

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated July 15, 2020, which denied the appellant's request for a supplement to cover the cost of a complete mandibular (lower) denture. The ministry found that the requirement in Section 4(2) of Schedule C of the EAPWDR had not been met as the appellant's dentures are not more than 5 years old. The ministry found further that the services requested are not included in the definition of "emergency dental service" under Section 1 of Schedule C of the EAPWDR.

The ministry also found that Section 69 of the EAPWDR, which provides a health supplement for persons facing a direct and imminent life-threatening health need, does not apply because dental and denture supplements are not included in this section. The ministry further found that the lower denture could not be provided as a crisis supplement as Section 57(3) of the EAPWDR excludes supplements described in Schedule C or any other health care goods or services.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 57, 63, 64, and 69 and Schedule C, Sections 1, 4, 4.2 and 5.

Schedule of Fee Allowances- Denturist; Emergency Dental- Denturist.

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Pacific Blue Cross (PBC) statement dated June 22, 2020 indicating total claimed amount of \$1,350 (code #31320) with a plan paid amount of nil;
- 2) Treatment Plan dated June 25, 2020 from a denture clinic indicating a charge of \$1,350 for “Complete Mandibular- Standard”;
- 3) PBC statement dated July 15, 2020 referring to service dates of October 16, 2017 where \$581.25 was paid to the appellant for “Complete Standard Dentures, Mandibular” and September 2, 2015 when \$581.25 was paid to the appellant for “Complete Standard Dentures, Mandibular,” and an accompanying note that “This payment has been made on an exception basis and does not set a precedent for future claims. This claim was processed per instructions from the ministry”; and,
- 4) Request for Reconsideration dated July 7, 2020, with additional handwritten page.

In the Request for Reconsideration and attached page, the appellant’s information included the following:

- The appellant brought the PBC statement in [to the ministry] with the reason they will not pay. The dentist said that if the appellant pays, the cost is \$1,000 and if the ministry pays the cost is \$1,350. The cost is cheaper if the appellant pays but the appellant does not make enough.
- Without teeth, the appellant could die. The appellant is too small to do chemo [chemotherapy] and the appellant only has the ministry to look to for help.
- The appellant has been going to the food bank but with no teeth the appellant has to use a blender to grind up food.
- The appellant needs traveling funds for chemo and to have teeth replaced.
- The appellant explained this to the ministry and the appellant was told that the appellant is “not due” until next April. The appellant cannot wait that long.
- The tumor is slow growing and the appellant will have a date on July 30, 2020 for the start of chemo. After this visit, it is a “life and death situation.”
- The appellant does not have money to replace [the appellant’s teeth] or the appellant would [replace them].
- The appellant does not have a general practitioner (GP) doctor.
- If the appellant pays and the \$1,350 is deposited, the appellant can get the teeth replaced and have traveling money. The appellant can use the \$350 for traveling.
- The appellant already gave proof of the cancer appointment and the PBC decision.
- The appellant has brain cancer.
- The appellant did the best the appellant could in answering the ministry’s questions.
- Rent, bills and food are what the appellant uses the [disability assistance] cheque for.

Additional information

In the Notice of Appeal dated July 16, 2020, the appellant expressed disagreement with the ministry decision and wrote that the appellant’s situation is life threatening. The appellant has

brain cancer and dentures are [needed] to eat properly to be healthy for chemo.

Prior to the hearing, the appellant provided additional documents (110 pages) including:

- 1) Copy of the Request for Reconsideration dated July 7, 2020 with added handwritten notes stating that:
 - The appellant has a titanium stent in the large intestine to the liver and the appellant is going in on the 18th for a scope and this could be cancerous. This is a life and death situation as well.
 - The appellant knows there will be a need for chemo on July 30, 2020.
 - The appellant waited for an advocate but because of the COVID19 pandemic, they are only helping by telephone so nobody can sign or help the appellant fill this out.
 - The appellant cannot eat proper foods with no teeth so it is up to [the Tribunal] if the appellant lives or dies.
 - The appellant had conflicting information given by the ministry. The appellant was hung up on after the appellant got a message saying the ministry would pay for dentures but not the gas to get there and the ministry would pay for gas for chemo appointments and parking. Then the appellant found out that the ministry is not helping the appellant with anything.
 - The appellant asks that the decision be reconsidered. The appellant's head has been "cracked open" by an ex-spouse.
 - The chemo is so dangerous that if one of the capsules opens, the appellant can get a third-degree burn.
 - The appellant was in pain while filling out the form.
 - The appellant was not sleeping and not eating and is a small size and a low weight because of not having dentures.
 - The appellant asks that the money [for dentures] be taken off every [disability assistance] cheque.
 - The appellant's gums are becoming infected because of no lower dentures. The doctor sent [the ministry] a note and the chemotherapist faxed [the ministry] a letter.
- 2) Copy of July 15, 2020 letter to the appellant from the ministry with added handwritten notes that there was nobody to help the appellant as the advocate said "she had no room for 3 weeks";
- 3) Copy of the Reconsideration Decision dated July 15, 2020 with an added handwritten note that the appellant is "in dire need" so the appellant can gain weight for chemo;
- 4) Copy of a Notice of Appeal form with handwritten notes dated July 16, 2020 stating that the appellant's "life is at stake" if the appellant does not gain weight as the appellant may not be able to do the chemo; and,
- 5) Copies of unaltered documents from the Record of the Ministry Decision.

At the hearing, the appellant stated:

- The appellant has been in and out of the hospital. The appellant cannot live only drinking powdered drinks and needs solid food, which the appellant cannot chew without bottom dentures.
- The appellant experienced an excess of bowel movements from drinking the powdered

drinks, although there is no cancer in the appellant's bowels.

- This has been an upsetting time with being in hospital and preparing for the hearing and the appellant only has until September to gain weight prior to starting chemo.
- The powdered drinks are going "straight through" the appellant and not allowing the appellant to gain weight.
- The dentures that the ministry provided in October 2017 are no longer available for the appellant to use. The appellant got up in the morning to make a drink and had both of the appellant's dentures in her hands because the appellant usually cleans them in the morning. The bottom denture got dropped in the Ninja [blender].
- The appellant has had problems in the past with family members breaking in to the appellant's residence to steal the appellant's belongings, including the appellant's dentures.
- The appellant has brain cancer and this is life-threatening and the appellant needs the lower dentures to eat solid food and gain weight before the chemo.
- The appellant has paid for gas to drive back and forth to the hospital and has had to pay for the powdered drinks.
- The appellant has been told that the appellant would be 'due' again in April 2021 and the appellant would be able to obtain dentures at that time.
- The appellant is willing to pay out of the appellant's own pocket and have the amount deducted from the disability assistance cheque if the ministry will provide the funding up front.
- The appellant absolutely has to have the lower dentures. The appellant is a very low weight and has been told there is a need to eat real food.

The ministry relied on the reconsideration decision as summarized at the hearing. The ministry also clarified:

- The regulation allows for replacement dentures after the original dentures are more than 5 years old. The appellant was most recently provided with lower dentures on October 16, 2017 and, therefore, the appellant's dentures would be more than 5 years old after October 16, 2022.
- The ministry policy only allows for a one-time exemption to the requirement for the original dentures to be more than 5 years old and the appellant has already used the one-time exemption. As well, there was insufficient information to show that the original dentures were lost or damaged beyond repair, the loss or damage was beyond the appellant's control.
- The ministry acknowledged that failure to provide a lower denture could result in the appellant's compromised health.

Admissibility of Additional Information

The ministry did not object to the admissibility of the additional documents provided by the appellant. The panel considered the additional documents provided by the appellant and admitted them in accordance with Section 22(4) of the *Employment and Assistance Act* on the basis that the information directly relates to the request for funding for lower dentures for the appellant and is, therefore, reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the cost of a complete lower denture, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

The EAPWDR provides as follows:

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, 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 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 . . .

Emergency dental and denture supplement

- 64 The minister may provide any health supplement set out in section 5 [emergency dental supplements] of Schedule C to or for
- (a) a family unit in receipt of disability assistance . . .

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 of the EAPWDR sets out:

Health Supplements

Definitions

1 In this Schedule:

"basic dental service" means a dental service that

. . .

(b) if provided by a dentist,

- (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 . . .

"emergency dental service" means a dental service necessary for the immediate relief of pain that,

. . .

(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, 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).

(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.

Basic Dental Service

The ministry determined that the appellant is a Person With Disabilities (PWD) in receipt of disability assistance and is, therefore, eligible for basic and emergency dental services in accordance with Sections 63 and 64 of the EAPWDR and Schedule C, Sections 1, 4 and 5. The appellant submitted a treatment plan for a Complete Mandibular Lower Denture (Fee Code 31320) to be provided by a Denturist. 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 25 of the Employment and Assistance for Persons With Disabilities Act (EAPWDA).

The appellant's request was denied by PBC as the appellant had been provided coverage by the ministry for a complete lower denture on October 16, 2017 and, therefore, the appellant's request did not meet the requirement in Section 4(2)(b) of Schedule C of the EAPWDR that the dentures are "more than 5 years old." In the reconsideration decision, the ministry referred to ministry policy that allows a one-time exemption to the 5 year replacement requirement if certain conditions are met and wrote that the previous coverage by the ministry of a complete lower denture to the appellant on October 16, 2017 was as a one-time exemption to the 5-year replacement regulation. At the hearing, the ministry reiterated that the policy allows for a one-time exemption only.

The appellant did not dispute that the appellant had been provided coverage by the ministry for a complete lower denture on October 16, 2017. The appellant wrote in the Notice of Appeal that the appellant's situation is life threatening as the appellant has brain cancer and dentures are needed to eat properly to be healthy for treatment (chemo). In the Request for Reconsideration,

the appellant wrote that without teeth, the appellant could die, that the appellant is too small to do chemo and the appellant only has the ministry to look to for help.

At the hearing, the appellant explained that the lower dentures provided by the ministry in October 2017 are no longer available to use as they fell into a blender. The appellant did not dispute that the lower dentures had been previously provided by the ministry as an exemption to the 5-year requirement. The PBC statement dated July 15, 2020 refers to a service date of September 2, 2015, approximately 2 years prior, when \$581.25 was paid to the appellant for "Complete Standard Dentures, Mandibular." The ministry considered the ministry policy and confirmed at the hearing that the exemption to the requirement that the dentures are more than 5 years old is only available one time and is, therefore, no longer available to the appellant.

Section 4(2) of Schedule C of the EAPWDR stipulates that dentures may be provided as a basic dental service in *only* two situations: to a person who has never worn dentures, or to a person whose dentures are more than 5 years old. The PBC statement dated July 15, 2020 refers to a service date on October 16, 2017, where \$581.25 was paid to the appellant for "Complete Standard Dentures, Mandibular" and the panel finds that the ministry reasonably determined that the appellant's lower dentures are not more than 5 years old. Therefore, the panel finds that the ministry reasonably concluded that a complete lower denture may not be provided to the appellant as a basic dental service under Section 4(2)(b) of Schedule C of the EAPWDR.

Emergency Dental Service

In the reconsideration decision, the ministry wrote that the definition of "emergency dental service" in Section 1 of Schedule C of the EAPWDR means a dental service necessary for the immediate relief of pain that, if provided by a dentist, 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 is provided at the rate set out in that Schedule for the service and the category of the person receiving the service. The ministry wrote that while the Schedule of Fee Allowances- Emergency Dental- Denturist lists denture repairs and adjustments, it does not provide for coverage of dentures themselves.

The appellant claims that the requested services of a Complete Lower Denture (fee code 31320) are included in the Schedule of Fee Allowances- Emergency Dental- Denturist. In the appellant's submission on appeal, the appellant wrote the appellant is "in dire need" for dentures so the appellant can gain weight for chemo.

Upon a review of the Schedule of Fee Allowances- Emergency Dental- Denturist, the panel notes that the fee codes are in chronological order and after fee code number 10104 for a specific exam, there is a fee code number 32418 for a maxillary reline of a denture, with no reference to fee code 31320 for a complete mandibular denture. As the services requested by the appellant are not set out in the Schedule of Fee Allowances-Emergency Dental-Denturist, the panel finds that the ministry reasonably concluded that the appellant is not eligible for

coverage of a complete mandibular denture (fee code 31320) as an emergency dental service.

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 a lower denture under Section 57 [crisis supplement] and Section 69 [health supplement to meet a direct and imminent life-threatening need] of the EAPWDR. 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. As denture services, which are described in Schedule C are also considered health care goods or services, the panel finds that the ministry was reasonable in concluding that the ministry was not eligible for the requested funding under Section 57 of the EAPWDR.

Section 69 of the EAPWDR provides for some health supplements [specifically medical supplies, medical transportation and medical equipment and devices] when the person is not otherwise eligible and the person faces a direct and imminent life-threatening need; however, dental and denture supplements are not included in the health supplements in Section 69. The panel finds that the ministry reasonably determined that the appellant was not eligible for the requested funding for a complete lower denture under Section 69 of the EAPWDR.

Conclusion

In conclusion, the panel finds that the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the cost of a lower denture, was a reasonable application of the applicable enactment in the appellant's circumstances, and the panel confirms the decision. The appellant's appeal, therefore, is not successful.

APPEAL NUMBER
2020-00181

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
S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)
2020-08-06

PRINT NAME
Mel Donhauser

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020-08-06

PRINT NAME
Jeanne Byron

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020-08-06