unnecessary trauma due to the appellant’s high hemocrit level which causes profuse bleeding;
 2. the appellant also suffers from Multiple Sclerosis (MS);
 3. a removable prosthetic would damage otherwise healthy teeth
 4. the least invasive and most appropriate procedure for the appellant is replacement of the crown;
 - January 30, 2020 letter from the appellant’s first advocate (G) requesting approval of the appellant’s request for a crown
- Pacific Blue Cross (PBC) statement of appellant’s authorized products and services for the period February 13, 2019 – February 13, 2020 rejecting the appellant’s request for a crown (procedure code 27211) on 3 occasions. Enclosed was a copy of the procedures necessary to obtain pre-approval from the ministry for a dental crown.

Information received after ReconsiderationDocuments:

- February 13, 2020 letter from the ministry to the appellant advising that following reconsideration the ministry has determined that the appellant is eligible for a replacement crown at the rate set out in the ministry’s “Schedule of Fee Allowances – Crown and Bridgework”,
- Notice of Appeal dated February 26, 2020 in which the appellant stated a belief that there was a conflict in the documents to access further information;
- letter to the Employment and Assistance Appeal Tribunal (the Tribunal) dated July 10, 2020 stating that the ministry sent a letter to Dr. P on February 24, 2020 advising that the appellant’s request for a crown had been approved, but due to an administrative error PBC had not been advised of the ministry’s approval, with the result that Dr. P could not receive approval from PBC despite repeated attempts. The ministry advised that that on July 9, 2020 PBC was advised of the error and of ministry approval;
- appellant’s 149-page submission (AS) dated July 2, 2020 containing the following attachments:
 - British Columbia Dental Association (BCDA) 2009 abbreviated fee guide setting a dentist’s fee for a code 27211 crown at \$620.50 plus laboratory costs;
 - BCDA 2010 abbreviated fee guide setting dentist’s fee for 27211 crown at \$635.60 plus laboratory costs;
 - BCDA 2019 abbreviated fee guide setting dentist’s fee for 27211 crown at \$816.00 plus laboratory costs;
 - ministry document “Dental Supplement – Dentist” effective September 1, 2017. Included in Part E of the document is the ministry’s “Schedule of Fee Allowances – Crown and Bridgework” effective April 1, 2010. The fee schedule sets a dentist’s fee for a code 27211 crown at \$624.20 including laboratory costs,;
 - ministry pamphlet entitled “Welfare Benefits” dated March 2018;

Oral Information:

The oral information provided by the appellant during the hearing consisted of argument, which will be discussed in Part F of the appeal decision.

Admissibility of Additional Information

The ministry representative did not object to the admissibility of the appellant’s submission and the appellant did not object to the admissibility of the ministry’s July 10, 2020 letter to the Tribunal. EAA Section 22 (4) states: “A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.” The panel considered the additional information and

determined that all of it should be admitted under EAA Section 22(4) because it provides additional information relevant to the issue under appeal.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry decision which denied coverage for fees that exceeded ministry rates for a dental crown health supplement provided under Employment and Assistance Act for Persons with Disabilities Regulation (EAPWDR) Sections 62, 63, 63.1 and Schedule C, Section 4 and 4.1. The ministry also determined that:

- the requested coverage cannot be provided under the “direct and imminent life-threatening health need” provisions in EAPWDR Section 69 because the information provided did not establish that the appellant’s need was imminent and life-threatening, and coverage of excess fees under this section does not apply to a dental supplement; and
- the appellant is not eligible for a crisis supplement under EAPWDR Section 57 (3) because dental supplements are excluded from crisis supplements under this section.

Relevant legislation:

EAPWDR:**General health supplements**

62 The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

Dental supplements

63 The minister may provide any health supplement set out in section 4 [*dental supplements*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,

Crown and bridgework supplement

63.1 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 disability assistance, if the supplement is provided to or for a person in the family unit who is a person with disabilities, 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 disabilities.

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

69 (1) The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation

Schedule C**Definitions**

1 In this Schedule:

- (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.

Dental supplements

- 4** (1) In this section, "period" means
- (a) in respect of a person under 19 years of age, a 2 year period beginning on January 1, 2017, and on each subsequent January 1 in an odd numbered year, and
 - (b) in respect of a person not referred to in paragraph (a), a 2 year period beginning on January 1, 2003 and on each subsequent January 1 in an odd numbered year.
- (1.1) The health supplements that may be paid under section 63 [*dental supplements*] of this regulation are basic dental services to a maximum of
- (a) \$2 000 each period, if provided to a person under 19 years of age, and
 - (b) \$1 000 each period, if provided to a person not referred to in paragraph (a)

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 person has received the pre-authorization of the minister.
- (2) A health supplement may be paid under section 63.1 of this regulation for crown and bridgework but only if the minister ~~is~~ is of the opinion that the person 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;

EAPWDR:

Crisis supplement

- 57** (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if
- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
 - (b) the minister considers that failure to meet the expense or obtain the item will result in
 - (i) imminent danger to the physical health of any person in the family unit.
- (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.

EAA:

Decision of panel

- 24** (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,
- (a) reasonably supported by the evidence, or
 - (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.
- (2) For a decision referred to in subsection (1), the panel must
- (a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and

(b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

ATA:

General power to make orders

14 In order to facilitate the just and timely resolution of an application the tribunal, if requested by a party or an intervener, or on its own initiative, may make any order

- (a) for which a rule is made by the tribunal under section 11,
- (b) for which a rule is prescribed under section 60, or
- (c) in relation to any matter that the tribunal considers necessary for purposes of controlling its own proceedings.

Appellant's Position:

At the hearing the appellant delivered an extensive oral argument to support the position that the ministry's decision was not reasonable. The appellant's position is summarized as follows:

- Although the ministry's "Schedule of Fee Allowances – Dentist" is dated September 1, 2017 the ministry's "Schedule of Fees and Allowances – Crown and Bridgework" has not been updated since April 1, 2010. The ministry has failed to update the fees for crowns and bridgework despite ample opportunity to do so.
- The BCDA updates its fee schedule annually. The ministry's failure to update the fee schedule is not reasonable. "Reasonable" is defined in Black's Law Dictionary as "*fair, proper, moderate*".
- Dental health is an important component of overall health. This is especially important for PWDs. For this reason PWD recipients should have their own category of fees payable by the ministry.
- A ministry worker advised the appellant to find a dentist who charges at the BCDA rate. The appellant had to travel to a town 47 km away to be treated by Dr. P, who charged the appellant at the 2019 BCDA rate of \$816.00 plus laboratory costs. All dentists practising in the appellant's home community bill at a higher rate.
- The shortfall of \$591.80 which must be paid by the appellant has caused significant stress and financial hardship. The appellant had to borrow the funds to pay the difference.
- The ministry's process in communicating approval of the dental crown was poor. The approval letter was sent to Dr. P on February 24, 2020 but due to ministry errors the matter was not resolved until July 9th. The approval letter instructed Dr. P to use a different procedure for submitting the claim to PBC. Dr. P's office has no record of receiving the approval letter. Consequently Dr. P continued to submit the claim using the original procedure, which caused PBC to reject all claim submissions. The ministry worker in charge of the claim approval did not advise PBC that the crown had been approved, and retired soon afterward.
- the appeal panel must be guided by ATA Section 14 (c) which states that in order to facilitate a just and timely resolution of an application a tribunal may make any order in relation to any matter that the tribunal considers necessary for purposes of controlling its own proceedings.

Ministry's Position:

The ministry argues that it is bound by the legislation, specifically EAPWDR Sections 63, 63.1 and Schedule C, which limits payment of crowns and bridgework to the rate set out in the Schedule of Fees and Allowances. The fee schedule limits may only be exceeded in certain circumstances, namely a life-threatening health need (S. 69) need or a crisis supplement (S. 57 (3)), neither of which is applicable to the appellant's circumstances.

PANEL DECISION

The ministry approved funding for the appellant's crown in the reconsideration decision. The remaining issue under appeal is the reasonableness of the ministry's determination that the amount payable to the appellant's dentist is limited to the rate set out in the Schedule of Fee Allowances – Crown and Bridgework.

Maximum Allowable Coverage

As a recipient of disability assistance the appellant is eligible for a health supplement under EAPWDR Section 62. Section 63 provides coverage for basic dental services provided by a dentist, denturist or dental hygienist to recipients of disability assistance. A dental crown is excluded from the list of dental services under this legislation.

Upon reconsideration the ministry determined that the appellant is eligible for a dental crown under EAPWDR Schedule C, Section 4.1 (2) (a) because the information provided by Dr. P established that the appellant's dental condition precluded the provision of restorative services and the use of a removable dental prosthetic. The criteria relating provision of a crown as a dental service is set out in Section 4.1 (1) of Schedule C:

- 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 person has received the pre-authorization of the minister.

The fee schedule for a code 27211 dental crown set out in the 2020 schedule is \$624.20. The panel finds that the ministry reasonably determined that the maximum dental supplement payable to the appellant's dentist for a code 27211 dental crown is \$624.20 as set out in Set out in the Schedule of Fee Allowances – Crown and Bridgework.

Eligibility due to a Life-Threatening Health Need

EAPWDR Section 69 lists the following eligibility criteria for a health supplement in the event of life-threatening health need:

1. direct and imminent life-threatening health need and no resources available;
2. health supplement is necessary to meet the need;
3. receiving premium Medicare assistance;
4. the following Schedule C requirements are met:
 - i. subsections 2(1) (a) (*wound care*) or (f) (*limb circulation care*) and (3) (*a supplement already received but now repealed*) of Schedule C; or
 - ii. sections 3 to 3.12 (*health supplements not including dental devices or services*), other than paragraph (a) of section 3(1) (*already eligible under Section 62*) of Schedule C.

Although the appellant has experienced significant stress arising from the request for a dental crown no additional information was submitted to indicate that the appellant's need for a dental supplement is directly and imminently life-threatening. Dental supplies and treatment are not included in the supplements listed in (i) or (ii) of Criterion 4.

The panel therefore finds that the ministry reasonably determined that the appellant is not eligible for a dental crown as a life-threatening health need.

Eligibility through a Crisis Supplement

EAPWDR Section 57(1) states that a crisis supplement may not be provided for the purpose of obtaining a health supplement under Schedule C. The appellant is requesting a health supplement for a dental service that is included in Schedule C. The panel therefore finds that the ministry reasonably determined that the appellant is not eligible for a crisis supplement under Section 57 (1).

Applicability of ATA Section 14 (c)

The appellant argues that the ministry's failure to update its Schedule of Fee Allowances – Crown and Bridgework since April 1, 2010 is unfair, unreasonable and places an onerous financial burden upon recipients of PWD. As a result of this unfairness the appellant asserts that appeal panel is required by ATA Section 14 (c) to make any order that is just and reasonable when requested by a party.

The following ATA provisions apply to the Tribunal (EAA Section 19.1): Part 1, Part 2, Part 3 - Sections 30, 40, 44, 46.3, Part 8 - Sections 58, 59.1, 59.2, 60 (1) (g) to (i) and (2) and 61. Section 14 is in Part 4 and is not specifically listed. ATA Section 14 (c) is therefore not relevant to this appeal. The jurisdiction of the Tribunal is restricted to the legislative authority contained in EAA Section 24 (1), which requires the panel to determine whether the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Conclusion

The panel acknowledges that the ministry's fee schedule for dental crowns has not changed since 2010, whereas the BCDA's suggested fees have increased annually. Failure to update the ministry's schedule of allowable fees increases the portion which must be paid by applicants for a dental supplement and causes a significant financial burden to the applicant. However neither the ministry nor the panel has the authority or discretion to exceed the fee limit for a code 27211 dental crown set out in the EAPWDR except as allowed by the legislation.

The panel therefore finds that the ministry reasonably determined that payment of a health supplement of \$624.20 for a code 27211 dental crown as set out in the ministry's Schedule of Fee Allowances – Crown and Bridgework constitutes 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 2020-00060

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

Joan Bubbs

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/Jul/20

PRINT NAME

Mel Donhauser

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Jul/20

PRINT NAME

Robert Kelly

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Jul/20