

APPEAL NUMBER
2021-00026

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated January 20, 2021, in which the ministry determined that the appellant:

- cannot request a reconsideration of the decision because the time limit to do so had expired and is not within the twenty day period as required under Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 71; and further
- would not be eligible for coverage of dental/denture treatments in excess of the limits provided in the Schedule of Fee Allowances – Dentist, as required by EAPWDR sections 63, 63.1, 64, and Schedule C sections 1 and 4.1.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation sections 63, 64, and 71
Employment and Assistance for Persons with Disabilities Regulation Schedule C sections 1, 4 and 4.2
Schedule of Fee Allowances – Dentist/Denturist and Emergency Dental

PART E – SUMMARY OF FACTS

Background Information

- The appellant is in receipt of disability assistance.
- In June 2020 the appellant sought dental treatment, because of pain, at a dentist. The dentist then sought pre-authorization approval from the insurance company (PBC) who manages dental claims on behalf of the ministry. The appellant requires a number of dental procedures, including dentures, and the following is a summary of the ten pages of PBC Online Pre-Authorization Information from June 2020:
 - 71209 (extraction, surgical same quad) - 15 claims were approved (\$242 claimed with \$85.98 paid on each) and 4 claims rejected
 - 71101 (extraction, uncomplicated) - 3 claims were approved (\$145 claimed with \$45.59 paid on each)
 - 56231 (denture reline, processed, maxillary) - 1 claim was approved (\$485 claimed with \$212.38 paid) and 2 claims rejected
 - 51301 (surgical standard dentures, immediate) - 1 claim was approved (\$1688 claimed with \$577.37 paid) and 1 claim rejected
 - 71201 (extraction, surgical) - 2 claims were approved (\$242 claimed with \$130.27 paid on each)
 - 51101 (standard dentures, maxillary) - 1 claim (\$1363) was rejected
 - *[Note: references above to “paid” refer to amounts approved for payment but not paid as no dental work was in fact done.]*
- On January 8, 2021, the appellant wrote as their reason for requesting a reconsideration decision:
 - The amount the ministry was going to cover only covers about half of what is needed;
 - All the teeth have to be pulled and a false set put in;
 - Currently the front three teeth are bridge work that is over thirty years old, are almost falling out and there are nerves exposed causing terrible pain;
 - They need to get them fixed as it is driving them crazy.

Additional Information and Admissibility

On the Notice of Appeal form dated January 29, 2021 the appellant wrote that he really needs the operation to get false teeth as his teeth are almost falling out and are causing extreme pain, and it is not possible to do half of the work because dentures have to go in right.

At the hearing, the appellant explained he had not been provided with enough information back in June when the dental office told him how much his required extractions and dentures would cost. He explained he had been into the ministry office several times since then and was told by a staff member he needed to call in to ask his questions but that he had been having complications from a surgery and time just passed by. In December, the pain in his upper teeth was becoming worse so he contacted the ministry to find out what options he had. It was at this point he was provided with the ministry’s decision informing him that the amount the dentist was charging for the various extractions and dentures was in excess of what is covered through PBC and informing him of his right to appeal the decision. The appellant explained once he received the information in the reconsideration decision, regarding a dental clinic that could possibly do his dental work at a cheaper rate, he contacted the clinic and is now on a wait list to see them.

At the hearing, the ministry reviewed the reconsideration decision and emphasized that the appellant had been told back in June 2020 that the dentist’s rate was higher than what PBC would cover so he should have appealed the decision within twenty days of being informed. The ministry further stated that even if the appeal could be heard, the amount the dentist was claiming is higher than the rates set in the Fee Schedule and there is no discretion in the amount the ministry can pay for each specific piece of dental work. The panel asked for clarification regarding Schedule C section 4(3), which pertains to how the limits set may be exceeded to provide for dentures. The ministry responded that, to the best of their knowledge, in the appellant’s circumstance, the entire dental amount in the period 2019 to 2020 cannot exceed \$1,000.

Neither party provided additional documents or oral evidence that require an admissibility determination under section 22(4) of the *Employment and Assistance Act*. The ministry relied on the reconsideration decision and both

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parties provided argument at the hearing. The panel considers both parties' arguments in Part F - *Reasons for panel decision*.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's decision determining that the appellant

- cannot request a reconsideration of the decision because the time limit to do so had expired and is not within the twenty day period as required under EAPWDR section 71; and further
- would not be eligible for coverage of dental/denture treatments in excess of the limits provided in the Schedule of Fee Allowances – Dentist, as required by EAPWDR sections 63, 63.1, 64, and Schedule C sections 1 and 4.1,

was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstance.

Appellant Position

The appellant's position is that he did not receive any information from the ministry until December 2020 regarding his right to appeal the amount that PBC would cover for necessary dental extractions and dentures. The appellant cannot afford to pay a dentist any extra money, over and above the PBC rates, for the extractions and dentures he must have done to relieve his pain on his upper teeth.

Ministry Position

The ministry's position is that the appellant was informed in June 2020 of the amount the dentist would be reimbursed therefore he did not have the right to a reconsideration of the decision as he appealed six months later, in December 2020. Further, their position is that even if a decision were to be made regarding this issue, the rates set in the Fee Schedule and legislation limits a maximum of \$1,000 in the two-year period 2019 to 2020. In the appellant's circumstance, the dentist's charge was higher than the rates set in the Fee Schedule so PBC would only authorize the fee schedule amounts.

Panel Decision

Right to a Reconsideration of a Decision

Section 71(1) of the EAPWDR sets out that a person who wishes the minister to reconsider a decision must do so within twenty business days after the date the person is notified of the decision. The ministry argues the appellant was notified in June 2020 of the decision regarding the amount that PBC would cover for his dental work and that he did not request a reconsideration of this decision until December 2020. The appellant argues the ministry did not provide him with any documentation in regard to his dental work or inform him of his right to a reconsideration of the decision until December 2020.

The panel considers that a dental office telling the appellant that PBC will not cover the entirety of their costs should not be considered the same as being informed by the ministry of the decision and being offered the right to a reconsideration of the decision. The appellant contacted the ministry in December 2020 to see what options he had, and it was at this time he was told by a ministry worker exactly what would and would not be covered and was then informed of the right to reconsideration. The reconsideration was provided on December 9, 2020 with a response required by January 11, 2021. The appellant submitted the request on January 8, 2021, which is within the required time frame. Therefore, the appellant has a right to appeal, he has exercised that right, and this panel has jurisdiction to hear the appeal. Given the failure of the ministry to inform the appellant in a timely fashion of the right to request a reconsideration, the panel finds the ministry was not reasonable in its decision to deny a reconsideration of the decision based on a purported failure by the appellant to meet statutory timelines.

Coverage of Basic Dental/Dentures

Section 63 of the EAPWDR says the minister may provide a health supplement set out in section 4 (dental supplements) of Schedule C to a family unit in receipt of disability assistance. The appellant is a recipient of disability assistance.

Section 4(1) and (1.1) of Schedule C sets out the amount that may be paid for dental supplements in a two-year time frame for a specific period. In the appellant's circumstance, the limit for dental supplements is \$1,000 for the two-year period January 1, 2019 to the end of 2020.

Section 4(2) of Schedule C allows that dentures may be provided as a basic dental service to a person who has never worn dentures. The panel notes the appellant has never worn dentures.

Section 4(3) of Schedule C sets out that the limits under (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 provided, if the person requires a full upper denture, full lower denture or both because of extractions made in the previous six months. The panel notes that the ministry did not address this provision in their reconsideration decision and they also stated at the hearing that the yearly limit for all dental work is \$1,000. However, the panel notes that the estimates for individual work exceeds fee schedule provision and makes this omission ineffective.

Section 1 of Schedule C provides definitions that are applicable.

“basic dental service”, means a dental service that, if provided by a dentist, is set out in the Schedule of Fee Allowances – Dentist and is provided at the rate set out in that Schedule.

"denture services" means services and items that, if provided by a dentist are set out under fee numbers 51101 to 51302 in the Schedule of Fee Allowances – Dentist and is provided at the rate set out in that Schedule.

The appellant indicated he required a number of extractions of his upper teeth, followed by dentures. The panel initially found it difficult to confirm exactly how many extractions were required, as there appear to be duplicate entries on the PBC pre-authorization form. The form indicates duplicate fee items on the dates of June 12, 2020 and June 29, 2020. For example, procedure 71201 (extraction) for tooth 17 shows as approved four times, with \$130.27 paid and \$242 claimed, twice on June 12 and twice on June 29. The ministry, in their decision, did not review each of the procedure codes for their accuracy, or determine whether they are for basic dental services, dentures, or emergency dental service.

Below is a table that lists the pre-authorizations approved for the appellant:

| Code note | Code | Tooth | A/R | Cost | Fee Shed | Date |
|-----------|-------|-------|----------|------|----------|--------|
| | 71201 | 17 | Approved | 242 | 130.27 | 29-Jun |
| | 71201 | 26 | Approved | 242 | 130.27 | 29-Jun |
| | 71209 | 16 | Approved | 182 | 85.98 | 29-Jun |
| | 71209 | 15 | Approved | 182 | 85.98 | 29-Jun |
| | 71209 | 14 | Approved | 182 | 85.98 | 29-Jun |
| | 71209 | 13 | Approved | 182 | 85.98 | 29-Jun |
| | 71101 | 12 | Approved | 145 | 69.02 | 29-Jun |
| | 71101 | 11 | Approved | 145 | 45.59 | 29-Jun |
| | 71101 | 22 | Approved | 145 | 69.02 | 29-Jun |
| | 71209 | 23 | Approved | 182 | 85.98 | 29-Jun |
| | 71209 | 24 | Approved | 182 | 51.83 | 29-Jun |
| | 71209 | 25 | Reject | 182 | 0 | 29-Jun |
| reline | 56231 | | Reject | 485 | 0 | 29-Jun |
| | 51301 | | Reject | 1688 | 0 | 29-Jun |
| | 71201 | 17 | Approved | 242 | 130.27 | 12-Jun |
| | 71201 | 26 | Approved | 242 | 130.27 | 12-Jun |
| | 71209 | 16 | Approved | 182 | 85.98 | 12-Jun |

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|---------|-------|----|----------|------|--------|--------|
| | 71209 | 15 | Approved | 182 | 85.98 | 12-Jun |
| | 71209 | 14 | Approved | 182 | 85.98 | 12-Jun |
| | 71209 | 13 | Approved | 182 | 85.98 | 12-Jun |
| | 71209 | 12 | Approved | 182 | 85.98 | 12-Jun |
| | 71209 | 11 | Approved | 182 | 85.98 | 12-Jun |
| | 71209 | 21 | Approved | 182 | 85.98 | 12-Jun |
| | 71209 | 22 | Approved | 182 | 63.5 | 12-Jun |
| | 71209 | 23 | Reject | 182 | 0 | 12-Jun |
| | 71209 | 24 | Reject | 182 | 0 | 12-Jun |
| | 71209 | 25 | Reject | 182 | 0 | 12-Jun |
| reline | 56231 | | Reject | 485 | 0 | 12-Jun |
| Max Den | 51101 | | Reject | 1363 | 0 | 12-Jun |
| reline | 56231 | | Approved | 485 | 212.38 | 12-Jun |
| Max Den | 51301 | | Approved | 1688 | 577.37 | 12-Jun |
| | 71201 | 17 | Approved | 242 | 130.27 | 29-Jun |
| | 71201 | 26 | Approved | 242 | 130.27 | 29-Jun |
| | 71209 | 16 | Approved | 182 | 85.98 | 29-Jun |
| | 71209 | 15 | Approved | 182 | 85.98 | 29-Jun |
| | 71209 | 14 | Approved | 182 | 85.98 | 29-Jun |
| | 71209 | 13 | Approved | 182 | 85.98 | 29-Jun |
| | 71101 | 12 | Approved | 145 | 69.02 | 29-Jun |
| | 71101 | 11 | Approved | 145 | 45.59 | 29-Jun |
| | 71101 | 22 | Approved | 145 | 69.02 | 29-Jun |
| | 71209 | 23 | Approved | 182 | 85.98 | 29-Jun |
| | 71209 | 24 | Approved | 182 | 51.83 | 29-Jun |
| | 71209 | 25 | Reject | 182 | 0 | 29-Jun |
| Reline | 56231 | | Reject | 485 | 0 | 29-Jun |
| Max Den | 51301 | | Reject | 1688 | 0 | 29-Jun |
| | 71201 | 17 | Approved | 242 | 130.27 | 12-Jun |
| | 71201 | 26 | Approved | 242 | 130.27 | 12-Jun |
| | 71209 | 16 | Approved | 182 | 85.98 | 12-Jun |
| | 71209 | 15 | Approved | 182 | 85.98 | 12-Jun |
| | 71209 | 14 | Approved | 182 | 85.98 | 12-Jun |
| | 71209 | 13 | Approved | 182 | 85.98 | 12-Jun |
| | 71209 | 12 | Approved | 182 | 85.98 | 12-Jun |
| | 71209 | 11 | Approved | | | 12-Jun |
| | 71209 | 21 | Approved | | | 12-Jun |
| | 71209 | 22 | Approved | 182 | 63.5 | 12-Jun |
| | 71209 | 23 | Reject | 182 | 0 | 12-Jun |
| | 71209 | 24 | Reject | 182 | 0 | 12-Jun |
| | 71209 | 25 | Reject | 182 | 0 | 12-Jun |
| | 56231 | | Reject | 485 | 0 | 12-Jun |
| | 51101 | | Reject | 1363 | 0 | 12-Jun |

| | | | | |
|-------|----------|------|--------|--------|
| 56231 | Approved | 485 | 212.38 | 11-Jun |
| 51301 | Approved | 1688 | 577.37 | 11-Jun |

The panel reviewed each of the various fee codes listed on the pre-authorization form and concludes the appellant had a total of thirteen different teeth requiring extraction, for which PBC indicated approval at the rates set out in the fee schedule for each of the codes. The total amount of these approvals, as best as the panel calculates as no total was provided on the form, is \$1,247.34. The appellant was authorized to have teeth removed and dentures at the rates provided in the fee schedule. The dental clinic claimed rates that were higher than the amount listed in the fee schedule. There were a number of fee codes that were rejected and the panel could find no explanation as to the reason for the rejection, other than they may have been for duplicated requests.

The fee schedule lists denture fee items as 51101, 51102 51301 and 51302 and for those patients with a two-year year limit, any funds still available within that limit will be utilized to pay for the dentures with the remaining balance for the dentures paid over the limit. In the appellant's circumstance, PBC pre-authorization indicates approval for denture fee items 51101 and 51301 at the rates set out in the fee schedule, which is for a total of \$789.75 for dentures. The dental clinic is requesting payment in excess of those rates.

PBC authorized extractions and dentures for the appellant at the rates set out in the fee schedule, therefore the panel finds the ministry was reasonable in their decision to authorize basic dental services to the appellant that were not in excess of the rates set out in the fee schedule.

Emergency Dental Services

Section 64 of the EAPWDR says the minister may authorize emergency dental supplements as set out in section 5 of Schedule, which are described under definitions of "emergency dental services".

"**emergency dental service**" means a dental service necessary for the immediate relief of pain that, if provided by a dentist, is set out in the Schedule of Fee Allowances – Emergency Dental - Dentist

The ministry determined the appellant did not qualify for emergency dental services because they are not able to pay in excess of the rates set in the fee schedule. However, the panel reads in the Schedule of Fee Allowances – Emergency Dental, the intent is to provide short-term assistance for those who have exhausted their limit if immediate attention is required to alleviate pain. This was not specifically addressed in the decision, however, the panel notes there is no evidence the appellant has already used up the two year limit and is now requesting additional dental work to relieve pain, so finds the ministry was reasonable to determine the appellant is not eligible for emergency dental services.

Conclusion

As the panel rescinded the ministry decision that the appellant did not have a right to a reconsideration of a decision, accordingly we proceeded to determine whether the appellant was eligible for dental/dental treatments in excess of the legislated rates because the ministry also made a decision on this issue.

The panel concludes that the ministry's determination that the appellant is not eligible for the dental/denture treatments in excess of the rates set out in the Fee Schedule and pursuant to section 63 EAPWDR and section 4 of Schedule C, is a reasonable application of the legislation in the appellant's circumstances, and confirms the decision. The appellant is not successful in this appeal.

Relevant Legislation

EAPWDR

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.

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.

How a request to reconsider a decision is made

71 (1) A person who wishes the minister to reconsider a decision referred to in section 16 (1) [*reconsideration and appeal rights*] of the Act must deliver a request for reconsideration in the form specified by the minister to the ministry office where the person is applying for or receiving assistance.

(2) A request under subsection (1) must be delivered within 20 business days after the date the person is notified of the decision referred to in section 16 (1) of the Act and may be delivered by

- (a) leaving it with an employee in the ministry office, or
- (b) being received through the mail at that office.

Schedule C Health Supplements

Definitions

1

"**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;

"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;

"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

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).

(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.

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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

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021 February 20

PRINT NAME

Keith Lacroix

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 February 20

PRINT NAME

Michael Skinner

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 February 20