

APPEAL NUMBER
2020-00255

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated Oct 5, 2020 which held that the appellant was not eligible for coverage for the cost of partial upper and lower cast dentures beyond the basic dental services benefit limit of \$1,000.00 (per two years).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disability Regulation (EAPWDR) sections 57, 62, 63, 63.1, 64, 65, 69 and Schedule C sections 1, 4, 4.1 and 5

PART E – SUMMARY OF FACTS

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

1. The appellant is a sole recipient of disability assistance;
2. The appellant is enrolled in a dental plan with Pacific Blue Cross;
3. There was no record of the appellant having a tooth extracted while enrolled in a dental plan with Pacific Blue Cross;
4. The appellant had received a benefit of \$580.42 between January 1, 2019 and October 5, 2020;
5. The appellant has never worn dentures;
6. The appellant had been a patient of the same dentist since 2010;
7. The appellant had participated in group therapy services provided by a health service in 2019 and 2020;
8. On April 5, 2020 a dentist, on behalf of the appellant, submitted a request for authorization for a benefit for \$1,784.00 for a partial upper denture, and \$1,875.00 for a partial lower denture;
9. On April 5, 2020 Pacific Blue Cross provided pre-authorization for a benefit of \$419.58 for a lower partial denture but did not authorize a benefit for a partial upper denture because the "Payable amount reduced due to payable dollar maximum rule";
10. On September 24, 2020, the Ministry received a letter from a dentist confirming that the appellant required partial upper and lower dentures;
11. The appellant had informed the ministry that:
 - a. they suffered from issue with both mental and physical health;
 - b. they could not eat large pieces of solid food;
 - c. they rarely socialized and suffered from low self esteem, anxiety, and depression;
 - d. they had no confidence when in public or social situations; and
 - e. they were on several medications.

During the hearing both the appellant and the ministry made submissions that are described in Part F – Reasons for Panel Decision. There were no new facts provided during the hearing.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision that the appellant was not eligible for coverage for the cost of partial upper and lower cast dentures beyond the basic dental services benefit limit of \$1,000.00 (per two years) was reasonably supported by the evidence or a reasonable application of the enactment in the appellant's circumstance.

The Relevant Legislation

The EAPWDR authorizes the ministry to provide health supplements as specified in Schedule C of the Regulation. Schedule C states that basic dental services provided by a dentist are set out in a document called "Schedule of Fee Allowances – Dentist and that dentures may be provided as a basic dental service to a person who has never worn dentures but that the maximum amount of the supplement that may be paid for basic dental services is \$1,000 for each 2 year period (each period begins on January 1 of an odd numbered year).

In addition to basic dental services, the EAPWDR also authorizes the ministry, in specific situations, to provide an emergency dental service benefit, a benefit if there is a "direct and imminent life threatening need", or a crisis supplement if an unexpected expense causes "imminent danger to the physical health of a person."

EAPWDR – BASIC DENTAL 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,
- (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.

Schedule C

Definitions

"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 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, and

(c) if provided by a dental hygienist,

(i) is set out in the Schedule of Fee Allowances — Dental Hygienist 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;

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).

(c) Repealed. [B.C. Reg. 163/2005, s. (b).]

(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 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 disability assistance or income assistance for at least 2 years or a dependant of that person requires replacement dentures.

EAPWDR – EMERGENCY DENTAL SERVICE

Schedule C

Definitions

"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;

EAPWDR – DIRECT AND IMMEDIATE LIFE THREATENING 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, 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) the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, 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).

EAPWDR – IMMEDIATE DANGER TO PHYSICAL HEALTH

Crises 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.

The Appellant's Position

The appellant described several serious consequences of their dental health, including:

1. Frequent choking;
2. Frequent biting of their cheeks, lips and tongue;
3. Pain when eating;
4. Inability to eat solid food;
5. Difficulty getting proper nutrition because of limitations on what they can eat;
6. Social discomfort and anxiety; and
7. Fear that they will choke and suffocate.

The appellant has had dental services done in the recent past but those services were focused on retaining their current teeth in the best possible condition. The appellant has not required any recent extractions and does not currently have dentures.

The appellant emphasized that getting dentures is not optional for their well-being and that the requirement for dentures is strongly supported by the dentist that treats the appellant. The appellant also explained that there are no resources available to pay for the required dental treatments.

The Ministry's Position

On the appeal, the ministry relied on the reconsideration decision.

The ministry stated that it was sympathetic to the appellant. The ministry stated that there was no discretion to go beyond the limit of supplements authorized in section 4 of Schedule C and noted that Pacific Blue Cross did authorize the balance of the \$1,000 limit. The ministry noted, and the appellant confirmed, that the appellant did not have any extractions performed in the previous 6 months to relieve pain and does not require replacement dentures.

The ministry stated that the appellant was not entitled to a benefit under the emergency dental provision because dentures are not a service authorized under the Schedule of Fee Allowances — Emergency Dental — Dentist.

The ministry stated that the appellant was not entitled to a benefit under section 69 (Direct and Imminent Life Threatening Health Need) because that section requires that the appellant be “otherwise not eligible for the health supplement” and the appellant is eligible for the basic dental services supplement but has exhausted the limit of the benefit.

The ministry stated that the appellant was not entitled to a benefit under section 57 (Crisis Supplement) because section 57 does not apply when the purpose is obtaining a supplement described in Schedule C and basic dental services is described in Schedule C.

In summary, the ministry stated that it was sympathetic to the appellants situation, but that it did not have any

authority under the EAPWDR to provide the supplement requested.

The Panel's Decision

The panel is very sympathetic to the appellant's situation. The panel recognizes that the appellant has a legitimate and urgent health need and no resources available to receive the required treatment. The panel also notes that the appellant has worked diligently with the health care provider and the documents indicate that the health care provider strongly supports the appellant's request.

The panel determines that EAPWDR section 4 (1.1) applies and that the limit for the appellant for basic dental services is \$1,000 per period. Consequently, the panel finds that the ministry's determination that the limit of the available benefit of was \$419.58 was reasonably supported by the evidence.

The panel determines that the appellant's request does not come within the statutory definition of emergency dental service because the definition requires that the service is identified in the Schedule of Fee Allowances — Emergency Dental — Dentist and dentures are not identified in that schedule.

The panel determines that EAPWDR section 69 does not apply to the appellants circumstance because the appellant is eligible for the basic dental services supplement and had received a benefit under that supplement of \$580.42 between January 1, 2019 and October 5, 2020.

The panel determines that EAPWDR section 57 does not apply because section 57 states a crisis supplement may not be provided for a supplement described in Schedule C and basic dental services is described in Schedule C.

Consequently, the panel finds that the ministry's decision was reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstance.

The panel considers that this is a situation where the appellant's particular situation has "fallen through the cracks" of the legislation. The panel notes that the ministry may have been authorized to exceed the basic dental services limits if the appellant had a tooth or multiple teeth "extracted in the previous 6 months to relieve pain" (under EAPWDR Schedule C section 4(3)(a) or section (4)(3)(b)). However, because the appellant has worked diligently to preserve their existing teeth in the best possible condition no extractions have been required. From one perspective, the appellant has been denied a supplement that would have provided a health benefit because the appellant was diligent in remaining as healthy as possible which appears inconsistent with public policy.

Conclusion

The panel finds that the ministry's decision that the appellant was not eligible for a supplement for the cost of partial upper and lower cast dentures beyond the basic dental services benefit limit of \$1,000.00 (per two years) was a reasonable application of the enactment in the appellant's circumstance.

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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

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/01/05

PRINT NAME

Carman Thompson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/01/06

PRINT NAME

Anne Richmond

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/01/06