

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of November 25, 2020 (the “Reconsideration Decision”), in which the Ministry determined that the Appellant was ineligible for a dental supplement for coverage of a crown for teeth numbered 24 and 25 because:

- the request did not meet the criteria for coverage as a basic or emergency dental service under Schedule C to the Employment and Assistance for Persons with Disabilities Regulation (the “EAPWDR”);
- the request did not meet the criteria for coverage as a supplement for crown and bridgework supplement under Schedule C to the EAPWDR;
- the Appellant could not demonstrate a life threatening need for a crown; and
- a crown is not among the items for which a crisis supplement can be provided by the Ministry.

PART D – RELEVANT LEGISLATION

EAPWDR- sections 57, 63, 63.1, 64, 69, and Schedule C- sections 1, 4, and 4.1

PART E – SUMMARY OF FACTS

The Appellant is a recipient of disability assistance.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- a letter from a treating dentist, dated September 22, 2020 (the “September 22 letter”) in which the dentist writes that:
 - the Appellant was missing teeth numbered 18, 16, 28, 36, 37, 38, 46, 47, and 48;
 - the Appellant had no prosthesis to replace the missing teeth; and
 - teeth numbered 24 and 25 had composite fillings in them but without proper crowns both were likely to fracture and might not be able to be restored;
- an X-ray of the Appellant’s teeth, taken on July 3, 2019;
- a dental claim form, dated October 15, 2020 (the “October 15 Claim”), seeking coverage in the amount of \$1,096.00 for codes 27211 for each of the Appellant’s number 24 and 25 teeth;
- The Ministry’s Dental Supplement, which includes:
 - the Ministry’s Fee schedule for Crown and Bridgework (the “Crown and Bridge Fee Schedule”), indicating that the Ministry was authorized to pay up \$624.20, including lab fees, for fee code 27211, which is for a “Crown, Porcelain/Ceramic/Polymer Glass, Fused to Metal Base”;
 - the Ministry’s Fee Schedule for Emergency Dental Services (the “Emergency Fee Schedule”); and
 - the Ministry’s Fee Schedule for Basic Dental Services (the “Basic Fee Schedule”);
- the Appellant’s Request for Reconsideration (“RFR”), dated November 4, 2020, which included:
 - the October 15 Claim;
 - a medical certificate (the “Certificate”) from a doctor indicating that the Appellant suffered from osteoarthritis of the neck, shoulders, and hands;
 - a letter, dated November 4, 2020 (the “November 4 Letter”), in which the Appellant’s dentist recommends against extraction of the 24 and 25 numbered teeth and describes the Appellant’s likely limitations with respect to inserting and removing a partial denture due to arthritis; and
 - a prescription, dated November 4, 2020, for a walking cane for the Appellant.

In the Appellant’s Notice of Appeal, the Appellant stated simply “do not agree with Ministry’s decision.”

The Appellant also submitted a letter from an advocate, dated December 11, 2020 (the “Submission”, in which the advocate argued that:

- the Ministry erred in finding that the Appellant’s dental condition cannot be corrected because the condition did not necessarily preclude being resolved by restorative means;
- the Ministry erred in not finding that the Appellant had a physical impairment that made it impossible for the Appellant to “place a removable prosthetic.”

In the Submission, the Appellant’s advocate relied entirely on the documents and information that had been provided to the Ministry at the time of the Reconsideration Decision. The panel views the Submission as argument which does not require an admissibility determination.

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 coverage of a crown for teeth numbered 24 and 25 because:

- the request did not meet the criteria for coverage as a basic or emergency dental service under Schedule C to the EAPWDR;
- the request did not meet the criteria for coverage as a supplement for crown and bridgework supplement under Schedule C to the EAPWDR;
- the Appellant could not demonstrate a life threatening need for a crown; and
- a crown is not among the items for which a crisis supplement can be provided by the Ministry.

Applicable Legislation

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.

Section 63.1 of the EAPWDR authorizes the Ministry to provide a crown and bridgework supplement:

Crown and bridgework supplement

63.1 The minister may provide a crown and bridgework supplement under section 4.1 of Schedule C to or for

- (a) a family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who is a person with disabilities, or
- (b) a family unit, if the supplement is provided to or for a person in the family unit who
 - (i) is a continued person, and
 - (ii) was, on the person's continuation date, a person with disabilities.

Section 64 of the EAPWDR authorizes the Ministry to provide an emergency dental and denture supplement:

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 of Schedule C to the EAPWDR sets 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.

The Ministry's authority to pay for basic dental services is also set out in the definition of basic dental service in section a of Schedule C to the EAPWDR:

"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, 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;

Section 4.1 of Schedule C to the EAPWDR sets out the eligibility criteria for crown and bridgework supplements:

Crown and bridgework supplement

4.1 (1) In this section, "crown and bridgework" means a dental service

- (a) that is provided by a dentist,
- (b) that is set out in the Schedule of Fee Allowances — Crown and Bridgework, that is effective April 1, 2010 and is published on the website of the ministry of the minister,
- (c) that is provided at the rate set out for the service in that Schedule, and
- (d) for which a person has received the pre-authorization of the minister.

(2) A health supplement may be paid under section 63.1 of this regulation for crown and bridgework but only if the minister is of the opinion that the person has a dental condition that cannot be corrected through the provision of basic dental services because

- (a) the dental condition precludes the provision of the restorative services set out under the Restorative Services section of the Schedule of Fee Allowances — Dentist, and
- (b) one of the following circumstances exists:
 - (i) the dental condition precludes the use of a removable prosthetic;
 - (ii) the person has a physical impairment that makes it impossible for the person to place a removable prosthetic;
 - (iii) the person has an allergic reaction or other intolerance to the composition or materials used in a removable prosthetic;
 - (iv) the person has a mental condition that makes it impossible for the person to assume responsibility for a removable prosthetic.

(3) The minister must also be satisfied that a health supplement for crown and bridgework will be adequate to correct the dental condition.

(4) A health supplement for crown and bridgework may not be provided in respect of the same tooth more than once in any period of 60 calendar months.

Section 5 of Schedule C sets out the eligibility requirements for emergency dental and denture supplements by reference to the definition of emergency dental service in section 1 of Schedule C to the EAPWDR:

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 for certain expenses 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

Eligibility for coverage of the Appellant's crown as a basic dental service is governed by section 4 of Schedule C to the EAPWDR and the definition of basic dental service in section 1 of Schedule C. The Ministry did not note how much of the Appellant's period allowance for basic dental services has been used so it is not clear to the panel whether or not the Appellant had sufficient room left for coverage of the crowns as a basic dental service. However, the panel notes that the cost for each crown described on the October 15 Claim exceeded the \$1,000.00 limit for basic services claimable by the Appellant for the two year period ending on December 31, 2020. In any event, neither of the codes set out on the October 15 Claim is among those listed in the Basic Fee Schedule and, in the result, is not eligible for coverage as a basic service under section 1 because such services are not set out in the "Schedule of Fee Allowances – Dentist, as required by the definition of "basic dental service." The panel finds that the Ministry was reasonable in its determination that the Appellant was not eligible for coverage of the crowns as a basic dental service.

Likewise, neither of the codes set out on the October 15 Claim is among those listed in the Emergency Fee Schedule. As with basic dental services, emergency dental services are a defined term under Schedule C and to be eligible for coverage as an emergency service, it must be set out in the Schedule of Fee Allowances – Emergency Dental. Because the code for the crowns sought by the Appellant do not meet that criteria, the panel finds that the Ministry was reasonable in its determination that the Appellant was not eligible for coverage of the crowns as an emergency dental service.

Section 4.1 governs the eligibility for a crown and bridgework supplement. Section 4.1(2) sets out the requirements for a crown and bridgework supplement where the basic eligibility requirements of section 4.1(1) have been met. Section 4.1(2)(a) requires that an applicant demonstrate that "the dental condition precludes the provision of the restorative services set out under the Restorative Services section of the Schedule of Fee Allowances — Dentist." The evidence on this issue is set out in the September 22 letter in which the Appellant's dentist wrote that "without the proper protection of crowns, both 24 and 25 will inevitably result in fractures, depending on the severity of fractures, both teeth might not be able to be restored." Likewise, the November 4 Letter recommends against the extraction of the Appellant's teeth and the use of a prosthetic and, in fact, specifically sets out that a prosthetic is not in the best interests of the Appellant. In effect, although the dentist does not opine on the chances that a fracture would be capable of being restored, the dentist does indicate that the severity of the inevitable fractures, which the dentist does opine is only avoidable with crowns, could make it impossible for restoration of the teeth. In view of this evidence, the panel is not satisfied that the Ministry was reasonable in its determination that the Appellant had not met the requirements of section 4.1(2)(a) for a crown and bridgework supplement.

However, to be eligible for a crown and bridgework supplement, an applicant must also satisfy at least one of the requirements of section 4.1(2)(b) of section 4.1 of Schedule C to the EAPWDR:

- the dental condition precludes the use of a removable prosthetic;
- the person has a physical impairment that makes it impossible for the person to place a removable prosthetic;
- the person has an allergic reaction or other intolerance to the composition or materials used in a removable prosthetic;
- the person has a mental condition that makes it impossible for the person to assume responsibility for a removable prosthetic.

In the case of the Appellant, there was no indication that a removable prosthetic was precluded, that the Appellant had an allergic reaction or other intolerance to the composition of materials use in a prosthetic,

or that the Appellant had any mental condition, let alone one that would have made it impossible for the Appellant to “assume responsibility for a removable prosthetic.”

In the Submission, it was argued that the evidence did support a finding that the Appellant had a physical impairment that made it impossible to place removable prosthetic. The panel finds that there was no shortage of evidence about the Appellant’s physical condition. The Certificate clearly indicates that the appellant suffers from osteoarthritis of the shoulders, neck, and hands. The November 4 Letter also indicates that the Appellant would likely have a challenging time inserting and removing a partial denture.” The criteria of section 4.1(2)(b), however, requires the Appellant to show that it would be impossible, not just challenging, to handle a dental prosthesis and the panel finds that the Ministry’s determination that the Appellant had not met the onerous requirements of section 4.1(2)(b) of Schedule C to the EAPWDR was reasonable.

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 a crown for teeth numbered 24 and 25.

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 dental-related items and, as a result, the panel finds that the Ministry reasonably determined that the Appellant is not eligible for a crown for teeth numbered 24 and 25 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

2020-00273

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)

2021/January/12

PRINT NAME

Nancy Eidsvik

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/January/12

PRINT NAME

Barbara Insley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/January/12