

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of June 2, 2021 (the “Reconsideration Decision”), in which the Ministry determined that the Appellant was:

- ineligible for dental supplements under section 63 of the Employment and Assistance for Persons with Disability Regulation (“EAPWDR”) in relation to the following dental treatments received on September 21, 2020:
 - Parenteral Conscious Sedation (“Fee Code 92445”);
 - Fluoride Treatment, Varnish (“Fee Code 12113”); and
 - Preventative Restorative Resin (“Fee Code 13411”)

because these items are not provided for in the Schedule of Fee Allowances – Dental (the “Basic Schedule”) or the Schedule of Fee Allowances – Emergency Dental (the “Emergency Schedule”), as required by section 1 of Schedule C to the EAPWDR; and

- ineligible for dental supplements in excess of the rates set out in the Basic Schedule and the Emergency Schedule for the following dental treatments received on September 21, 2020:
 - Polishing (“Fee Code 11101”);
 - Scaling (“Fee Code 11112”);
 - Examination and Diagnosis (“Fee Code 01202”); and
 - Radiographs, bitewing (“Fee Code 02142”)

pursuant to section 1 of Schedule C to the EAPWDR.

APPEAL NUMBER
2021-0126

PART D – RELEVANT LEGISLATION

EAPWDR, section 63 and 65, Schedule C- section 1

PART E – SUMMARY OF FACTS

The Appellant is a recipient of disability assistance and meets the threshold requirements for coverage of both basic and emergency dental supplements set out in sections 63 and 65 of the EAPWDR.

At the time of the Reconsideration Decision, the information before the Ministry included the following:

- undated letter from the Appellant’s dentist, setting out that the Appellant:
 - is 29 years of age;
 - has Autism, Epilepsy, and fainting spells
 - requires IV sedation for dental treatments and that there would be risk to the Appellant’s health without it;
 - had received IV sedation since 2017 at the dentist’s current office and had been a patient for ten years prior to that at a different dental office;
- a claim summary, dated September 26, 2020, from the Ministry’s insurer setting out the reimbursement amounts for various dental expenses incurred by the Appellant on September 21, 2020;
- a Ministry Health Supplement Info Sheet for Dental & Orthodontic Services, dated April 14, 2021;
- the Appellant’s Request for Reconsideration, dated May 21, 2021, which set out the following information:
 - the Appellant had incurred dental expenses on September 21, 2021 for the following fee codes in the following amounts:
 - Fee Code 12113 in the amount of \$19.30, Fee Code 13411 in the amount of \$65.30, and Fee Code 92445 in the amount of \$349.00, Fee Code 11101 in the amount of \$40.00, Fee Code 11112 in the amount of \$94.00, Fee Code 10202 in the amount of \$32.00, and Fee Code 02142 in the amount of \$24.30; and
 - the Ministry’s insurer had advised that it was unable to provide coverage for Fee Code 12113, Fee Code 13411, or Fee Code 92445 as they were not covered expenses; and
- the Basic Schedule and the Emergency Schedule (although for reasons that are not clear, neither of these schedules were included with the record of the Reconsideration Decision)

The Appellant’s Notice of Appeal was filed June 14, 2021. At the hearing of the appeal, however, the Appellant’s advocate confirmed that the appeal concerned only the Ministry denial of a dental supplement in relation to the Parenteral Conscious Sedation (Fee Code 92445).

At the hearing of the appeal, the Appellant’s advocate and parents advised that:

- The Appellant was originally from another province and applied for a persons with disabilities (“PWD”) designation upon moving to British Columbia;
- The Appellant required sedation for any form of dental treatment and always has for the very reasons that have qualified the Appellant for PWD status;
- In the Appellant’s previous home province, the type of sedation that was denied by the Ministry was a covered service;
- There are two types of sedation available, one of which is described as conscious sedation and the other of which involves administering a general anaesthetic (which may be covered under some instances under fee code 92215 in the Basic Schedule); and

APPEAL NUMBER
2021-0126

- The Appellant has always previously had conscious sedation and general anaesthetic, in fact, poses a danger to the Appellant's health due to the status of the Appellant's health conditions.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant was:

- ineligible for dental supplements under section 63 of the EAPWDR in relation to the following treatments received on September 21, 2020:
 - Fee Code 92445;
 - Fee Code 12113; and
 - Fee Code 13411

because these items are not provided for in Basic Schedule or Emergency Schedule, as required by section 1 of Schedule C to the EAPWDR; and

- ineligible for dental supplements in excess of the rates set out in the Basic Schedule and the Emergency Schedule for the following dental treatments received on September 21, 2020:
 - Fee Code 11101;
 - Fee Code 11112;
 - Fee Code 01202; and
 - Fee Code 02142

pursuant to section 1 of Schedule C to the EAPWDR.

Panel Decision

The Ministry found that the Appellant met the basic eligibility requirements for a dental supplement under section 64 of the EAPWDR and for an emergency dental supplement under section 65 of the EAPWDR.

In order to be eligible for a supplement, however, the services for which a supplement is sought must be provided for as either a basic dental service or an emergency dental service, as those terms are defined by section 1 of Schedule C to the EAPWDR.

Section 1 of Schedule C to the EAPWDR defines a “basic dental service” as follows:

"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;

Section 1 of Schedule C to the EAPWDR defines an emergency dental service” as follows:

"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;

Fee Code 11101, Fee Code 11112, Fee Code 01202, and Fee Code 02142 are all found in the Basic Schedule and, as the services were provided by a dentist, the Ministry is authorized to provide a supplement for such services at the rates set out in the Basic Schedule pursuant to sub-section (a)(i) and (a)(ii) of the definition of “basic dental services” in section 1 of Schedule C to the EAPWDR. In this case, the Ministry provided supplements to the Appellant “at the rate set out in that Schedule for the service and the category of person receiving the service” in respect of each of the foregoing fee codes. In the result, the panel finds that the Reconsideration Decision was a reasonable application of the relevant statutory provision in the Appellant’s circumstances in respect of Fee Code 11101, Fee Code 11112, Fee Code 01202; and Fee Code 02142 and that, in fact, the applicable legislation precludes the Ministry from providing a supplement in excess of what was provided to the Appellant.

Fee Code 92445, Fee Code 12113, and Fee Code 13411, on the other hand, are not referenced in either the Basic Schedule or the Emergency Schedule and, as such, are not eligible for coverage as a dental supplement under sub-sections (a)(i) of the definitions of “basic dental services” and “emergency dental services” in section 1 of Schedule C to the EAPWDR. In the result, the panel finds that the Reconsideration Decision was a reasonable application of the relevant statutory provision in the Appellant’s circumstances in respect of Fee Code 92445, Fee Code 12113, and Fee Code 13411 and that, in fact, the applicable legislation precludes the Ministry from providing any supplements in respect of those fee codes as they are not applicable to adults. Of note, in respect of conscious sedation, the Appellant *may* be eligible for a supplement for a supplement in respect of general anesthetic and intravenous sedation under fee code 92215 where specific conditions are met. However, the evidence indicates that the Appellant’s dentist could not recommend the use of general anesthetic given the risks to the Appellant when other more favourable sedation options were available. Unfortunately, , there is no provision in the Basic Schedule for a supplement for conscious sedation for adults in the Appellant’s circumstances despite the fact that such a supplement is available to children under 19 years of age, where specific conditions are met. This is a significant discrepancy in coverage that appears to the panel to have the potential to be discriminatory in its effect on adults whose circumstances are similar to the Appellant’s in that sedation is required to carry out dental services but where general anesthesia has the potential to pose health risks.

Despite the foregoing, as the panel is bound by the wording of the legislation, despite the fact that the legislation appears to have an unfair operation, the panel finds that the Reconsideration Decision was a reasonable application of the relevant legislation and the Appellant is not successful in this appeal.

APPEAL NUMBER
2021-0126

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/July/15

PRINT NAME

Adeola Olulana

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/07/15

PRINT NAME

Emily Drown

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/07/15