

PART C – DECISION UNDER APPEAL

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated April 27, 2021, denying full funding for dental services for teeth 21 and 37 under Employment and Assistance for Persons with Disabilities Regulation. Specifically, the ministry concluded that the appellant (fee code in brackets):

- is eligible for funding for the restoration (23111) and root canal (33111) of tooth 21 as basic dental services at the rates set out in the Dental Supplement section of the Schedule of Fee Allowances;
- is not eligible for coverage for root canal (33114) on tooth 21 as a basic dental service because it is not included in the Dental Supplement section of the Schedule of Fee Allowances;
- is eligible for coverage for root canal (33141) on tooth 37 as a basic dental services but not up to the maximum amount set out in the Dental Supplement section of the Schedule of Fee Allowances because the maximum \$1,000 coverage for basic dental services for the two-year period would be exceeded;
- is not eligible for “core in conjunction with crown” (23602) on tooth 37 as a crown and bridgework supplement because it has not been established that the dental condition precludes restorative services and that the appellant is unable to use a removable prosthetic;
- is not eligible for coverage for any root canals and crowns as emergency dental services because they are not services set out in the Emergency Dental Supplement section of the Schedule of Fee Allowances; and,
- is not eligible for the radiograph (02111) of tooth 37 as a basic dental service because the maximum amount of \$54.71 for radiographs within the past 2 calendar years has been exceeded but is eligible for coverage as an emergency dental service at the maximum rate of \$9.95 set out in the Emergency Dental Supplement of the Schedule of Fee Allowances, but not at the dentist’s rate.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (the Regulation) – sections 63, 63.1, and 64 and sections 1, 4, 4.1, and 5 of Schedule C

Schedule of Fee Allowances (Dental Supplements, Emergency Dental Supplements, Crown and Bridgework Supplements)

PART E – SUMMARY OF FACTS

The appellant did not attend the hearing. After waiting 20 minutes, and having confirmation of delivery of the Notice of Hearing to the appellant, the hearing proceeded in the appellant’s absence in accordance with section 86(b) of the Employment and Assistance Regulation.

Information before the ministry at reconsideration

The appellant is a recipient of disability assistance eligible to receive funding for dental services in accordance with the Regulation.

The ministry has delegated its powers, duties and functions respecting dental supplements to Pacific Blue Cross (PBC) in accordance with section 34 of the *Employment and Assistance Act*.

On March 22, 2021, the appellant’s dentist submitted a claim for coverage for dental services on teeth 21 and 37. On March 23, 2021, the appellant’s outreach worker contacted the ministry indicating that the appellant had used all of her dental benefits and is in need of emergency dental care as a result of cavities discovered when the appellant’s current dentist removed dental caps. Having been denied the coverage in the full amount requested, the appellant submitted a Request for Reconsideration dated April 15, 2021, in which the appellant requested an emergency dental supplement for the dental services to alleviate pain caused by irreversible pulpitis, which the appellant stated can lead to pulp death and infection. Attached was a March 25, 2021 claim form from the dentist identifying the previously requested dental services for tooth 37 and an additional radiograph, with the dentist writing “Tooth #37 has been diagnosed with irreversible pulpitis and the pt. is in pain.” [Note: the ministry confirmed with the dentist’s office that only one radiograph of tooth 37 is being requested.]

It is not disputed that the current two-year period for dental services for the appellant began January 1, 2021 and ends December 31, 2022. It is also accepted that prior to the March 2021 requests for dental services, the ministry had provided \$271.08 funding for dental services requested on February 23, 2021 (ministry table and PBC excerpt included in the appeal record). Also included in the reconsideration decision is a chart indicating that the appellant received coverage for October 26, 2020 radiographs in the amount of \$54.71.

The dental service codes and the dentist’s fees at issue are set out in the table below. Additionally, the ministry rates as identified in the reconsideration decision are listed. Explanations for the denial or limits on funding are set out in the ministry’s position in Part F of this decision.

Tooth No.	Fee Code	Description	Dentist Fees	PBC Rate
21	23111	Restorations, Permanent, Anteriors, Bonded, One Surface	\$138.00	\$75.47 (approved)
21	33114	Root Canal, One canal, calcified Canal	\$545.00	\$0
21	33111	Root Canal, One canal	\$519.00	\$254.17 (approved)

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37	02111	Radiographs, Periapical, Single image	\$18.10	\$9.95 (approved as an emergency dental service and not included in total)
37	23602	Restoration, tooth coloured, bonded, core, in conjunction with crown	\$187.00	\$0
37	33141	Root Canal, Four or more canals	\$1,017.00	\$521.77 (\$399.28 approved)
TOTAL:			\$1,204.00	\$728.92

Information provided on appeal

The appellant's Notice of Appeal (NOA) dated May 19, 2021, in which the appellant confirms that her dental condition is causing significant pain and distress; that it is irreversible and if left untreated can abscess, cause infection and spread to other parts of the body. The appellant also provides argument, which is set out in Part F of this decision.

As the information provided on appeal reiterated information available at reconsideration, the panel did not consider it to be additional evidence and therefore a determination as to admissibility under section 22(4) of the Employment and Assistance Act was not required.

At the hearing, the ministry explained the reconsideration decision but did not provide additional evidence.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant the requested funding for the requested root canals, restorations and radiograph was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Positions of the Parties

The appellant's position is that due to the effects of irreversible pulpitis, emergency dental services are required and should be covered to relieve pain and control infection.

The ministry's position is that the maximum amount of funding has been approved because the Regulation sets out limits regarding what dental services are funded and limits on the amount of funding. Specifically, the ministry determined that:

- as section 1 of Schedule C of the Regulation defines a basic dental service as a service at the rate set out in the Dental Supplement section of the Schedule of Fee Allowances, the appellant is only eligible for funding for the restoration (23111) and root canal (33111) of tooth 21 at those rates, not the higher dentist's rates;
- as section 1 of Schedule C defines a basic dental service as a service set out in the Dental Supplement section of the Schedule of Fee Allowances, the appellant is not eligible for funding for root canal (33114) on tooth 21 because that service is not listed;
- while the appellant is eligible for funding for root canal (33141) on tooth 37 as a basic dental service, coverage may only be provided in the amount of \$399.28 because the maximum \$1,000 coverage for basic dental services for the two-year period beginning January 21, 2021 would be exceeded if coverage was provided at the rate set out in the Dental Supplement section of the Schedule of Fee Allowances (\$521.77);
- funding for root canals and crowns cannot be provided as emergency dental services because they are not services set out in the Emergency Dental Supplement section of the Schedule of Fee Allowances;
- although "core in conjunction with crown" (23602) is a service listed in the Crown and Bridgework section of the Schedule of Fee Allowances, the appellant is not eligible for that dental service on tooth 37 because it has not been established that the dental condition precludes restorative services and that the appellant is unable to use a removable prosthetic, as required under section 4.1(2)(a) and (b) of Schedule C of the Regulation [the ministry also notes that a crown has not been requested for tooth 37];
- the appellant is not eligible for the radiograph (02111) of tooth 37 as a basic dental service because page 3 of the Schedule of Fee Allowances – Dentist states that radiographs are limited to \$54.71 every 2 calendar years for adults and the appellant reached this maximum coverage for radiographs in October 2020; however, the appellant is eligible for coverage as an emergency dental service at the maximum rate of \$9.95 set out in the Emergency Dental Supplement section of the Schedule of Fee Allowances, but not at the dentist's rate.

Panel's Analysis

The general scheme for the provision of dental supplements under the Regulation is as follows.

Funding limits for dental services and the amount of funding per dental service arise from section 1 of Schedule C which defines "basic dental service" and "emergency dental service" and from section 4.1(1) of Schedule C which defines "crown and bridgework" as a dental service set out in the applicable section of Schedule of Fee Allowances and provided at the rate set out in that Schedule [emphasis added].

Section 4 of Schedule C limits the funding for "basic dental" services for persons 19 years of age or older to \$1,000 over a 2 year period beginning on January 1st of odd numbered years. There is no maximum total funding or funding period for "emergency dental" services or "crown and bridgework", but as noted above, funding is limited to services set out in those sections of the Schedule of Fee Allowances and is only provided at the rate set out in that Schedule.

For crown and bridgework dental services, section 4.1(2) of Schedule C of the Regulation imposes the additional requirements that:

- (a) the dental condition precludes the provision of the restorative services set out in the Schedule of Fee Allowances – Dentist; and
- (b) use of a removable prosthetic is precluded for one of the listed reasons.

Additional limits on specific dental services are also set out in the Schedule of Fee Allowances.

In the appellant's case, the panel finds that the ministry reasonably determined that, based on the definition of basic dental service, while the appellant is eligible for the restoration (23111) and root canal (33111) of tooth 21, the rate for the services cannot exceed the rate set out in the Schedule of Fee Allowances. Further, as it has been established that \$728.92 was remaining of the appellant's current \$1000 basic dental service funding available for the current 2 calendar year period, the panel finds that the ministry reasonably determined that, after funding the above mentioned services on tooth 21, only \$399.28 remained for the root canal (33141) of tooth 37 and therefore, this service could not be funded at the rate set out in the Schedule of Fee Allowances. There is no legislative authority for the ministry to exceed these limits for basic dental services. The panel notes that two different fee codes for the root canal on tooth 37 appear in the record and that the reconsideration decision considered fee code 33141 which is included in the Schedule of Fee Allowances, whereas the other fee code is not.

Having accepted the dentist's evidence respecting the need for emergency dental services on tooth 37, the ministry considered if additional funding for the root canal on tooth 37 was available as an emergency dental service. The panel finds that the ministry reasonably concluded that root canal services are not listed in the Emergency Dental Supplement section of the Schedule of Fee Allowances, so no additional funding is available for the root canal on tooth 37.

Respecting the radiograph (02111) of tooth 37, as the appellant's basic dental services coverage of \$1000 was used and the maximum amount for radiographs of \$54.71 over two calendar years was reached with the radiographs performed October 26, 2020, the ministry considered whether it could be funded as an emergency dental service. The panel finds the ministry was reasonable in concluding that as a service listed in the Emergency

Dental Supplement section of the Schedule of Fee Allowances, it could be funded, but only at the listed rate of \$9.95 based on the definition of emergency dental service.

The panel finds that the ministry was reasonable to deny coverage of the other root canal service for tooth 21 (33114) because it is not listed anywhere in the Schedule of Fee Allowances and the legislative definitions of the various dental services do not allow for coverage for services not listed.

Respecting the restoration in conjunction with crown requested for tooth 37 (23602), a service set out in the Crown and Bridgework section of the Schedule of Fee Allowances, the panel finds that the ministry was reasonable to conclude that the appellant has not met the eligibility requirements of section 4.1(2) of Schedule C. Specifically, the dentist does not explain why restorative services are not suitable or why removable devices are not suitable. Further, as noted by the ministry, the dentist has not requested a crown for tooth 37.

Conclusion

Based on the limits of coverage set out in the Regulation and Schedule of Fee Allowances, the panel concludes that the ministry's reconsideration decision denying the requested full coverage for the dental services was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the reconsideration decision and the appellant is not successful on appeal.

Employment and Assistance for Persons with Disabilities Regulation

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

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

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 family unit in receipt of disability assistance

Schedule C - Health Supplements

Definitions

1 In this Schedule....

"**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 person receiving the service....

Dental supplements

4 (1.1) The health supplements that may be paid under section 63 [*dental supplements*] are basic dental services.....

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 minister,

(c) that is provided at the rate set out for the service in that Schedule.....

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.

Schedule of Fee Allowances - Dentist

Dental Supplements

FEE AMOUNT (Adult)

TOOTH COLOURED RESTORATIONS

Tooth Coloured – Permanent Teeth

Bonded – Anterior

FEE NO. 23111 One Surface 87.91

ROOT CANAL THERAPY

FEE NO. 33111 One canal 254.17

FEE NO. 33141 Four or more canals 521.77

Emergency Dental Supplements

RADIOGRAPHS

Note: Maximum 2 intraoral films per emergency visit.

Intraoral – Periapical

FEE NO. 02111 Single Film 9.95

[The same dental service, fee number and fee amount appear in the Dental Supplements section with a Note stating that radiographs are limited to \$54.71 every 2 calendar years for adults].

Crown and Bridgework

CORES

FEE NO. 23602 Bonded Composite Core, 90.56
in Conjunction with Crown

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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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/06/10

PRINT NAME

Donald Storch

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/10

PRINT NAME

Inge Morrissey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/10