

PART C – DECISION UNDER APPEAL

The decision under appeal is the Reconsideration Decision (RD) of the Ministry of Social Development and Poverty Reduction (the Ministry) dated April 15, 2021, which determined that the Appellant was not eligible for crown and bridgework because:

- Crown and bridgework requested as basic or emergency dental services are not set out in the Schedules of Fee Allowances – Dentist, Emergency Dental – Dentist;
- The crown and bridgework requested do not meet the eligibility requirements set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, Subsection 4.1(2)(b); and,
- Dental services including bridgework are not authorized under the EAPWDR Section 69 (Life-Threatening Health Need) or Section 57 (Crisis Supplement).

PART D – RELEVANT LEGISLATION

EAPWDR Sections 57, 63, 63.1, 64, and 69, Schedule C, sections 1, 4, 4.1, and 5

Schedule of Fee Allowances – Dentist, Emergency Dental – Dentist, and Crown & Bridgework (collectively “the Fee Schedule”)

PART E – SUMMARY OF FACTS

The Appellant is receiving disability assistance as a designated person with disabilities (PWD).

On January 14, 2021 the Appellant sought dental treatment because she was experiencing pain in the area of her bridge, which was 41 years old. The dentist had to remove the old bridge because the appellant needed emergency dental care which resulted in extractions. The dentist submitted the following request for approvals to Pacific Blue Cross (PBC):

- Fee code 62501 (pontics) for tooth numbers 11, 12, 13, 21 with dentist fees listed as \$516.40 for each tooth;
- Fee code 67211 (retainers) for tooth numbers 14, 22 and 23 with dentist fees listed as \$891.70 for each tooth; and
- Total cost for dental fees listed as \$4,740.70.

On March 6, 2021 the Appellant received written notification that the requested crown and bridgework had been denied. The reasons provided by PBC for denying the request were:

- The Appellant's dental condition does not indicate that her dental condition precludes the provision of allowable dental services listed in the restorative services section of the Fee Schedule;
- The clinical explanation submitted does not confirm that the Appellant's needs cannot be met through the Ministry's basic dental program; and,
- The information provided does not confirm that the Appellant experiences one of the circumstances listed as an exemption.

On April 7, 2021 the Appellant submitted a Request for Reconsideration (RFR) indicating the reasons for requesting a reconsideration were, in summary:

- She believes PBC did not take due diligence to examine whether there were any medical conditions that could meet the criteria;
- She has diabetes which is causing gum disease;
- She is under investigation for Multiple Sclerosis (MS) which is causing memory loss and is having trouble functioning and she has an appointment on April 15, 2021 "*to confirm diagnosis*";
- She may lose the ability to use her hands or to be able to walk;
- She has Temporomandibular Joint Disorder (TMJ) which would be worsened if she wore dentures;
- The dental estimate of \$4,740.40 is less than other estimates which are approximately \$10,000; and,
- She has saved \$2,000 to use towards the bridgework.

With the RFR, the Appellant submitted:

- A chart showing the affected teeth, which are the upper teeth near the front of her mouth;

- Confirmation of a medical appointment on April 15, 2021 with a neurologist;
- A printout from an online source explaining what TMJ is, including its cause, symptoms, diagnosis, treatment and how it can be prevented; and,
- A private insurance company claim form showing dental work done on September 9, 2020 for fee codes 23112, 23312 and 71211, totalling \$743.00, of which amount the private insurance company paid \$371.50.

Additional Information and Admissibility

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In the Notice of Appeal (NOA), dated April 26, 2021, the Appellant wrote that she feels the Ministry decision is incorrect as “*it discriminates against me under the “Canadian Charter of Rights and Freedom – Section 15(2)”*”. At the hearing, the Appellant explained that she was referring to her human rights, which she felt had been violated, and that she had been discriminated against because the Ministry had not approved her request for the dental supplement even though the Ministry had a duty to accommodate under the BC Human Rights Code. The Panel explained that it only has the authority to consider appeals under the *Employment Assistance Act*, the *Employment and Assistance for Persons with Disabilities Act*, the *Child Care Subsidy Act*, and related legislation and regulations. This does not include human rights complaints, which are the responsibility of the BC Human Rights Tribunal. Accordingly, this new information was not admitted as it was not reasonably required for a full and fair disclosure of *all matters related to the decision under appeal*.

On May 26, 2021, the Appellant provided a submission (the First Appellant Submission) comprising the following documents:

- A one-page dental appointment form (the Dental Appointment Confirmation) for an appointment with a specialist in oral medicine and oral pathology with the Appellant identified as the patient, the location of the clinic and the time and date of the appointment not identified on the form in the space provided. Across the top of the form someone has written “*Appeal # 2021-0086 \$350 Appt. Aug 12 – 9:00 am*”; and
- A three-page letter from a neurologist to an internal medicine specialist dated April 15, 2021, providing the results of an examination of the Appellant on that date “*regarding the possibility of (MS)*” (the Consultation Report). The Consultation Report describes the Appellant’s symptoms, the results of a physical exam and the neurologist’s impressions and recommendations.

On June 8, 2021, the Appellant provided a submission (the Second Appellant Submission) comprising:

- An undated email from the Appellant to a dental services provider indicating that she has an appointment booked with a dentist on August 12 and asking what the charge would be for the consultation and whether it could be rescheduled for an earlier date; and,

- An email response from the dental service provider dated June 7, 2021, saying that the cost of the consultation is \$350 “*and (the dental service provider’s) office is non-assignment but we can help you submit a dental claim for reimbursement*”. The email response also says that “*we are currently fully booked but we will let you know if we get any cancellations*”.

The Panel admitted the new evidence contained in the Dental Appointment Confirmation, the Consultation Report and the email from the Appellant to the dental service provider and the dental service provider’s response as they were considered to be reasonably required for a full and fair disclosure of matters related to the decision under appeal.

At the hearing, the Appellant stated that she believed she qualified for a crown and bridgework supplement because she has TMJ, which she said represents a physical impairment that makes it impossible for her to place a removable prosthetic, and therefore qualifies her under EAPWDR Section 63.1 and Schedule C Section 4.1(2). In addition, the Appellant stated that her MS might progress to the point that she will be unable to use her hands to insert or extract a removable prosthetic. She said that she suffered a heart attack recently and as a result she is on blood thinners, which has delayed a lumbar puncture she has to undergo so that she can have another consultation with a neurologist and an update to her MS diagnosis.

The Appellant said that she has been unable to get confirmation of a TMJ diagnosis because she has not been able to arrange an appointment with a specialist earlier than her upcoming appointment on August 12, 2021, the scheduling of which had been delayed due to the pandemic. She also said that she thought the Ministry should also provide funding for the \$350 cost of the upcoming consultation, but that the Ministry had told her that she would not be eligible for payment to cover that cost.

The Appellant also said that she has a problem with her jaw because of her TMJ and as a result can’t chew properly and she is unable to use a removable prosthetic. She said that she wants to avoid surgery on her jaw and that “*it is hard to put in dentures every day*”.

At the hearing, the Ministry relied on the RD. In particular, with respect to the provisions set out in EAPWDR Schedule C Section 4.1(2) regarding a dental condition that cannot be corrected through basic dental services due to a physical impairment or a mental condition making the use of a removable prosthetic impossible, the Ministry said that the dentist had stated that they did not know if either of those conditions applied, and therefore the Ministry did not have enough information to make a decision in favor of the Appellant.

Regarding the response from the dental service provider to the Appellant’s June 7, 2021 email, the Ministry said that it was likely that when the dental service provider said that their office was “non-assignment” they meant that the office would not submit a claim to PBC on the Appellant’s behalf. The Ministry suggested that the Appellant might want to seek out the services of a different dental services provider, one that was prepared to submit a claim on the Appellant’s behalf and/or one that was prepared to provide consultation services at a lower cost or at no cost.

In response to a question from the Panel, the Ministry said that the Appellant could apply again for a crown and bridgework supplement once she has obtained the additional evidence she hopes to get from

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a specialist dentist (or any other prescribed professional) to confirm that she has a physical impairment that makes it impossible for her to place a removable prosthetic.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's RD determining that the Appellant was not eligible for crown and bridgework because:

- Crown and bridgework requested as basic or emergency dental services are not set out in the Schedules of Fee Allowances – Dentist, Emergency Dental – Dentist;
- The crown and bridgework requested do not meet the eligibility requirements set out in the EAPWDR Schedule C, subsection 4.1(2)(b); and
- Dental services, including bridgework, are not authorized under the EAPWDR Section 69 (Life-Threatening Health Need) or Section 57 (crisis supplement);

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

The relevant legislation is provided in Appendix A

Appellant Position

The Appellant's position is that the Ministry should provide a crown and bridge supplement because she has a physical impairment that makes it impossible for her to place a removable prosthetic and that she has been unable to get confirmation of this from a dental specialist and a neurologist due to delays in scheduling appointments.

Ministry Position

The Ministry's position is that it is not authorized to provide coverage for the crown and bridgework requested as either a basic or emergency dental service because they are not included in the Schedules of Fee Allowances, and that the Appellant's request does not meet the eligibility requirements set out in the EAPWD Regulation as a life-threatening health need or as a crisis supplement.

Panel Decision

Basic Eligibility of Dental Supplements

EAPWDR Section 63 says that the Ministry may provide any dental supplement listed in EAPWDR Schedule C Section 4 for a family unit in receipt of disability assistance. In the RD, the Ministry determined that the Appellant met the requirements set out in EAPWDR Section 63 and this matter is not in dispute.

The Panel finds that the Ministry reasonably determined that the Appellant qualified for any dental supplement listed in EAPWDR Schedule C Section 4 (basic eligibility).

Eligibility for Coverage of Retainers and Pontics as a Basic Dental Service

EAPWDR Schedule C Section 1 defines a basic dental service provided by a dentist as a dental service listed in the Schedule provided at the maximum rate given in that Schedule for the service and the category of person receiving the service. In the RD, the Ministry found that the Appellant was not eligible for the specific services she had requested (fee codes 67211 and 62501) because they are not listed in the basic dental services section of the Fee Schedule.

The Panel notes that the Ministry included an out-dated copy (the September 1, 2017 version) of the Fee Schedule in the appeal information materials. The Panel consulted the current version of the Fee Schedule (Part C of which is dated February 18, 2020) to confirm that fee codes 67211 and 62501 are not listed in the basic dental services section of the Fee Schedule. The preamble to the Fee Schedule says, in part: "*Adults who are eligible for basic dental services under Ministry Dental Supplements are eligible for a \$1,000 limit every 2-year period beginning on January 1st of every odd numbered year. The applicable fees for services provided to adult patients are listed in the (Fee Schedule) under the column marked 'Adult'*". Basic dental services are listed in Part B of the Fee Schedule and comprise specified diagnostic, preventative, restorative, endodontic, periodontic, removable prosthodontic, oral surgery and miscellaneous services. (anesthesia, professional consultations, and professional visits). Within each category, services are listed bearing a 5 digit numeric code (the Code Number).

Having reviewed the basic dental services section of the current Fee Schedule, the Panel notes that Code Numbers 67211 and 62501 are not included in Part B of the Fee Schedule. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not qualify for crown and bridge work as a basic dental service.

Eligibility for Coverage of Retainers and Pontics as an Emergency Dental Service

EAPWDR Section 64 says that the Ministry may provide an emergency dental supplements to a family unit in receipt of disability assistance. "*Emergency Dental Service*" is defined as any of the services listed in Part C of the Fee Schedule up to the maximum rates listed in that Schedule.

Having reviewed Part C of the current Fee Schedule, the Panel notes that Code Numbers 67211 and 62501 are not included in that Part of the current version of the Fee Schedule. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not qualify for crown and bridge work as an emergency dental service.

Eligibility for Coverage of Retainers and Pontics as a Crown and Bridgework Supplement

EAPWDR Section 63.1 says that the Ministry may provide a crown and bridgework supplement under EAPWDR Schedule C Section 4.1 to a family unit receiving disability assistance if the supplement is provided to a person in the family unit who is designated as a PWD.

The Panel notes that the Ministry did not indicate in the RD whether the Appellant meets the requirements set out in EAPWDR Section 63.1. As mentioned above, it has already been determined that the Appellant meets the PWD designation requirement. The Panel further notes that Code Numbers

67211 and 62501 are included in Part E of the Fee Schedule (which covers the crown and bridgework supplement). Therefore, the Panel finds that the requirements of EAPWDR Section 63.1 have been met in the circumstances of the Appellant.

However, the Panel notes that additional requirements must be met for a PWD to be eligible for the crown and bridge supplement. EAPWDR Schedule C Section 4.1(2) says that a crown and bridgework supplement may be paid under Section 63.1 only if the person has a dental condition that cannot be corrected through the provision of basic dental services because:

- the dental condition does not permit the restorative services listed under the Restorative Services section of the Fee Schedule, and if one of the following circumstances exists:
 - The dental condition does not permit the use of a removable prosthetic;
 - The person has a physical impairment that makes it impossible for her to place a removable prosthetic;
 - The person has an allergic reaction or other intolerance to the composition or materials used in a removable prosthetic; or
 - The person has a mental condition that makes it impossible for her to assume responsibility for a removable prosthetic.

As the Ministry found in the RD, the Panel notes that the Appellant's dentist has confirmed that the Appellant's dental condition *does not* permit the restorative services listed under the Restorative Services section of the Fee Schedule and *does* permit the use of a removable prosthetic. Therefore, the Panel finds that the available evidence demonstrates that the first of the four circumstances listed in EAPWDR Schedule C Section 4.1(2)(b) has not been met.

As also stated by the Ministry in the RD, the Panel notes that the dentist also stated that they did not know if any of the other three circumstances specified in Schedule C Section 4.1(2)(b) applied (i.e. the Appellant has a dental condition that cannot be corrected through basic dental services due to a physical impairment, an allergic reaction or other intolerance to composition or materials, or a mental condition making the use of a removable prosthetic impossible).

The Panel further notes that the Appellant argued at the hearing that her TMJ and MS represent physical impairments that do not permit the use of a removable prosthetic. The Panel is sympathetic to the delays that the Appellant has experienced and continues to experience in obtaining evidence to confirm that she has a dental condition that cannot be corrected through basic dental services due to a physical impairment that makes the use of a removable prosthetic impossible. The Panel finds that the Ministry was reasonable in requiring confirmation from a prescribed professional, in this case a specialist dentist or a neurologist, that she has TMJ and/or that her MS is severe enough to not allow her to use a removable prosthetic. *Based on all the available evidence*, the Panel finds that the Ministry reasonably determined that the Appellant did not qualify for crown and bridge work under EAPWDR Section 63.1 and Schedule C Section 4.1(2)(b).

Eligibility for Coverage of Retainers and Pontics as a Life Threatening Health Need

EAPWDR Section 69 says that the Ministry may provide to a family unit *medical transportation, medical equipment and devices, and some types of medical supplies* (emphasis added), if it is provided to a person in the family unit who is otherwise not eligible for it, and if the Minister is satisfied that:

- The person faces a direct and imminent life-threatening need and there are no resources available to the person's family unit to meet that need;
- The dental supplement is necessary to meet that need;
- A person in the family unit is eligible for premium assistance under the *Medicare Protection Act*, and Regulations; and,
- The requirements of certain specified sections of EAPWDR Schedule C are met.

In the RD, the Ministry determined that EAPWDR Section 69 only applies to medical transportation, medical equipment and devices, and certain specific types of medical supplies, and that crown and bridge supplements are not identified as medical transportation, one of the types of medical equipment or devices, or specific types of medical supplies that are listed in the applicable sections of EAPWDR Schedule C.

The Panel notes that EAPWDR Section 69 is only applicable to supplements listed in that Section and dental services is not listed there. The Panel finds that the Ministry reasonably determined that the Appellant did not qualify for crown and bridgework under EAPWDR Section 69.

Eligibility for Coverage of Retainers and Pontics as a Crisis Supplement

EAPWDR Section 57(1) says that the Ministry may provide a crisis supplement to a family unit that is eligible for disability assistance if a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable pay for it because there are no resources available, and if the Minister considers that failure to meet the expense will result in imminent danger to the physical health of any person in the family unit. Section 57(3) says that a crisis supplement may not be provided for the purpose of obtaining a supplement described in EAPWDR Schedule C.

The Ministry noted in the RD that a crown and bridge supplement does not qualify for a crisis supplement under EAPWDR Section 57 because a crown and bridge supplement is described in EAPWDR Schedule C. The Panel notes that EAPWDR section 57 excludes supplements described in EAPWDR Schedule C and that crown and bridgework supplements meet the definition of a dental supplement as described in EAPWDR Schedule C.

Therefore, the Panel finds that the Ministry reasonably determined that a crown and bridgework supplement did not qualify as a crisis supplement under EAPWDR Section 57.

Conclusion

Having reviewed and considered all of the available evidence and relevant legislation, the Panel finds that the Ministry's RD, which determined that the Appellant was not eligible for a dental supplement in the form of crown and bridgework, was reasonably supported by the evidence and was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful.

APPENDIX A
RELEVANT LEGISLATION

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.

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.

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.

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.

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).

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 ...

"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).

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.

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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/06/15

PRINT NAME

Kevin Ash

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/15

PRINT NAME

Katherine Wellburn

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/16