

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated April 21, 2021 in which the ministry denied the appellant coverage for fees associated with dental work. The ministry found that:

- The appellant was not eligible for fees for tooth extractions (fee codes 71101, 71109, and 71201) above the ministry rates set out in the *Schedule of Fee Allowances - Dentist*, and *Emergency Dental - Dentist*.
- The appellant was not eligible for coverage of fees for complete upper and lower dentures (fee codes 31110 and 31620) because those fee codes are not set out in the *Schedule of Fee Allowances - Denturist*. The ministry found that the *Schedule of Fee Allowances - Emergency Dental - Denturist* also does not provide coverage for dentures themselves.
- The appellant was not eligible for coverage of dental fees as a life-threatening health need under section 69 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), and
- The appellant was not eligible for coverage of dental fees as a crisis supplement under section 57(3) of the EAPWDR.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - sections 57, 63, 64, 65, and 69, and sections 1, 4, 4.2 and 5 of Schedule C

Dental Supplement - Dentist including *Schedule of Fee Allowances - Dentist* and *Schedule of Fee Allowances - Emergency Dental - Dentist*

Dental Supplement - Denturist including *Schedule of Fee Allowances - Denturist* and *Schedule of Fee Allowances - Emergency Dental - Denturist*

PART E – SUMMARY OF FACTS

The evidence and documentation before the ministry at the reconsideration consisted of:

1. Information from the ministry’s record of decision indicating that:

- On February 17, 2021, the appellant provided an *Explanation of Benefits* from her dentist (oral surgeon), Dr. G., explaining the coverage for tooth extractions through the ministry’s insurer, Pacific Blue Cross (“PBC”). PBC approved coverage for the requested services up to the maximum ministry rate. The ministry notes that the amount approved by PBC includes the additional 10% permitted for specialists.

	Tooth No.	Fee Code	Description	Dentist Fees	Amount Approved by PBC
1	31	71101	Uncomplicated Extraction - First Tooth	\$216.00	\$75.92
2	34	71109	Uncomplicated Extraction - Additional Teeth	\$155.00	\$50.15
3	41	71101	Uncomplicated Extraction - First Tooth	\$216.00	\$75.92
4	43	71201	Complicated Extraction - First Tooth	\$355.00	\$143.30
			TOTAL:	\$942.00	\$345.29
			Fees not covered by PBC: \$596.71		

- In addition, the appellant submitted a request for dentures (fee codes 31110 and 31060) from a dentist. The ministry notes that PBC did not approve coverage for any portion of the cost:

	Tooth No.	Fee Code	Description	Dentist Fees	Amount Approved by PBC
1		31110	Complete Upper Denture - Precision Equilibrated Complex	\$1800.00	\$0.00
2		31620	Complete Lower Denture – Immediate Overdenture	\$1800.00	\$0.00
			TOTAL:	\$3600.00	\$0.00
			Fees not covered by PBC: \$3600.00		

- On March 15, 2021, the appellant requested a reconsideration regarding PBC’s decision to provide coverage up to the ministry rates only. The appellant asked the ministry to cover 100% of the cost.
- On April 12, 2021, the appellant submitted a *Request for Reconsideration* (“RFR”) explaining that she urgently needs dental work and subsequent dentures due to her deteriorating health and inability to pay the balance not covered by PBC. The appellant requires the ministry to make an exception due to the pain she is suffering. The appellant included a support letter from her local government representative (“MLA”), a treatment plan from a dentist confirming the cost for the dentures, the *Explanation of Benefits* from PBC, and two letters from a dentist, Dr. T. who had referred the appellant to the oral surgeon and the dentist.
- On April 16, 2021, the ministry contacted the dentist’s office to clarify the fee codes for the requested dentures. The dentist’s office confirmed they were requesting dentures under fee codes 31110 and 31620.

2. A letter from the appellant's MLA dated April 12, 2021, offered in support of the appellant's request for more dental coverage. The letter states that the appellant has a disability, is on a very tight fixed income and is unable to pay the portion not covered by PBC. The letter says the appellant also has a heart problem and asks the ministry to increase the coverage for the needed dental work.
3. The RFR signed by the appellant on April 12, 2021 with a typed statement describing the medical conditions and appellant's tight financial situation. The appellant provides argument for the reconsideration and explains that she needs the dental work performed by an oral surgeon due to her underlying health conditions.
4. A *Treatment Plan* from a denture clinic dated November 5, 2020, indicating a request for dentures: *Complete Maxillary - Precision Equilibrated Complex*, \$1,800.00, and *Complete Immed Overdenture - Complete Man*, \$1,800.00. Total cost = \$3,600.00.
5. An *Explanation of Benefits* from Dr. G.'s office submitted to PBC on February 11, 2021. The statement indicates that a total estimate of \$942.00 was submitted and PBC will pay the dentist \$345.29 for extractions. Notes at the bottom of the statement indicate that PBC reimbursed the maximum amount allowed under the appellant's plan for procedures performed by general practitioners/specialists.
6. An undated letter from the dentist, Dr. T., stating that the appellant needs to have the extractions done at the oral surgeon specialist's office because of the medical history and medications the appellant is prescribed for her conditions.
7. A letter from Dr. T. dated October 20, 2020, stating that the appellant's chief complaint is not being able to chew her food properly. An examination determined the appellant has an ill-fitting upper denture that has completely worn the teeth. The current denture has a hole as well, rendering it almost completely ineffective. The letter states that the appellant's lower teeth are badly decayed and broken down. A lower partial denture (with two of the appellant's teeth retained) and a full upper denture were recommended. The appellant was also given the option of extractions on all lower teeth and a new upper and lower denture. The appellant chooses to have all of the teeth extracted as a less expensive option.
8. A letter from a medical doctor dated January 18, 2021, stating that the appellant is unable to undergo regular dental work because of unforeseen medical circumstances. The appellant's quality of life is severely impacted as she can only consume dental soft foods which has led to weight loss. In addition, any dental work puts the appellant at higher cardiac risk and she has broken another tooth due to grinding her teeth at night. The doctor requests an increase in the appellant's dental coverage to provide her with a higher quality of life. The doctor recommends that the appellant see an oral surgeon as opposed to a general dentist.

Additional information

With the consent of both parties, the appeal proceeded as a written hearing pursuant to section 22(3) of the *Employment and Assistance Act* ("EAA"). Subsequent to the reconsideration decision, the Tribunal received the following documents:

1. A *Notice of Appeal* signed by the appellant on May 10, 2021, with a typed submission the panel accepts as argument.

2. An appeal submission, including a letter from an advocate dated May 21, 2021. The advocate provides argument for the appeal and references the letters and treatment plan documents that were provided for the reconsideration. Those documents outlined the appellant's health conditions and her medical need for oral surgery and new dentures.

The panel notes that the letters and documents submitted on appeal are the same ones that were before the minister at the reconsideration. The panel admits the letters and treatment documents under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

3. An email from the Ministry dated June 8, 2021, stating that the ministry's submission on appeal will be the reconsideration summary provided in the *Record of Ministry Decision*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry was reasonable in denying the appellant higher coverage for fees associated with dental work. Was the ministry reasonable in finding that:

- The appellant was not eligible for fees for tooth extractions (fee codes 71101, 71109, and 71201) above the ministry rates set out in the *Schedule of Fee Allowances - Dentist*, and *Emergency Dental - Dentist*.
- The appellant was not eligible for coverage of fees for complete upper and lower dentures (fee codes 31110 and 31620) because those fee codes are not set out in the *Schedule of Fee Allowances - Denturist*. The ministry found that the *Schedule of Fee Allowances - Emergency Dental - Denturist* also does not provide coverage for dentures themselves.
- The appellant was not eligible for coverage of dental fees as a life-threatening health need under section 69 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), and
- The appellant was not eligible for coverage of dental fees as a crisis supplement under section 57(3) of the EAPWDR.

The ministry based the reconsideration decision on the following legislation:

EAPWDR

Crisis supplement

- 57 (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

- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

Emergency dental and denture supplement

64 The minister may provide any health supplement set out in section 5 [*emergency dental supplements*] of Schedule C to or for

- (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 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,

"dentist" means a dentist registered with the College of Dental Surgeons of British Columbia continued under the *Health Professions Act*;

"denture services" means services and items that

- (a)** if provided by a dentist
 - (i)** are set out under fee numbers 51101 to 51302 in the Schedule of Fee Allowances — Dentist that is effective September 1, 2017 and is published on the website of the ministry of the minister, and
 - (ii)** are provided at the rate set out in that Schedule for the service or item and the category of person receiving the service or item, and
- (b)** if provided by a denturist
 - (i)** are set out under fee numbers 31310 to 31321 in the Schedule of Fee Allowances — Denturist that is effective September 1, 2017 and is published on the website of the ministry of the minister, and
 - (ii)** are provided at the rate set out in that Schedule for the service or item and the category of person receiving the service or item;

"denturist" means a denturist registered with the College of Denturists of British Columbia established under the *Health Professions Act*;

"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,
- (b) 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,

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).
- (c) Repealed. [B.C. Reg. 163/2005, s. (b).]

(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...

(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.

Denture supplements

4.2 The health supplements that may be provided under section 63.2 [*denture supplement*] of this regulation are denture services.

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.

Arguments

In submissions on appeal, the appellant says that due to her health complications she urgently needs extractions and subsequent dentures on the advice of her medical team. The appellant notes the portion of the dental work not covered by PBC (\$591.71 for extractions, and \$2400 for dentures), arguing that she cannot afford these out-of-pocket costs on her "very fixed income."

The appellant says that the ministry did not understand the complexities of her situation. The advocate describes the appellant's serious health conditions and explains the medical's team's recommendation for the dental work to be performed by a specialist (oral surgeon) because the appellant needs specialized care due to a heart ailment and other conditions.

The advocate argues the fees covered by PBC would be fair if the appellant was able to receive treatment at a general dentist office but the appellant requires the tooth extractions to be done by an oral surgeon. The advocate argues that the ministry's denial of dental coverage is incorrect because the ministry/PBC rates do not apply to dental work performed by a specialist.

In addition, the appellant describes being unable to eat, suffering weight loss due to pain, and her current denture is broken and effectively useless. The appellant argues the ministry was unreasonable to deny coverage for dentures when her health depends on it.

In an email to the Tribunal, the ministry indicated that its arguments on appeal are the reconsideration summary.

Analysis and Panel's decision

Appellant not eligible for coverage above ministry rates for extractions

The ministry notes that as a recipient of *Medical Services Only* ("MSO"), or a continued person as defined by the legislation, the appellant may be eligible for coverage of basic dental services, and emergency dental services pursuant to sections 63 and 64 of the EAPWDR. Sections 1 and 4 of EAPWDR Schedule C lay out the requirements for covering the cost of dental work. As the ministry explains, PBC is authorized by legislation to administer dental supplements on behalf of the ministry.

Section 1 of Schedule C defines "basic dental service" as a dental service that is provided according to the *Schedule of Fee Allowances - Dentist* published on the ministry's website. That Schedule sets out in detail the types of services and the frequency with which they may be provided as well as the prescribed fee for each service.

Section 1 of Schedule C defines "emergency dental service" as a dental service necessary for the immediate relief of pain when that service is provided by a dentist and is set out in the *Schedule of Fee Allowances - Emergency Dental - Dentist* published on the ministry's website. That Schedule also sets out the prescribed fee for each service.

Both Schedules cover extractions under the same fee codes. Fee items 71101, 71109, and 71201 were requested by the appellant's dentist for extractions. The Schedule indicates a fee rate for each type of extraction.

The panel finds that the ministry reasonably concluded that the rates in these Schedules are the maximum that PBC can cover because the definition of "dental services" in the EAPWDR only authorizes the fees that are set out in the Schedules. Under the Schedules, PBC is authorized to pay a maximum of \$345.29 for the requested extractions.

The ministry was sympathetic to the appellant's health needs and financial situation but argued it has no discretion to cover a higher amount for the extractions. The appellant requested 100% coverage due to her very tight finances.

The panel finds that the ministry reasonably applied the legislation in finding it is not authorized to provide coverage for the extractions in excess of the rates set out in the Schedules. There are no exceptions under the legislation. The ministry policy (*Dental Supplement - Dentist*) does not provide an exception either.

The fee Schedules for both regular and emergency dental work cover dental work performed by a dentist. Under section 1 of Schedule C, "dentist" means a dentist registered with the College of Dental Surgeons of British Columbia. The advocate argues that the ministry rates in the *Schedule of Fee Allowances - Dentist* apply to general dentists but the appellant needs to have her extractions done by a specialist (oral surgeon) whose fees should be covered by insurance.

The panel notes that the legislation (EAPWDR) does not distinguish between general dentists and specialists such as the appellant's oral surgeon, Dr. G. Both general dentists and specialists fall under the definition of "dentist" in section 1 of Schedule C because both are registered with the same professional body, the College of Dental Surgeons of British Columbia.

The panel sympathizes with the appellant and understands that she has serious health conditions that led her medical team to refer her to an oral surgeon for extractions. However, the ministry's interpretation of the legislation was reasonable because there is no coverage for specialist fees above the ministry rates. The fee Schedules provide a 10% top up when the work is performed by specialists. The notes on the *Explanation of Benefits* indicate the top up was included in the fees covered by PBC: \$345.29 for extractions. That is the maximum amount the ministry is authorized to pay under the legislation.

Appellant not eligible for dentures under fee codes 31110 and 31620

The ministry notes that dentures are covered as a basic dental service under section 1 of EAPWDR Schedule and dentures may be provided by a dentist or a denturist. The request for dentures was from a denturist and the panel finds that the ministry was reasonable to consider the appellant's request for dentures under the *Dental Supplement - Denturist* policy which includes the *Schedule of Fee Allowances - Denturist*.

Section 1 of EAPWDR Schedule C defines "denture services" provided by a denturist as the services and items set out under fee numbers 31310 to 31321 in the *Schedule of Fee Allowances - Denturist* published on the ministry's website. Section 1 states that denture services are provided at the rate set out in that Schedule for the service or item and the category of person receiving the service or item.

The ministry acknowledges that section 4(2) of EAPWDR Schedule C says that dentures may be provided as a basic dental service to a person who has never worn dentures, or whose dentures are more than 5 years old. The ministry argues this provision does not apply in the circumstances of the appellant because the fee codes requested by the denturist are not included in the definition of "denture services" in section 1 of Schedule C. The panel finds the ministry's application of the legislation was reasonable because the definition of "denture services" authorizes the minister to cover only those fee items indicated in the Schedule (fee codes 31310 to 31321) and only up to the maximum rates listed for those codes.

The ministry argues it has no discretion under legislation or policy to cover fee items that are not set out in the *Schedule of Fee Allowances - Denturist*. The panel finds the ministry's interpretation of the legislation was reasonable because the definition of "denture services" includes very specific fee codes, which were not indicated in the appellant's request for dentures. The ministry's denture policy provides no exceptions.

The appellant argues the ministry does not understand the pain and discomfort she is in and that recommending a nutritional supplement for her inability to eat is not an acceptable solution. The panel finds that the ministry showed due diligence in considering the appellant's medical need for dentures because the record indicates the ministry contacted the denturist's office to clarify what fee code items were requested.

In addition, the ministry considered the appellant's need for dentures as an emergency dental service. Under section 1 of EAPWDR Schedule C, denture services may be provided by a denturist for the immediate relief of pain if the service is set out in the *Schedule of Fee Allowances - Denturist*, and provided at the rate listed in the Schedule for the specific service.

The panel finds that the ministry reasonably applied the legislation in denying the request for dentures as an emergency dental service because the requested fee items (fee codes 31110 and 31620) are not set out in the *Schedule of Fee Allowances - Denturist*, and the Schedule lists repairs and adjustments to

dentures under emergency services. The Schedule does not provide coverage for dentures themselves, not even in the case of emergency.

The panel finds that the ministry was reasonable to conclude it has no discretion under the legislation to cover denture items 31110 and 31620 as a basic or emergency dental service, and there is no exception under the ministry's denture policy. The panel is sympathetic to the appellant's health situation but notes there is no information on record to indicate the appellant consulted another dentist to see if they could provide dentures under the fee codes set out in the *Schedule of Fee Allowances – Denturist: fee items 31310 to 31321*. Those are the fee codes the ministry is authorized to provide coverage for.

Appellant not eligible for dental coverage as a life-threatening health need

The ministry argues it cannot cover the appellant's emergency dental work as a life-threatening health need under the EAPWDR because section 69 authorizes the minister to provide a health supplement for medical transportation and for certain medical equipment/ supplies, but not dental services. The ministry explains that it can only provide the supplements that are listed in section 69 where a client is facing an imminent life-threatening health need and is not otherwise eligible for health supplements under the legislation.

The panel finds that the ministry reasonably applied section 69 of the EAPWDR in finding that the appellant is not eligible for dental services as a life-threatening health need. Section 69(1) specifies that it applies to certain supplements that are set out in EAPWDR Schedule C. The only supplements the ministry is authorized to provide under section 69(1) are a supplement for medical transportation and for the medical equipment and devices that are listed in other sections of Schedule C. Unfortunately, a supplement for emergency dental services is not covered under sections of the EAPWDR associated with life-threatening health need.

Appellant not eligible for dental fees as a crisis supplement

The ministry argues it is not authorized to provide a crisis supplement to cover the appellant's emergency dental work because the EAPWDR specifically states that a crisis supplement cannot be provided for dental services.

The panel finds that the ministry reasonably applied the legislation in finding that the appellant is not eligible for a crisis supplement. Section 57(3) of the EAPWDR says that the minister may not provide a crisis supplement to obtain any of the supplements described in Schedule C or any other health care goods or services. As noted by the ministry, dental services are health supplements under Schedule C of the EAPWDR. Therefore, the cost of emergency dental work cannot be covered by a crisis supplement.

Conclusion

The panel finds that the ministry's reconsideration decision that found that the appellant is not eligible for coverage of costs associated with dental extractions, and dentures under fee codes 31110 and 31620 was a reasonable application of the EAPWDR in the circumstances of the appellant. The panel is sympathetic to the appellant's situation but finds that the ministry's determination that it cannot pay the portion of the dental work not covered by PBC as a basic dental service, emergency dental service, life-threatening health need or crisis supplement, was a reasonable application of the legislation. The panel confirms the reconsideration decision and the appellant is not successful on appeal.

APPEAL NUMBER
2021-0098

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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021-06-24

PRINT NAME

Barbara Insley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-06-24

PRINT NAME

Kim Read

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-06-24