

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of November 3, 2020 (the “Reconsideration Decision”), in which the Ministry determined that the Appellant was ineligible for a dental supplement for partial lower and upper dentures as the amount requested was in excess of the amount remaining under the Appellant’s remaining balance for basic dental services, as set out in section 4(1.1) of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”) and because:

- the request did not meet the criteria for an emergency dental supplement under the EAPWDR;
 - the Appellant could not demonstrate a life threatening need for partial upper and lower dentures;
- and

partial and upper lower dentures are not among the items for which a crisis supplement can be provided.

PART D – RELEVANT LEGISLATION

EAPWDR- sections 57, 61.1, 63, 64, 69, and Schedule C- sections 1, 4, and 5

PART E – SUMMARY OF FACTS

The Appellant is ■ years old and a sole recipient of medical only disability assistance as a main continued person, pursuant to section 61.1(3)(a) of the EAPWDR.

At the time of the Reconsideration Decision, the information before the Ministry included:

- Dental Supplement- Denturist Fee Schedule (the “Fee Schedule”);
- an undated note from the Appellant’s dentist, recommending upper and lower cast partial dentures at a cost of \$1,600.00 each (the “Note”);
- e-mail from the Ministry to Pacific Blue Cross, requesting details of the denial and the denial date; and
- the Appellant’s Request for Reconsideration, dated October 25, 2020, which included:
 - the Note and
 - a Treatment Plan from a different denture clinic, dated October 19, 2020 (the “Treatment Plan”), which quoted \$1,716.00 each for a partial toothborne maxillary denture and a partial free end mandibular denture;

In the Appellant’s Notice of Appeal, dated November 9, 2020, the Appellant described being unable to enjoy “quality of life due to extreme pain” and taking Tylenol on a daily basis. The Appellant also argued that the issues constituted a dental emergency and described losing 35 pounds due to being unable to eat.

With the Notice of Appeal, the Appellant also included:

- a letter, dated November 10, 2020 (the “Letter”) from a treating dentist who described the Appellant as:
 - having had tooth #34 extracted on September 28, 2020;
 - missing teeth 13,16,17,24, 25, 26, 27, 31, 32, 33, 34, 41, 42, 43, 44, 46, and 47
 - being unable to eat properly due to missing teeth; and
 - needing to get dentures emergently.
- a quote from another a sedation dentist for fee codes 53101 and 53102 at \$1,659.00 each (the “Quote”).

The Appellant also submitted quote from the same sedation dentist for the same fee codes with an X-ray of the Appellant’s teeth (the “Submission”).

At the hearing of the appeal, the Appellant described having been advised by the Ministry that it would pay \$1,500.00 towards dentures. The Appellant also described losing a lot of weight and never having had any difficulties with the Ministry before. The Appellant also advised that a tooth had been extracted in the Fall, which was most likely the #34 tooth described in the Letter and had also had other teeth removed between January and September. The Appellant noted that dentures were last approved in 2007 but that, since then, a number of other teeth have been extracted making the dentures poor fitting. The Appellant applied for replacement dentures after 5 or 6 teeth were extracted. As set out in the Reconsideration Decision, the Appellant has \$461.02 left in basic dental services for the current two year period, ending on December 31, 2020 and did not want to miss out on using up that amount.

The Appellant is also dealing with a number of other health issues including heart and lung problems, osteoporosis, and difficulty walking. The Appellant described the need for dentures as desperate.

At the hearing of the appeal, the Ministry reiterated its position, as set out in the Reconsideration

Decision and suggested that the Appellant search for a denturist who could provide dentures at Ministry approved rates set out in the Fee Schedule.

The panel accepts the evidence of the Appellant in the Notice of Appeal, in the Submission, and at the hearing of the appeal as evidence that, although not part of the record, is reasonably required for a full and fair disclosure of all matters related to the decision under appeal as per section 22(4) of the Employment and Assistance Act.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was ineligible for a dental supplement for partial lower and upper dentures as the amount requested was in excess of the amount remaining under the Appellant’s remaining balance for basic dental services, as set out in section 4(1.1) of the EAPWDR and because:

- the request did not meet the criteria for an emergency dental supplement under the EAPWDR;
- the Appellant could not demonstrate a life threatening need for partial upper and lower dentures; and

partial and upper lower dentures are not among the items for which a crisis supplement can be provided.

Applicable Legislation

Section 61.1 of the EAPWDR sets out the criteria for a person to be eligible for medical services only:

Access to medical services only

61.1 (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 disability assistance, and

(ii) a person with disabilities on that date,

(b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and

(c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

(2) Subject to subsection (6), a person is a dependent continued person if

(a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date and is currently a dependant of the main continued person, or

(b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

(a) on a date the family unit includes a person aged 65 or older,

...

Section 63 of the EAPWDR authorizes the Ministry to provide the dental supplements set out in Schedule C to the EAPWDR:

Dental supplement

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.

Sections 63.2, and 64 of the EAPWDR authorize the Ministry to provide a denture supplement or an emergency dental and denture supplements, respectively:

Denture supplement

63.2 (1) Subject to subsection (2), the minister may provide any health supplement set out in section 4.2 [*denture supplements*] of Schedule C to or for a family unit in receipt of hardship assistance.

(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 63 [*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 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,
- (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.

Sections 4 and 5 of Schedule C to the EAPWDR set out the eligibility criteria for those supplements described in sections 63 to 65 of the EAPWDR:

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.

(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.

(7) A reline or a rebase of dentures may be provided as a basic dental service only to a person who has not had a reline or rebase of dentures for at least 2 years.

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.

An emergency dental service is defined in section 1 of Schedule C to the EAPWDR as follows:

"**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;

Section 57 of the EAPWDR authorizes the Ministry to provide a crisis supplement to applicants who meet the applicable criteria:

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.

...

Under section 69 of the EAPWDR, a health supplement may be provided by the Ministry to an applicant who faces a direct and imminent life threatening need:

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

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

(2) For the purposes of subsection (1) (c),

- (a) "adjusted net income" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and

(b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit, other than a dependent child.

Panel Decision

The Appellant is a main continued person who is eligible for medical services only assistance, pursuant to Section 61.1(3)(a) of the EAPWDR. The Appellant meets the basic eligibility requirements to receive:

- a dental supplement, pursuant to section 63(c) of the EAPWDR;
- a crown and bridgework supplement, pursuant to section 63.1(b) of the EAPWDR;
- an emergency dental and denture supplement, pursuant to section 64(c) of the EAPWDR; and
- an orthodontic supplement, pursuant to section 65(1)(b) of the EAPWDR.

Because the Appellant is eligible for a basic dental supplement under section 63 of the EAPWDR, the Appellant does not meet the basic eligibility requirements for a denture supplement, under section 63.2(2) of the EAPWDR.

To receive supplements, however, the Appellant must also meet the eligibility requirements set out in the relevant sections of Schedule C to the EAPWDR.

Section 4(1.1) of Schedule C to the EAPWDR provides eligible recipients with up to \$1,000.00 in each two year period for a person in the Appellant's circumstances. Under section 4(1) of Schedule C to the EAPWDR, the two year period for a person in the Appellant's circumstances ends on December 31, 2020. The Appellant has used \$538.98 of the \$1,000.00 available in this period, leaving \$461.02 available until December 31, 2020.

Dentures are provided as a "basic dental service", pursuant to section 4(2) of Schedule C to the EAPWDR, except where a recipient can meet the criteria in section 4(3) of Schedule C to the EAPWDR which provides that the limits in section 4(1.1) may be exceeded when any of the following three criteria are met:

- (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.

The supplement that may be provided to an applicant who meets the criteria set out in sections 4(3) of Schedule C to the EAPWDR and requires a partial denture, as does the Appellant, are limited to the services provided under specific fee codes. Namely, 41610, 41612, 41620, and 41622 in the Fee Schedule and codes 52101 and 52402 in the "Schedule of Fee Allowances – Dentist", as per section 4(5) of Schedule C to the EAPWDR. None of the above noted codes was quoted in any of the information provided to the Ministry or to this panel. For example, the Treatment Plan recommended a partial maxillary toothborne denture, which is referenced in fee code 41254 (not 41114, as set out in the Reconsideration Decision) and a partial mandibular free end denture, which is referenced in fee code 41124. The Quote referenced fee codes 53101 and 53102. In the result, the panel finds that the Ministry reasonably determined that the Appellant was eligible for the recommended dentures only as a basic

dental service and only up to the amounts set out in the Fee Schedule (\$787.50 for each of 41254 and 41124), and that the Appellant was not eligible for coverage in excess of the basic limit for either of those fee codes or the fee codes set out in the Quote.

However, the panel does find that the evidence establishes that the Appellant is eligible for coverage in excess of the basic limit set out in section 4(1.1) of Schedule C to the EAPWDR. The Appellant had tooth #34 extracted on September 28, 2020 and the extraction was described as serving a pain relief function. Tooth #34 is on the lower set of teeth and is contiguous with teeth 31, 32, and 33, which are also missing, meaning the Appellant meets the criteria set out in section 4(3)(b) of Schedule C to the EAPWDR. Likewise, the panel also finds that the Letter, which confirms that the Appellant cannot properly eat due to missing teeth on both the upper and lower jaws, establishes the need for replacement dentures, as set out in section 4(3)(c) of Schedule C to the EAPWDR. Accordingly, the panel finds that the Appellant does meet the requirements of section 4(3) for a supplement for denture services provided under the fee codes set out in section 4(5) of Schedule C to the EAPWDR but, as noted above, the fee codes referenced in the Treatment Plan and the Quote are not among the codes that are eligible for coverage under section 4(5) of Schedule C to the EAPWDR.

The Fee Schedule sets out the fee codes that are eligible for coverage as an emergency dental supplement under section 5 of Schedule C to the EAPWDR. The codes referenced in the Treatment Plan and the Quote are not among the codes that are eligible for coverage as an emergency dental supplement and, in the result, the panel finds that the Ministry was reasonable in its determination that the Appellant is not eligible for coverage of the recommended dentures as an emergency dental supplement.

Although section 57 of the EAPWDR does permit the Ministry to issue a crisis supplement to an eligible applicant, section 57(3) expressly precludes the Ministry from providing a crisis supplement for any item "described in Schedule C" or any other health care goods or services. In view of this restriction, the panel finds that the Ministry reasonably determined that the Appellant was not eligible to receive a crisis supplement for dentures.

Finally, section 69 of the EAPWDR authorizes the Ministry to provide a supplement for a person facing a life threatening need. However, this section also limits the Ministry to the provision of a supplement only for the items specified in sections 2(1)(a) or (f) and 3 through 3.12 of Schedule C to the EAPWDR. None of the items specified in these sections are dentures or dental-related items and, as a result, the panel finds that the Ministry reasonably determined that the Appellant is not eligible for a supplement for dentures as a life threatening need, pursuant to section 69 of the EAPWDR.

In view of all of the foregoing, the Appellant is not successful in the appeal.

APPEAL NUMBER
2020-00254

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

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/December/30

PRINT NAME

Daniel Chow

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/December/30

PRINT NAME

Sameer Kajani

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/December/30