

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of January 27, 2021 (the “Reconsideration Decision”), in which the Ministry determined that the Appellant was ineligible for a dental supplement for coverage for orthodontic treatment for the Appellant’s child because:

- The request was coverage of dental services in excess of the Ministry rates set out in the Schedule of Fee Allowances – Dental (the “Dental Schedule”);
- the request did not meet the eligibility criteria for coverage as an orthodontic supplement under Schedule C to the *Employment and Assistance Regulation* (the “EAR”);
- the request did not meet the criteria for coverage as a basic or emergency dental service under Schedule C to the EAR;
- the request did not meet the criteria for coverage as a life-threatening health need under the EAR; and
- the Appellant was not eligible for coverage of the orthodontic treatments as a crisis supplement.

PART D – RELEVANT LEGISLATION

Sections 59, 68, 70, 71, and 76 of the EAR
Sections 1, 4, and 6 of Schedule C to the EAR

PART E – SUMMARY OF FACTS

The Appellant is a recipient of income assistance with a dependent child (the “child”).

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

- the Dental Supplement for Dentist Schedule (the “Schedule”), which includes:
 - the Dental Schedule;
 - the Schedule of Fee Allowances – Emergency Dental – Dentist (the “Emergency Schedule”); and
 - the Schedule of Fee Allowances – Crown and Bridgework (the “Crown Schedule”);
- the Appellant’s claims history with the Ministry’s coverage provider for services provided on December 2, 2020, which included:
 - examination and diagnosis;
 - radiographs,
 - two units of scaling;
 - one half unit of scaling;
 - one unit of polishing; and
 - fluoride treatment;all of which were covered at the rates set out in the Dental Schedule;
- a pre-treatment estimate form, dated September 21, 2020 (the “Estimate”) from the child’s dentist, setting out that the child had:
 - malocclusion on the left and right side;
 - excessive overbite; and
 - mild crowding of both arches;and that the anticipated cost of treatment was \$7,500.00
- an unsigned orthodontic consent to treatment and financial agreement, dated September 19, 2020;
- an undated pre-determination from the child’s dentist to the Ministry’s insurance carrier, seeking approval for coverage for the cost of the orthodontic treatment; and
- the Appellant’s Request for Reconsideration, dated January 12, 2021 (“RFR”).

In the Notice of Appeal filed, January 29, 2021, the Appellant advised that the child was in need of braces for alignment of the child’s teeth for proper oral care.

The Appellant also made a late submission (the “Submission”) in which the Appellant:

- stressed the importance of “adequate dental care” for the child;
- argued that the child’s teeth being in alignment as dental care effects (sic) overall health;
- stated that the Appellant had no means of paying for the orthodontic services.

The panel considers the Submission mostly argument but admits the evidence concerning the Appellant’s financial circumstances as written evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, in accordance with 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 not eligible for a supplement for orthodontic services for the child because:

- The request was coverage of dental services in excess of the Ministry rates set out in the Schedule of Fee Allowances – Dental (the “Dental Schedule”);
- the request did not meet the eligibility criteria for coverage as an orthodontic supplement under Schedule C to the EAR;
- the request did not meet the criteria for coverage as a basic or emergency dental service under Schedule C to the EAR;
- the request did not meet the criteria for coverage as a life-threatening health need under the EAR; and
- the Appellant was not eligible for coverage of the orthodontic treatments as a crisis supplement.

Applicable Legislation

Section 68(a)(ii) of the EAR authorizes the Ministry to provide a dental supplement to a minor child of a recipient of income assistance:

Dental supplements

68 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 income assistance, if
 - (i) the family unit includes a person with persistent multiple barriers to employment, or
 - (ii) the health supplement is provided to or for a person in the family unit who is under 19 years of age,

Section 70 of the EAR authorizes the Ministry to provide emergency dental and denture supplements:

Emergency dental and denture supplements

70 The minister may provide any health supplement set out in section 6 [*emergency dental supplements*] of Schedule C to or for

- (a) a family unit in receipt of income 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.

Section 71 of the EAR authorizes the Ministry to provide an orthodontic supplement:

Orthodontic supplement

71 (1) The minister may provide orthodontic supplements to or for a family unit in receipt of income assistance if the orthodontic supplements are provided to or for a person in the family unit who meets the conditions under subsection (2) and who is under 19 years of age.

(2) For a person referred to in subsection (1) to be eligible for orthodontic supplements, the person's family unit must have no resources available to cover the cost of the orthodontic supplements and the person must

- (a) have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations, and
- (b) obtain prior authorization from the minister for the orthodontic supplements.

The above described supplements provided for in the EAR are further governed by the definitions in section 1 of Schedule C to the EAR and by sections 4 and 6 of the EAR.

Section 1 of Schedule C to the EAR contains the following 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 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;

"**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 4 of Schedule C to the EAR sets out the limits and restrictions on dental supplements:

Dental supplements

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

(a) in respect of a person under 19 years of age, including a child in a home of a relative, 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 68 [*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, other than a person who is a main continued person under section 66.3 (1) of this regulation as a result of having been part of a family unit identified in section 66.3 (3) (a) or a dependent continued person under section 66.3 (2) of that 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 income assistance or disability 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.

Section 6 of Schedule C to the EAR sets out that the emergency dental supplements provided for in section 70 of the EAR are the emergency dental services defined in section 1 of Schedule C:

Emergency dental supplements

6 The health supplements that may be paid for under section 70 [*emergency dental and denture supplements*] of this regulation are emergency dental services.

Finally, sections 59 and 76 of the EAR authorize the Ministry, in extraordinary circumstances, to pay crisis supplements and health supplements in cases of life threatening need, respectively:

Crisis supplement

59 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for income 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.

(4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:

(a) if for food, the maximum amount that may be provided in a calendar month is \$40 for each person in the family unit,

(b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of

(i) the family unit's actual shelter cost, and

(ii) the sum of

(A) the maximum set out in section 2 of Schedule A and the maximum set out in section 4 of Schedule A, or

(B) the maximum set out in Table 1 of Schedule D and the maximum set out in Table 2 of Schedule D,

as applicable, for a family unit that matches the family unit, and

(c) if for clothing, the amount that may be provided must not exceed the smaller of

(i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and

(ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.

(5) and (6) Repealed. [B.C. Reg. 248/2018, App. 1, s. 2.]

(7) Despite subsection (4) (b), a crisis supplement may be provided to or for a family unit for the following:

(a) fuel for heating;

(b) fuel for cooking meals;

(c) water;

(d) hydro.

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

76 (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 child is eligible for a basic dental supplement by operation of section 68(a)(ii) of the EAR, being a person in the Appellant's family unit under the age of 19. Orthodontic services may also be provided under section 71 of the EAR if the criteria in that section is otherwise met.

Eligibility in Excess of Ministry Rates

The limits on basic dental services and emergency dental services are set out in section 1 of Schedule C to the EAR. The Ministry's authority to issue to a supplement for orthodontic services is expressly set out in section 71 of the EAR and, unlike basic and emergency dental services, orthodontic services are not provided for under Schedule C to the EAPWDR. Nevertheless, as the Reconsideration Decision did consider the limits of the Ministry's authority with respect to basic and emergency dental supplements, the panel's decision will address those aspects of the Reconsideration Decision.

Section 4 of Schedule C to the EAR limits the amount that the Ministry can pay for basic dental services to a person under 19 to \$2,000.00 for any two year period beginning on January 1 of each odd numbered year. At \$7,500.00, the anticipated cost of the orthodontic services proposed far exceeds the total amount available as a dental supplement for the child in the two year period provided for in section 4 of Schedule C to the EAR. However, this limit would only apply if coverage of the orthodontic treatment as either a basic or emergency dental service was available, which is not the case. It should be noted that under section 71 of the EAR, which authorizes orthodontic supplements, there is no such limit, although there are other criteria which must be met.

The definition of basic dental services, if provided by a dentist, as the orthodontic work is, limits the amount payable to the rates set out in the appropriate schedule for the type of service being provided and the category (adult or child) receiving the service.

Likewise, the definition of emergency dental services, if provided by a dentist, as the orthodontic work is, limits the amount payable to the rates set out in the appropriate schedule for the type of service being provided and the category (adult or child) receiving the service.

Accordingly, the panel finds that the Ministry reasonably determined that it has no authority to provide coverage for either basic or emergency dental services in excess of the rates set out in Schedule C.

Eligibility as a Basic Dental Service or Emergency Dental Service

The definitions for both basic and emergency dental services set out that the services to be provided must actually be set out in the Dental Schedule or the Emergency Schedule, respectively. Neither the Dental Schedule nor the Emergency Schedule provides for coverage for any orthodontic services. In the

result, the panel finds that the Ministry reasonably determined that it could not provide orthodontic services under either the Basic Schedule or the Emergency Schedule.

Eligibility for Orthodontic Supplement

Orthodontic supplements are, however, provided for in section 71 of the EAR. The criteria is set out in subsection (2) of section 71 of the EAR, which requires severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations. The Estimate does not describe severe skeletal dysplasia with jaw misalignment and, instead, describes:

- malocclusion on the left and right side;
- excessive overbite; and
- mild crowding of both arches.

The Estimate does not suggest that any of the above-described symptoms are related to skeletal dysplasia and, in the result, the panel finds that the Ministry reasonably determined that the Appellant was not eligible for an orthodontic supplement for the child.

Eligibility as Crisis Supplement

The Ministry also has the authority to issue crisis supplements under specific circumstances where the eligibility criteria are met. However, section 59(3) clearly precludes a crisis supplement “for the purpose of obtaining a supplement described in Schedule C” or “any other health care goods or services.” As dental supplements and emergency dental supplements are described in Schedule C and orthodontic services are “other health care goods or services”, the panel finds that the Ministry reasonably determined that it has no authority to provide coverage for orthodontic services as a crisis supplement under the provisions of section 59 of the EAR.

Eligibility for Health Supplement as a Life Threatening Health Need

Finally, while section 76 of the EAR permits the Ministry to provide a health supplement for persons facing direct and imminent life threatening health need, section 76(1)(d) specifically limits supplements to those items set out in paragraph (a) of section 2(1) of Schedule C to the EAR or sections 3 through 3.12 of Schedule C to the EAR. Those sections refer to medical or surgical supplies and a variety of medical equipment and devices. Dental items are not included among those items and, for that reason, the panel finds that the Ministry reasonably determined that it had no authority to provide a supplement for orthodontic services under section 76 of the EAR.

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

APPEAL NUMBER
2021-00027

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/March/9

PRINT NAME

Anil Aggarwal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/March/9

PRINT NAME

Susan Ferguson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/March/9