

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated November 9, 2020, which denied the Appellant's request for a dental supplement to cover the cost of Immediate Complete Upper and Lower Dentures (ICUD and ICLD respectively) and a New Patient Exam (NPE).

The Ministry found that it is not authorized to provide coverage for the NPE as a basic dental service as the Appellant has already exceeded his \$1,000 period limit for that type of coverage. The Ministry also found that it was not authorized to provide coverage for:

- ICUD and ICLD as a basic dental service over the \$1,000 limit, as this type of coverage is limited to fee codes 31310 and 31320 only;
- ICUD and ICLD as an emergency dental service, as they are not identified as emergency dental services in the Schedule of Fee Allowances, Emergency Dental – Denturist; and
- Dental services under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 69 (Life-Threatening Health Need) or Section 57 (Crisis Supplement).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 25
EAPWDR, Sections 57, 63, 64, 69 and Schedule C, Sections 1, 2(1)(a) and (f), 3, 4,

The relevant legislation is provided in Schedule A.

PART E – SUMMARY OF FACTS

The Appellant has been designated as a person with disabilities and has been receiving disability assistance since 2013.

The information before the Ministry at the time of the Reconsideration Decision (RD) included:

1. A Request for Reconsideration (RFR), dated October 15, 2020, in which the Appellant states that he is requesting a reconsideration of the Ministry's decision not to fund the ICUD and the ICLD, and that there are two reasons why he is seeking an RFR:
 - There was an administrative error with the original funding request and funding should be available for the ICUD and the ICLD now that the correct dates have been provided; and
 - The Appellant's health is declining because he is not able to eat properly due to not having proper dentures, and he is fearful for his future because he doesn't think he has the health to endure this for much longer;
2. A letter, dated October 15, 2020, from the Appellant's Family Physician (GP) addressed "To Whom it May Concern" (the GP's Letter) stating that the Appellant requires a new set of dentures for the following reasons:

"(The Appellant) is a bilateral lung transplant recipient, receiving immunosuppressant therapy, and as a result has had weight loss and change in his denture fit. For this reason he is not eating well and have continued to lose weight. He requires dentures so he can maintain his nutrition and ... weight. As (the Appellant) is immunocompromised this is paramount to his continued health";
3. A letter dated October 22, 2020, from a registered social worker (SW) addressed "To Whom it May Concern" (the SW's Letter) asking the Ministry to "*reconsider this decision based upon the detrimental effect not having a set of dentures is having on (the Appellant's) quality of life and health condition.*" The letter also describes the physical, social and emotional indicators of the Appellant's declining health, including significant weight loss (dropping from 165 to 116 lbs.) and extensive bowel and stomach issues causing him to be mostly housebound and resulting in increased social isolation compounded by the pandemic. The SW also describes a lack of sleep due to persistent hunger pains, regular painful bowel movements and significant stress and anxiety resulting from his longstanding and ongoing effort to try to acquire dentures. The SW concludes by stating "*It is reasonable to describe this situation as life-threatening*";
4. A hand-written letter, dated November 5, 2020, from the dentist's assistant (the November 5 Letter) stating that the Appellant visited the dentist in September 2019 for a consultation. Following the Appellant's 2018 lung transplant, the Appellant's pre-transplant dentures "*were believed to be ... contributing to poor appetite and nutrition, (loss of) weight ... (and) causing ... significant pain.*" The November 5 Letter also states that the Appellant's existing partial dentures were causing significant pain and that he received treatment for the removal and placement of implants on September 28, 2020, before he had approval for the funding of new dentures, and that the dentist's assistant is requesting coverage as the Appellant now has no teeth;
5. A Ministry standard pre-authorization dental claim form, dated November 5, 2020, in the name of the Appellant (the Claim Form), identifying the Denturist by name and address and quoting a total

fee of \$3,807, which comprises charges for procedure code 31311 in the amount of \$1,820; procedure code 31321 in the amount of \$1,870; and procedure code 10010 in the amount of \$117. The Claim Form also indicates that the dentures are for initial placement; and

6. A record of dental claims made by the Appellant to the Ministry's delegated client extended health services provider (the Insurer) showing all claims made by the Appellant between January 1, 2019 and November 9, 2020, comprising the amounts claimed and paid for:
- The odontectomy and/or extraction of 11 teeth, the alveoloplasty of 4 teeth and a torus mandibularis removal, all dated September 28, 2020;
 - Two examinations performed on April 14, 2020;
 - An examination and pain control treatment on December 12, 2019;
 - Two radiographs performed on September 10, 2019;
 - A root canal performed on January 15, 2019; and,
 - An examination and the drainage of anteriors and bicuspid on January 8, 2019.

Additional Information Submitted after Reconsideration

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In the Notice of Appeal (NOA), the Appellant states that he feels that there was a discrepancy in the dates between when the last denture work was done and the date that the insurance provider has indicated that the last work was done. The Appellant notes that the last denture work was done over 5 years ago. The Panel considered the written information in the NOA to be argument.

At the hearing the Appellant said that the Insurer somehow got the wrong information when they received his request for authorization of the dental work. He also stated that his previous partial dentures, both upper and lower, were fitted at the same time and, while he couldn't remember the date, it was more than 2 years ago. The Appellant also said that his inability to chew while having to wait for dentures has led to him developing bad eating habits and that he is now lactose intolerant.

The Ministry relied on its RD and explained that the Insurer administers the dental insurance coverage program and tracks the dates of service. According to the Insurer, the coverage for a partial upper denture was provided on January 20, 2015 and for a partial lower denture on February 15, 2017.

The Ministry also said that the Insurer has the authority to adjudicate dental claims and determine the amount of any given claim that is eligible for coverage. That amount is paid to the service provider (in the case the denturist) and any additional amount owing must be paid by the patient to the service

provider. In this case, the Appellant confirmed at the hearing that the amount of charges over the eligible amount for various dental services including tooth extraction (but excluding the cost of the dentures), together totalling \$3,420.95, was paid for by the Appellant from his savings. The Appellant also said that he is required to pay an additional amount of approximately \$4,500 to cover the cost of the dentures, which he was hoping to recover from the Ministry. Of that total he has already paid \$3,900 and still owes an additional \$600.

The Ministry also stated that it expects that the reason why there was confusion regarding the type of lower denture required in the September 25, 2020 predetermination of benefits form sent to the Insurer was likely that the dentist had submitted incorrect billing codes.

The Panel considered the verbal evidence provided by the Appellant at the hearing regarding the previous payments made to the dentist to be information that is not relevant to the decision under appeal. Evidence that is not relevant to the issue is inadmissible.

PART F – REASONS FOR PANEL DECISION

Basic Eligibility

EAPWDR Section 63 says that the Ministry may provide any dental supplement included in EAPWDR Schedule C Section 4 to a family unit in receipt of disability assistance. In the RD, the Ministry acknowledges that the Appellant meets the basic eligibility requirements for dental supplements within the prescribed limits, so basic eligibility is not at issue in this appeal.

The Panel notes that the Appellant did not ask the Ministry to reconsider its decision not to provide coverage for an NPE.

Eligibility for Coverage of Dental Services as a Crisis Supplement

EAPWDR Section 57 says that the Ministry may provide a crisis supplement to a family unit who is eligible for disability assistance if certain conditions apply. However, it may not provide a crisis supplement to obtain a supplement described in Schedule C.

The Panel notes that basic dental services and emergency dental supplements that may be provided by a dentist are defined in EAPWDR Schedule C to be those services which are listed in the Schedule of Fee Allowances – Denturist (SFAD) Part B for basic dental services and SFAD Part D for emergency dental services. Basic dental services include new patient, renewal and specific examinations and complete dentures. Emergency dental services include specific exams and the chairside direct relining, repair and adjustment of complete dentures.

Because the coverage requested by the Appellant is for a complete set of new dentures, which are included in the services listed in the SFAD Part B, the Panel finds that the Ministry reasonably determined that the Appellant is not eligible for coverage of these services as a Crisis Supplement.

Eligibility for Coverage as an Emergency Dental Service

EAPWDR Section 64 and Schedule C Section 5 say that the Ministry may provide coverage for qualifying emergency dental services provided by a dentist. “Emergency dental services” provided by a dentist are defined in EAPWDR Schedule C Section 1 as “*a dental service necessary for the immediate relief of pain that ... is set out in the SFAD*”.

As stated above, the Panel notes that SFAD Part D specifies that emergency dental services relating to dentures are limited to specific exams and the chairside direct relining, repair and adjustment of complete dentures, and does not include the cost of an NPE or complete dentures. Therefore the Panel finds that the Ministry reasonably determined that the Appellant is not eligible for coverage of these services as an emergency dental service.

Eligibility for Coverage as a Life-Threatening Need

EAPWDR Section 69 states that the Ministry may provide medical transportation, medical equipment / devices, and some types of medical supplies to or for a person who is otherwise not eligible for the health supplement set out in EAPWDR Schedule C Sections 2 (1)(a) and (f) and Section 3, if the Minister is satisfied that certain specified conditions apply.

The Panel notes that EAPWDR Schedule C Sections 2 (1) (a) and (f) and Section 3 comprise medical or surgical supplies, medical transportation and medical equipment and devices, and does not include basic dental services or emergency dental services. Therefore the Panel finds that the Ministry reasonably determined that the Appellant is not eligible for coverage of these services as a life-threatening need.

Eligibility for Coverage of Replacement ICUD and ICLD as a Basic Dental Service

EAPWDR Schedule C Section 4(3) says that the \$1,000 basic dental service limit may be exceeded by the amount necessary to meet needs if a person requires a full upper and/or a full lower denture because of extractions made in the previous 6 months to relieve pain [subsection (3)(a)], or if the person has been a recipient of disability assistance or income assistance for at least 2 years [subsection 4(3)(c)]. In the RD the Ministry acknowledges that the Appellant has satisfied both of these conditions.

Section 4(6) goes on to say that, if the services are provided by a dentist, as they are in this case, the only type of full upper and/or lower **replacement** dentures that may be provided to a person who qualifies for dentures under 4(3)(c) are those listed under fee numbers 31310, 31320 (or 31330) in the SFAD.

The SFAD describes fee numbers 31310 and 31320 as “Complete Maxillary Denture” and “Complete Mandibular Denture” respectively. The Panel notes that the Appellant has been prescribed an “Immediate Complete Maxillary Denture” (fee number 31311) and an “Immediate Complete Mandibular Denture” (fee number 31321). The Panel further notes that Schedule C Section 4(6) states that the dental supplements that may be provided to a person *who requires the replacement of a full upper, a full lower denture or both* are limited to services under fee numbers 31310 and 31320. However, the ICUD and the ICLD are not a full **replacement** set of dentures, they are an **initial** full set of dentures replacing a partial set that were used before the September 2020 extraction of the Appellant’s remaining teeth. When initial full replacement dentures are required, the types of dentures available to a person qualifying under Section 4(3)(a) are any of those listed in the SFAD, and fee numbers 31311 and 31321 appear on the list of generally eligible dental supplements in the SFAD.

In the Panel’s view, this characterization, that the Appellant’s request is for an *initial* as opposed to a *replacement* set of dentures, is supported by the intention of the Legislature as demonstrated by its wording. The Panel notes Section 4(4) which provides that denture *replacement* timelines do not apply where a person requires full dentures because of extractions made in the previous 6 months. The Panel views this as demonstrating an intention to treat requests for dentures as a consequence of recent extractions to be an *initial* request (provided all of the requirements are met).

The Panel also notes that Part A of the SFAD summarizes eligible expenses relating to the initial placement of a complete set of dentures as set out in the legislation as follows:

All Ministry clients ... are eligible for a single complete denture (upper or lower), or complete dentures if the dentures are required as a result of extractions for relief of pain resulting in full clearance of the arch/arches. This clearance must have taken place in the preceding six months ...

The number of extractions required is not limited, but the extractions must result in full clearance and either be completed using the patient’s basic dental limit or under Emergency Dental Supplements.

The denture fee items are restricted to 31310, 31311, 31320 and 31321.

For those patients that have a 2-year limit, funds still available within that limit will be utilized to pay for the denture(s) with the remaining balance for the denture(s) paid over limit.

The Panel notes that the extractions were performed on September 28, 2020, which is less than 2 months in advance of the Appellant initiating their claim, and resulted in full clearance of the arches and the need for a complete set of upper and lower dentures. Because the Appellant's dentures are an initial set of full dentures (not replacement dentures) and because they were required as a result of full clearance extractions which took place in the previous 6 months for relief of pain, the Panel finds that the ICUD and ICLD qualify for the basic dental service exemption and that the Ministry has the authority under the legislation to cover the cost.

Conclusion

Having reviewed all of the available evidence, the Panel finds that the Ministry's decision to not fund the Appellant's request for ICUD and ICLD (fee codes 31311 and 31321) as a basic dental service over the \$1,000 period limit is not a reasonable interpretation of the legislation in the circumstances of the Appellant, and therefore rescinds the decision. The Appellant's appeal, therefore, is successful.

SCHEDULE A - LEGISLATION

The EAPWDA provides the minister with authority to assign its powers, duties or functions as follows:

Delegation of minister's powers and duties

25 (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, and

(b) the power to enter into an agreement under section 21 (2) or (2.1), unless section 21 (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.

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 ... 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 ...

(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 (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 ...

**EAPWDR
Schedule C**

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 ...

"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 ...

(b) if provided by a dentist

(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, ...

(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 ...

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 62 [*general health supplements*] of this regulation:

(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

(i) the supplies are required for one of the following purposes:

- (A) wound care;
- (B) ongoing bowel care required due to loss of muscle function;
- (C) catheterization;
- (D) incontinence;
- (E) skin parasite care;
- (F) limb circulation care ...

(f) the least expensive appropriate mode of transportation to or from

- (i) an office, in the local area, of a medical practitioner or nurse practitioner,
- (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
- (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
- (iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,

Medical equipment and devices

3 (1) ... medical equipment and devices ... are the health supplements that may be provided by the minister ...

Dental supplements

4 (1) In this section, "period" means ...

(b) ... 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 ...

(b) \$1 000 each period ...

(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, ... or
- (c) a person who has been a recipient of disability assistance or income assistance for at least 2 years ... 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 ...

(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 ...

- (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 ...

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.

APPEAL NUMBER
2020-00262

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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/12/10

PRINT NAME

Arshdeep Dhaliwal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/12/10

PRINT NAME

Carla Tibbo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/12/10