

APPEAL NUMBER
2020-00183

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated July 14, 2020, which determined that the appellant was not eligible for coverage for a partial denture, because his request did not meet the criteria set out in sections 59, 68, 69, 70, or 76 of the Employment and Assistance Regulation.

Specifically, the ministry determined that the appellant was not eligible for coverage of a partial denture as a crisis supplement, or health supplement (dental supplement, denture supplement, emergency dental and denture supplements, health supplement for persons facing a life-threatening health need).

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA), section 34

Employment and Assistance Regulation (EAR), sections 59, 66.1, 66.3, 68, 69, 70, and 76, Schedule C, sections 1, 2, 4, 5 and 6

PART E – SUMMARY OF FACTS

Relevant Evidence Before the Minister at Reconsideration

Ministry records show:

- The appellant is a recipient of income assistance.
- Under the EAA and applicable regulations the minister may authorize any person or category of persons to take on any or all the minister's powers, duties or functions. In the case of dental supplements, the minister's powers, duties or functions are assigned to Pacific Blue Cross.
- On June 8, 2020 the appellant contacted the ministry and stated that his dentist informed him that he is eligible for a full denture but not a partial one and that he wanted a partial denture only. The ministry worker contacted Pacific Blue Cross to clarify the appellant's request.

Pacific Blue Cross response:

"The client is under emergency services only, therefore only eligible for a complete (denture) as partial dentures are not a benefit under emergency services. To be eligible for a complete denture under emergency, the client must have full clearance of the arch and be within 6 months of denture insertion."

Request for Reconsideration (July 3, 2020)

The appellant stated he is only approved for a complete denture, but he and the dentist who removed his teeth, do not want to pull teeth that are still good. The dentist explained that the appellant is still young and teeth are important for his facial bone health. The appellant is happy not to be in pain anymore or have his mouth full of infections. He hopes the ministry will approve a partial denture so he can eat regular food and smile.

Letter written by a Health Authority Clinician (July 3, 2020)

The clinician stated she is writing as an advocate for the appellant in order to receive funding for a partial denture. In October 2019 the appellant was hoping to attend a treatment centre, Unfortunately he had several infections in his mouth from broken and rotten teeth and the treatment centre requested that he get his dental issues dealt with prior to being accepted into treatment. As these infections were causing the appellant much pain, he followed through on this.

His dentist stated that he does not remove healthy teeth, but removed the majority of the appellant's teeth on his top arch that could not be saved. This left the appellant with five healthy upper teeth. The dentist explained the importance of not pulling these healthy teeth - the appellant is young and it is important to preserve the bone integrity of his jaw. "Without teeth, bone density is lost, which can lead to future problems."

Since having his teeth removed, the appellant is glad to not be in pain but is struggling to eat solid food and has lost weight. He states he is embarrassed to meet people and feels as though his life is on hold. The appellant is committed to going to the treatment centre but would like to have teeth before going, in order to connect with confidence.

The appellant has worked hard while waiting to find out what will happen with his teeth. He is hoping for approval of a partial denture so he can eat comfortably, be more confident and smile.

Ministry of Social Development and Poverty Reduction - Dental Supplement – Dentist

Part A - Preamble - Dental Supplements - Dentist

Emergency Dental Supplements

Schedule of Fee Allowances – Dentist Effective September 1, 2017

FEE NO.	FEE DESCRIPTION	FEE AMOUNT (\$)	
		Adult	Child
<u>PROSTHODONTICS - REMOVABLE</u>			
<u>Note:</u>	Dentures are an eligible item once every five years. The replacement of dentures within five years of original insertion will normally not be paid by the Ministry. Refer to Denture Policy in Part A – Preamble to Dental Supplements – Dentist.		
	Lab fees are included in the listed fee unless otherwise indicated.		
	COMPLETE DENTURES Includes:		
	<ul style="list-style-type: none"> - impressions - initial and final jaw relation records - try-in evaluation and check records - insertion - adjustments (includes 6 months post-insertion care) 		
51101	Complete Maxillary Denture	757.50	957.20
51102	Complete Mandibular Denture	780.75	1045.00
<u>IMMEDIATE COMPLETE DENTURES</u>			
Also includes six-month post-insertion care, including all tissue conditioners but does not include hard/permanent relines.			
51301	Immediate Complete Maxillary Denture	789.75	1182.28
51302	Immediate Complete Mandibular Denture	816.00	1266.37

Ministry of Social Development and Poverty Reduction - Dental Supplement – Denturist

Part A - Preamble - Dental Supplements - Denturist

Schedule of Fee Allowances – Denturist Effective September 1, 2017

FEE NO.	FEE DESCRIPTION	FEE AMOUNT (\$)	
		Adult	Child
31310	Complete Maxillary Denture	581.25	1007.00
31311	Immediate Complete Maxillary Denture	675.00	1280.00
<u>Note:</u>	Denturists without Oral Pathology must wait 21 days prior to provision of service.		
31320	Complete Mandibular Denture	581.25	1007.00
31321	Immediate Complete Mandibular Denture	675.00	1280.00

Additional Information

Appellant

Notice of Appeal (July 20, 2020)

The appellant does not want to have to pull the healthy few teeth he has but needs a partial to be able to eat. He has only two front teeth and three rear upper teeth. He has no lower back teeth and so can't chew.

Appellant Submission (August 6, 2020)

Dental X-ray - shows the teeth that were removed, and that this leaves the appellant with few remaining teeth, none of which line up in order to chew or bite.

At the hearing the appellant added that in 2019 he stopped working to go into recovery. He was accepted into treatment but the treatment centre wanted him to remove his bad teeth. He didn't know the government didn't cover partials. He has no teeth at all on his left side. The appellant is looking for partial dentures for the top and bottom, but primarily the top - to be provided by a dentist. He is now in pain all the time as he is trying to eat, without adequate teeth. This is also causing the appellant to suffer from depression.

Ministry

At the hearing the ministry relied on its reconsideration decision but also added that the benefits are provided through Pacific Blue Cross. The ministry uses Pacific Blue Cross as a resource and then applies the legislation. The fee schedule is only applied after the legislative criteria is met.

The panel determined that the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is:

Whether the ministry's reconsideration decision that determined the appellant was not eligible for coverage for a partial denture, because his request did not meet the criteria set out in sections 59, 68, 69, 70, or 76 of the EAR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine that the appellant was not eligible for coverage of a partial denture as a crisis supplement, or health supplement (dental supplement, denture supplement, emergency dental and denture supplements, health supplement for persons facing a life-threatening health need)?

Relevant 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 (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.

Division 5 — Health Supplements

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

...

"continued person" means

(a) a main continued person under section 66.3 (1) or 66.4 (1)

...

"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.

...

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,

...

(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, ...

Denture supplement

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 hardship 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.

...

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,
- (b) the health supplement is necessary to meet that need,

...

Schedule C

Health Supplements

Definitions

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,

(b) if provided by a denturist,

(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,

...

"dentist" means a dentist registered with the College of Dental Surgeons of British Columbia continued under the *Health Professions Act*;

"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 September 1, 2017 and is published on the website of the ministry of the minister, and

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

(b) if provided by a denturist

(i) are set out under fee numbers 31310 to 31321 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) are provided at the rate set out in that Schedule for the service or item and the category of person receiving the service or item;

"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 denturist,

(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;

...

General health supplements

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 67 [*general health supplements*] of this regulation:

(a) medical or surgical supplies

...

(f) the least expensive appropriate mode of transportation

...

Dental supplements

4

...

(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) \$1000 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.
- (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
- (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.
- (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) 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.
- (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 and 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) 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.

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.

- (c) pre-authorized eyewear and repairs;
- (d) emergency dental services.

Appellant Argument

The appellant argues that he does not want to have to pull the healthy few teeth he has but he needs a partial denture to be able to eat. He has only two front teeth and three rear upper teeth and has no lower back teeth and so he can't chew. The appellant also argues that the dentist who removed his teeth does not want to pull teeth that are still good. The dentist explained that the appellant is still young and teeth are important for his facial bone health. The appellant also argues that it is painful trying to eat with such few teeth and this situation has led to depression.

Ministry Argument

The ministry argues that the legislation was reasonably applied. The appellant's request does not meet the legislative requirements set out in the EAR pertaining to, coverage of a partial denture as a denture supplement or emergency dental service or coverage of a partial denture as a life-threatening health need or a crisis supplement. As the appellant is a recipient of income assistance, his coverage is for emergency services only, which does not cover partial dentures.

Section 34, EAA - Delegation of minister's powers and duties

The ministry states that under section 34, in the case of dental supplements, the minister's powers, duties or functions are assigned to Pacific Blue Cross. The panel finds section 34 of the EAA allows the ministry to delegate the minister's powers to Pacific Blue Cross.

In its reconsideration decision, the ministry reviewed the following sections of the EAR to determine if the appellant was eligible to receive coverage for a partial denture.

Section 59, EAR – Crisis supplement

Under section 59 the ministry determined the appellant was not eligible to receive a crisis supplement to cover a partial denture as section 59 (3) states that the ministry may not provide a crisis supplement to obtain a supplement described in schedule C or for any other health care goods or services, and the partial dentures the appellant is requesting is a health care service described in schedule C.

In a letter dated July 3, 2020, the appellant's clinician advised that since having his teeth removed, he is struggling to eat solid food and has lost weight. He is committed to going to a treatment centre but would like to have teeth before going, in order to connect with confidence. At the hearing, the appellant stated it is painful trying to eat with such few teeth and this situation has led to depression.

The panel acknowledges the appellant's need for a partial denture, but as the appellant is requesting a supplement (dental or denture), which is included in schedule C, the panel finds the ministry reasonably determined that the appellant was not eligible for coverage of partial dentures under section 59 of the EAR – crisis supplement.

Health Supplements

Section 68, EAR – Dental Supplements, 68.1 Crown and Bridgework Supplement

Under section 68, the ministry determined that although the appellant is on income assistance he was not eligible for partial dentures as he is not a person with persistent multiple barriers, not under 19 years of age, and not a continued person (as defined in the EAR, sections 66.1 and 66.3).

The panel finds ministry records show the appellant is in receipt of income assistance. However, there is insufficient evidence to demonstrate that the appellant is a person with persistent multiple barriers, is under 19 years old or is a continued person as defined by the legislation.

As these criteria are required for eligibility under section 68, the panel finds the ministry reasonably determined that the appellant was not eligible for partial dentures under sections 68 of the EAR – dental supplements.

Section 69, EAR Denture Supplement

The ministry determined the appellant was not eligible for coverage for partial dentures under section 69 as the applicable Schedule of Fee Allowance only provides coverage for full dentures.

Section 69 (1) states, "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 family unit in receipt of income assistance."

Subsection (2) states, "A person is not eligible for a health supplement under subsection (1) unless...the person has had tooth extractions that ...resulted in the person requiring a full upper denture, a full lower denture or both."

The appellant argues that he does not want to have to pull the healthy few teeth he has but he needs a partial denture to be able to eat. He has only two front teeth and three rear upper teeth and has no lower back teeth and so he can't chew. The appellant also submitted a dental x-ray (August 6, 2020) showing the position of his remaining teeth and inability to chew.

His clinician advised in a letter dated July 3, 2020 that the appellant's dentist stated that he does not remove healthy teeth, but removed the majority of the appellant's teeth on his top arch that could not be saved. This left the appellant with five healthy upper teeth. The dentist explained the importance of not pulling these healthy teeth - the appellant is young and it is important to preserve the bone integrity of his jaw. "Without teeth, bone density is lost, which can lead to future problems."

The panel appreciates that the appellant does not want to remove healthy teeth. However, as the panel is bound by legislation, it finds the ministry reasonably determined that the appellant was not eligible for partial denture coverage under section 69 – denture supplement, as section 69 (2) pertains only to full dentures.

Section 70, EAR - Emergency Dental and Denture Supplements

The ministry determined that the appellant was not eligible for coverage for partial dentures under section 70, as the ministry “may only provide coverage for *emergency dental services*...when necessary for the immediate relief of pain, *as outlined in the ministry Schedule of Fee.*” and the Schedule of Fee Allowances does not provide for coverage of dentures themselves in the section for emergency dental services.

The panel notes section 70 states that the minister may provide any health supplement set out in section 6 [*emergency dental supplements*] of Schedule C to or for a family unit in receipt of income assistance, and section 6 does include emergency dental services under, “Emergency dental supplements”.

The panel also notes the definition for “emergency dental service” (schedule C, section 1) is a dental service necessary for the immediate relief of pain that if provided by a dentist or denturist is set out in the Schedule of Fee Allowances — Emergency Dental (September 1, 2017). In addition, the panel notes that the Schedule of Fee Allowances does not provide for coverage of dentures in the section for emergency dental services.

In his request for reconsideration, the appellant stated he is happy not to be in pain anymore or have his mouth full of infections; however, at the hearing he stated that he is now in pain as he is trying to eat with few teeth.

The panel finds that, although the appellant stated he is now in pain as he is trying to eat with few teeth, the Schedule of Fee Allowances does not provide for coverage of dentures in the section for emergency dental services. Therefore, the panel finds the ministry reasonably determined that the appellant is not eligible for coverage of partial dentures under section 70 of the EAR – emergency dental and denture supplements.

Section 76, EAR – Direct and Imminent Life Threatening Health Need

The ministry determined that the appellant was not eligible for coverage of a partial denture as a life-threatening health need as dental and denture supplements are not included under this legislation. Section 76 states “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...”

The panel notes that section 2 (1) (a) pertains to medical and surgical supplies, section (f) pertains to transportation and section (3) pertains to medical equipment and devices. Partial dentures are not included in any of these sections.

Therefore, the panel finds the ministry reasonably determined that the appellant was not eligible for coverage of partial dentures, under section 76 of the EAR - direct an imminent life-threatening health need.

The panel acknowledges the difficulties the appellant has with not being able to chew and the future challenges he faces because of missing teeth. However, the panel is bound by the legislation.

Conclusion

Therefore, in conclusion, the panel finds the ministry's reconsideration decision that determined the appellant was not eligible for coverage for a partial denture, because his request did not meet the criteria set out in sections 59, 68, 69, 70, or 76 of the EAR was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, the panel finds the ministry reasonably determined that coverage for a partial denture is not included in the legislation, which pertains to: a crisis supplement, or health supplement (dental supplement, denture supplement, emergency dental and denture supplements, health supplement for persons facing a life-threatening health need).

Therefore, the appellant is not successful on appeal.

APPEAL NUMBER
2020-00183

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

Connie Simonsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/08/12

PRINT NAME

John Pickford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/08/12

PRINT NAME

Melvin Donhauser

DATE (YEAR/MONTH/DAY)

2020/08/12