

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of February 24, 2021 (the “Reconsideration Decision”), in which the Ministry determined that the Appellant was ineligible for dental supplements or supplements for the full cost for a variety of treatments, including:

- Radiographs (“Fee Code 02111”) and Fluoride Treatment, Varnish (“Fee Code 12113”) on January 21, 2021;
- a Perio Exam and Diagnosis (“Fee Code 01501”), on August 5, 2020; and
- a Surgical Implant (“Fee Code 79932”), Osseous Grafts (“Fee Code 42621”), and Radiograph Tomography (“Fee Code 02934”)

because:

- The Appellant had reached the maximum allowable eligibility for radiographs, as set out in the Schedule of Fee Allowances – Dental (the “Basic Schedule”);
- the remaining requests were for treatments that were not provided for in either the Basic Schedule or the Schedule of Fee Allowances – Emergency Dental (the “Emergency Schedule”);
- the Appellant was not eligible for coverage of the requested items, as per the criteria in the section dealing with life-threatening health needs under section 69 of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”); and
- the Appellant was not eligible for coverage of the requested items as a crisis supplement under section 57 of the EAPWDR.

PART D – RELEVANT LEGISLATION

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

PART E – SUMMARY OF FACTS

The Appellant is a recipient of disability assistance.

On August 5, 2020, in addition to Fee Code 01501, the Appellant also submitted a claim in respect of Fee Code 02118 for Intraoral – Periapical Radiographs 8 films (“Fee Code 02118”) and received a supplement in the amount of \$39.47.

On January 21, 2021, in addition to Fee Code 02111 and Fee Code 12113 and several other services for which coverage was provided in full, the Appellant submitted a claim for Fee Code 02144 for Radiographs, Bitewing Four images (“Fee Code 02144”) and received a supplement in the amount of \$15.34.

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

- the Emergency Schedule;
- the Basic Schedule;
- the Appellant’s Request for Reconsideration (“RFR”). Which included;
 - letter from the Appellant’s dentist, dated February 17, 2021, in which the dentist opined that the Appellant’s pain and irritation arising from dental issues will negatively impact the Appellant’s muscular tension and joint dysfunction.
 - a series of Radiographs, taken January 19, 2021;
 - the Appellant’s patient chart from January 19, 2021, describing a number of dental issues, including:
 - tissue inflammation;
 - plaque;
 - local mild chronic perio and general moderate chronic perio;
 - a cyst at tooth 34, and abscesses at teeth 27, 36, and 46
 - a one page letter from the Appellant, dated October 12, 2020 (the “October 12 Letter”), in which the Appellant describes a number of symptoms arising from the dental issues including infection from gum disease, chills, fever and a cough;
 - a letter, dated January 26, 2021 from the Appellant (the “January 26 Letter”), in which the Appellant described:
 - cancelling a previously made appointment with a dental surgeon;
 - attending at a chiropractor;
 - having diabetes and gum disease;
 - living with fever chills, sore throat, sinus, and pain, in addition to those associated with the Appellant’s disability;
 - having no extra funds to pay for dental treatments;
 - issues with funds that were used to repair items at the Appellant’s apartment; and
 - other monetary issues related to the Appellant’s telecommunications provider
- an estimate, dated August 5, 2020 (the “Estimate”) from a local dental clinic for the cost of a number of dental procedures, including:
 - osseous surgery;
 - biopsy;
 - enucleation of cyst;
 - CT scan;
 - Complicated EKO;
 - Implant; and

- lateral ridge allo
 - a Pacific Blue Cross predetermination, dated August 22, 2020 (the “PBC Predetermination”), for Fee Codes 04312 and 74611;
 - a receipt from the Appellant’s dentist, dated August 5, 2020 (the “Receipt”) for x-rays and the Perio Exam & Diagnosis;
- and in which the Appellant wrote about, among other things:
- discussions with the Ministry about what was covered by Pacific Blue Cross and the Ministry;
 - the difficulties in dealing with health professionals as a result of what the Appellant described as conflicting information provided by the Ministry;
 - having dental issues that had become a medical crisis; and
 - the Ministry process being too difficult and time consuming.

With the Appellant’s Notice of Appeal, dated March 5, 2021, were the following:

- a typed three page letter from the Appellant, dated March 5, 2021 (the “March 5, 2021 Letter”), in which the Appellant described, among other things:
 - being told by the Ministry that an assessment from an oral surgeon was necessary;
 - that more teeth were being affected the longer the issue with the Ministry went on;
 - the inflammation and the dangers associated with it; and
 - lacking the funds to pay for the treatments needed;
- a letter, dated March 4, 2021 (the “March 4, 2021 Letter”), from the Appellant’s dentist, opining that the Appellant is predisposed to infection and more susceptible to disease, including tooth disease;

The Appellant also submitted two e-mails to this tribunal, dated March 31, 2021 (the “March 31, 2021 E-mails”), in which the Appellant described a number of issues, including:

- becoming nauseous after a call with the appeal coordinator;
- the Appellant’s background and past accomplishments;
- problems with a co-operative at which the Appellant resided;
- being unable to access legal assistance;
- violation of the Appellant’s privacy;
- that seniors, despite being among the poorest members of society, are required to pay for their health care.

The panel admits the portions of the March 5, 2021 Letter and the entirety of the March 4, 2021 Letter as evidence that is not part of the record but that is reasonably required for a full and fair disclosure of all matters related to the appeal. The panel considers the balance of the information contained in the March 5, 2021 Letter and the entire contents of the March 31 E-mails to be argument and treats same as such.

PART F – REASONS FOR PANEL DECISION

Issue Under Appeal

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was ineligible for dental supplements or supplements for the full cost for a variety of treatments, including:

- Fee Code 02111 (Radiographs), Fee Code 12113 (Fluoride Treatment, Varnish) on January 21, 2021;
- Fee Code 01501 (Perio Exam and Diagnosis), on August 5, 2020; and
- Fee Code 79932 (Surgical Implant), Fee Code 42621 (Osseous Grafts), and Fee Code 02934 (Radiograph Tomography)

because:

- The Appellant had reached the maximum allowable eligibility for radiographs, as set out in the Basic Schedule;
- the remaining requests were for treatments that were not provided for in either the Basic Schedule or the Emergency Schedule;
- the Appellant was not eligible for coverage of the requested items, as per the criteria in the section dealing with life-threatening health needs under section 69 of the EAPWDR; and
- the Appellant was not eligible for coverage of the requested items as a crisis supplement under section 57 of the EAPWDR.

Applicable Legislation

Section 63 of the EAPWDR sets out the basic eligibility for dental supplements:

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.

Section 64 of the EAPWDR sets out the basic eligibility for emergency dental supplements:

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.

In addition to the basic requirements for dental supplements and emergency supplements, a recipient of disability assistance must meet the requirements of sections 4, for dental supplements, and 5, for emergency dental supplements, of Schedule C to the EAPWDR, both of which also impose limits on what may be provided by the Ministry in respect of each:

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.

Further limits on the Ministry's ability to provide dental supplements and emergency dental services are set out in the definitions of each of those terms in section 1 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;

"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 69 of the EAPWDR sets out the eligibility criteria:

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.

Finally, section 57 of the EAPWDR sets out the eligibility criteria for a crisis supplement, which was the final category of supplement addressed by the Ministry in the Reconsideration Decision and the only other non-specific category of supplement which the Ministry is legally authorized to provide under the EAPWDR:

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.

(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;

- (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. 2, 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.

Panel Decision

To meet the basic eligibility requirements for dental supplements and emergency dental supplements, the Appellant need only satisfy sections 63 and 64 of the EAPWDR. The Appellant meets those requirements. However, to be eligible for specific dental supplements or emergency dental supplements, the Appellant must also meet the requirements of sections 4 and 5 of Schedule C to the EAPWDR.

There are also limits on the amount that the Ministry can pay for both basic dental services and emergency dental services.

For basic dental services, the Ministry is limited by the criteria in section 4 of Schedule C to the EAPWDR, which imposes a \$1,000.00 limit on supplements that may be provided to a sole recipient in any two year period:

(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).

In other words, the Ministry is not authorized to provide more than \$1,000.00 in total supplements during any two year period ending on December 31 of each odd numbered year for dental treatments that meet the definition of “basic dental services.”

The basic dental services are those that are found in the Basic Schedule and the Ministry is further limited in what it can pay for basic dental services by the Basic Schedule itself which sets out which services are eligible for coverage and the maximum amounts that can be paid for those services.

In respect of Fee Code 02111, the Basic Schedule limits the amount of coverage that can be provided by the Ministry, through its insurer, to \$54.71 for adults for every 2 calendar years. In other words, the Ministry is not legally authorized by the legislation to pay more than the amount set out in the Basic Schedule for radiographs and the Appellant reached the 2-year maximum amount provided for Radiographs upon payment by the Ministry’s insurer of \$15.34 for Fee Code 02144 on January 21, 2021 and \$39.47 for Fee Code 02118 on August 5, 2020. In view of this, the panel finds that the Ministry reasonably determined that it was not authorized to provide any further coverage for radiographs for the Appellant as a basic dental service.

The Ministry is also not legally authorized to provide a dental supplement for any dental service that does not appear in the Basic Schedule. None of Fee Code 12113, Fee Code 01501, Fee Code 79932, Fee Code 42621, or Fee Code 02934 are among the services listed in the Basic Schedule and, as such, the Ministry is simply not legally authorized to provide supplements for those services as basic dental services. The panel finds that the Ministry reasonably determined that it could not provide supplements for the above-described fee codes as basic dental services.

For emergency dental services, the amount that the Ministry can provide as a supplement is limited by the Emergency Schedule, which sets out which services are eligible for coverage and the maximum amounts that can be paid for those services. None of Fee Code 12113, Fee Code 01501, Fee Code 79932, Fee Code 42621, or Fee Code 02934 are among the services listed in the Emergency Schedule and, as such, the Ministry is simply not legally authorized to provide supplements for those services as

emergency dental services. The panel finds that the Ministry reasonably determined that it could not provide supplements for the above-described fee codes as emergency dental services.

Although section 69 of the EAPWDR permits the Ministry to provide a health supplement for persons facing direct and imminent life-threatening health needs, section 69(1)(d) specifically limits supplements payable under this section to those items set out in paragraphs (a) or (f) of section 2(1) of Schedule C to the EAPWDR or sections 3 through 3.12 of Schedule C to the EAPWDR. Those sections refer to medical or surgical supplies and a variety of medical equipment and devices. Dental items are not included among them and, for that reason, the panel finds that the Ministry reasonably determined that it had no authority to provide a supplement in respect of dental items under section 69 of the EAPWDR.

Finally, the Ministry also has the authority to issue crisis supplements under specific circumstances where the eligibility criteria are met. However, section 57(3) of the EAPWDR expressly precludes a crisis supplement “for the purpose of obtaining a supplement described in Schedule C” or “any other health care goods or services.” As supplements for basic dental services and emergency dental services are described in Schedule C and fall within the description of “other health care goods or services”, the panel finds that the Ministry reasonably determined that it has no authority to provide coverage for the items that are the subject of this appeal under the provisions of section 57 of the EAPWDR.

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

APPEAL NUMBER
2021-00058

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)

2021/04/28

PRINT NAME

Barbara Insley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/04/28

PRINT NAME

Edward Wong

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/04/28