

APPEAL NUMBER
2021-0152

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction ("Ministry") reconsideration decision dated July 9, 2021 in which the Ministry determined that the appellant was not eligible for coverage of dental work.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation - Sections 62, 63, 63.1, 64 and 65.
Employment and Assistance for Persons with Disabilities Regulation, Schedule C - Sections 1, 4, 4.1, and 5

Schedule of Fee Allowances – Dentist, Schedule of Fee Allowances – Denturist

Employment and Assistance Act (EAA) – Section 22

Part E – Summary of Facts

The appellant is an adult recipient of disability assistance.

In April 2021 Pacific Blue Cross (PBC), acting on behalf of the Ministry in accordance with delegated decision making powers, found the appellant ineligible for coverage for many costs included in a dental treatment plan submitted by their dentist, which involved multiple tooth extractions and placement of dental implants. Portions of the treatment plan were refused by PBC for several different reasons: some because the procedures were not covered benefits; some due to missing information in the dentist's submission; some because the cost treatment exceeded Ministry rates; and some because PBC indicated the appellant had reached their maximum coverage for the specified period

In June 2021, the appellant's mother, who has power of attorney, sought reconsideration of the decision denying coverage for the appellant's dental treatment plan. In her request for reconsideration, dated June 6, 2021, the appellant's mother argued against the ineligibility decision. She argued that the appellant's medical specialist has insisted that the appellant have dental implants rather than dentures because of their medical condition and that the Ministry should at least cover the cost of dentures that would be covered. She further argued that the need for the dental care requested is not the appellant's fault and that their teeth have been affected by medications that deplete saliva and cause tooth rot. As well, she argued that several of the appellant's teeth have been broken due to clenching during seizures. The appellant's mother also included several documents relating to the appellant's dental needs, including:

- A letter from the appellant's dentist to another medical professional;
- A letter from the appellant's dentist to MSP requesting coverage for tooth extraction and anesthesia;
- A letter from Health Insurance BC approving anesthesia coverage;
- Consultation completed by the appellant's dentist;
- Fee estimate for the dental treatment plan, totaling \$29, 231.02;
- Consultation completed by the appellant's medical specialist;
- Prescription note from a general practitioner describing the appellant's need for anesthesia; and
- PBC dental predetermination summary relating to the treatment plan requested.

On July 9, 2021 the Ministry issued its reconsideration decision.

With the consent of both parties under section 22(3)(b) of the EAA, this appeal was determined by way of a written hearing. Additional information before the panel on appeal consisted of the following:

Notice of Appeal

In the Notice of Appeal dated July 22, 2021, the appellant's mother argued that the Ministry covers the cost of dentures for clients who are recipients of disability benefits and that the appellant's medical conditions prevent her from having dentures. She argues that the appellant needs implants to replace broken and decayed teeth, caused by medications and seizures. Finally, she states that they are only asking for the amount of funding that would be provided for dentures, which is a small portion of the total cost of dental treatment required.

Appeal Submissions

The appellant did not provide appeal submissions.

The Ministry relied on the reconsideration decision.

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Admissibility

The panel finds that the information provided in the appellant's Notice of Appeal consisted of argument and does not contain any new information requiring an admissibility determination in accordance with section 22(4)(b) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's determination, that the appellant was not eligible for full coverage of the dental treatment requested, is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Legislation

The applicable legislation is provided in Appendix A

Analysis

On appeal, the panel must, in accordance with section 24 of the EAA, determine whether the decision under appeal is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. The applicable enactment in this appeal is the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The Ministry determined at reconsideration that the appellant was not eligible for full coverage of the dental treatment requested. The Ministry, as is their practice, considered several benefits, supplements and funding provisions at reconsideration prior to confirming that the appellant is not eligible for coverage.

Eligibility for Implants Coverage

The Ministry first considered the appellant's eligibility for funding of treatment under dental fee codes associated with dental implants, prefabricated abutments or surgical templates. The Ministry noted that it may only provide funding for dental services that are included in the *Schedule of Fee Allowances – Dental* ("Schedule of Fee Allowances") and that the treatment requested under four specific fee codes is not included. The Ministry, therefore, concluded that the appellant was not eligible for coverage for those procedures. The Ministry explained that it may provide coverage for basic dental services and emergency dental services, as set out at Section 63 and 64 respectively, as well as Schedule C, sections 1, 4 and 5 of the EAPWDR.

The Ministry concluded that, because the specific services requested by the appellant are not set out in the Schedule of Fee Allowances, the Ministry cannot cover those services. The Ministry went on to explain that it does not have discretion to cover procedures that are not included in the Schedule of Fee Allowances.

Eligibility for Dental Fees in Excess of Ministry Rates

The Ministry next found that the appellant is not eligible for dental fees, for coverage of basic dental services under EAPWR Section 63, in excess of the rates set out in the Schedule of Fee Allowances. The Ministry noted that the appellant has been approved for the maximum coverage allowed in the Schedule of Fee Allowances, with approval of an additional 10% because the procedures would be completed by a certified specialist. The Ministry explained that it can only provide funding for the services set out in the Schedule of Fee Allowances and can only fund those services to the maximum allowed by the Schedule of Fee Allowances. The Ministry concluded that it is not authorized to cover dental services in excess of the rates set out and there is no grant of discretion to the Ministry that would permit any exception to be made.

Eligibility for Coverage in Excess of \$1000

The Ministry went on to consider whether the appellant was eligible for coverage of basic dental

services, under EAPWR Section 63, in excess of the legislated \$1000 limited for the current two year period, described as January 1, 2021 to December 31, 2022, and determined they were not. The Ministry explained that the maximum coverage for basic dental services is \$1000 per two year period and that, at the date of reconsideration, pre-authorization for in that amount had already been issued. The Ministry found that the appellant was not eligible for services, included in the Schedule of Fee Allowances, beyond the \$1000 limit.

Eligibility for coverage as Emergency Dental Services

Finally, the Ministry considered whether it could provide funding for odontectomy procedures treatment as emergency dental services as contemplated in section 64 of the EAPWDR. The Ministry noted that the regulation allows for emergency dental services, as necessary for immediate relief of pain, to the maximum rates set out in the Schedule of Fee Allowances. The Ministry went on to note that the Schedule of Fee Allowances expands the allowance of emergency dental services for persons who require immediate attention to control infection or bleeding or for a person's health or welfare is otherwise immediately jeopardized. The Ministry found that the information provided did not include confirmation from a dental practitioner that the appellant met one of these circumstances. The Ministry noted that the medical specialist's consult reported that the appellant's teeth do not hurt and that information was not provided that the appellant's health or welfare is in immediate jeopardy. The Ministry concluded that in the absence of such information it could not establish emergency dental services eligibly for coverage of the services requested.

The appellant's arguments and submissions do not specifically address the legislative requirements for each of the benefits, supplements and funding provisions discussed in the reconsideration decision. The appellant's mother argues that the Ministry does fund dentures for people with disabilities but this is not a treatment option for the appellant due to her medical conditions. Further, she argues that the appellant's need for dental treatment is not one of their own making; rather, the need is due to dental damage caused by medications and seizures. The appellant's mother argued that the funding request is not for full coverage from the Ministry, only funding in the amount that dentures would be covered.

With tremendous sympathy for the position of the appellant and their mother, the panel finds that the Ministry's decision at reconsideration is both reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel finds that the evidence and argument clearly demonstrate a situation of need for the appellant, who faces significant barriers due to complex medical diagnoses. Despite this apparent need, the legislated benefits scheme does not allow for the totality of an individual's needs to be considered and assessed in determining whether they qualify for a particular benefit, supplement or subsidy. It is in the context of this regime that the panel must assess the reasonableness of the Ministry's reconsideration decision in light of the legislated requirements and restrictions.

The panel notes that the legislated benefits scheme allows funding for basic and emergency dental treatment only in certain circumstances. The Ministry is only permitted to approve funding for the services specifically listed in the Schedule of Fee Allowances and only to the maximum amounts set out. The Ministry has no authority to approve funding for services that are not specifically listed or to approve funding above the maximum amounts in the Schedule of Fee Allowances. In addition, the Ministry has no authority to provide funding where a person does not meet the requirements set out in the EAPWR, or to provide funding in the amount of a funded service where that service is not provided.

The panel finds, according to the evidence presented in the medical and dental documents, the appellant requires significant dental treatment that includes multiple tooth extractions and placement of dental

implants; dentures are not suitable for the appellant. The panel finds that Ministry is permitted to fund the provision of funding of basic dental services, under section 63 of the EAPWDR, only for those portions of the appellant's dental treatment that are listed services in the Schedule of Fee Allowances and only to the accompanying maximum amounts. The panel further finds that the appellant requires some dental treatment that is not included in the Ministry's dental care scheme and some dental treatment that is above the funding maximums that the Ministry is permitted to approve.

The panel finds that the evidence does not include any information about dental treatment being necessary to relieve pain, control infection or bleeding or that the appellant's health or welfare is otherwise immediately jeopardized as required for funding of emergency dental services under section 64 of the EAPWDR. Because there is no grant of discretion in the regulation that would permit the Ministry, or PBC, to engage in a holistic or forward-looking assessment of need for an individual, each required circumstance or criterion is assessed in an absolute way. In other words, one is not eligible for funding and the Ministry cannot providing funding unless each of the requirements is clearly met.

In essence, the panel finds that appellant needs, and has requested funding for, a number of dental services that the Ministry has no legal authority to approve as either basic or emergency dental services. The panel finds the Ministry's conclusions in relation to each of the benefits discussed in the reconsideration decision to be reasonable, taking into account the circumscribed legislative context in which the reconsideration decision was made. As such, the panel finds the Ministry's conclusions in relation to each of these benefits is both reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant.

Conclusion

The panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the Ministry's reconsideration decision. The appellant is not successful on appeal.

Appendix A

Appendix A

Employment and Assistance for Persons with Disabilities Regulation - Sections 62, 63, 63.1, 64 and 65

Employment and Assistance for Persons with Disabilities Regulation, Schedule C - Sections 1, 4, 4.1, and 5

General health supplements

62 The minister may provide any health supplement set out in section 2 [*general health supplements*] or

3 *[medical equipment and devices]* 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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

Denture supplement

63.2 (1) Subject to subsection (2), the minister may provide any health supplement set out in section 4.2 *[denture supplements]* of Schedule C to or for a family unit in receipt of hardship assistance.

(2) A person is not eligible for a health supplement under subsection (1) unless

- (a) the person is not eligible for a supplement under section 63 *[dental supplements]*, and
- (b) the person has had tooth extractions that were performed in the last 6 months because of pain and resulted in the person requiring a full upper denture, a full lower denture or both.

[en. B.C. Reg. 270/2019, App. 2, s. 15.]

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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

Schedule C

1 In this Schedule:

"audiologist" means an audiologist registered with the College of Speech and Hearing Health Professionals of British Columbia established under the *Health Professions Act*;

"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;

"basic eyewear and repairs" means any of the following items that are provided by an optometrist,

ophthalmologist or optician:

(a) for a child who has a new prescription, one pair of eye glasses per year consisting of the least expensive appropriate

- (i) single-vision or bifocal lenses, and
- (ii) frames;

(b) for any other person who has a new prescription, one pair of eye glasses every 3 years consisting of the least expensive appropriate

- (i) single-vision or bifocal lenses, and
- (ii) frames;

(c) for a child or other person,

- (i) new lenses at any time if an optometrist, ophthalmologist or optician confirms a change in refractive status in either eye,
- (ii) a case for new eye glasses or lenses, and
- (iii) necessary repairs to lenses or frames that come within this definition;

"change in refractive status" means a change of not less than 0.5 dioptres to the spherical or cylinder lens, or a change in axis that equals or exceeds

- (a) 20 degrees for a cylinder lens of 0.5 dioptres or less,
- (b) 10 degrees for a cylinder lens of more than 0.5 dioptres but not more than 1.0 dioptre, and
- (c) 3 degrees for a cylinder lens of more than 1.0 dioptre;

"dental hygienist" means a dental hygienist registered with the College of Dental Hygienists established under the *Health Professions Act*;

"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, 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;

"eye examination" means a full diagnostic examination of a person's eyes by an optometrist or an ophthalmologist, that includes

(a) a determination of the refractive status of the eyes and of the presence of any observed abnormality in the person's visual system,

(b) any necessary tests connected to making determinations under paragraph (a), and

(c) the provision of a written prescription for lenses if necessary;

"hearing instrument" has the same meaning as in the Speech and Hearing Health Professionals Regulation, B.C. Reg. 413/2008;

"hearing instrument practitioner" means a hearing instrument practitioner registered with the College of Speech and Hearing Health Professionals of British Columbia established under the *Health Professions Act*;

"occupational therapist" means an occupational therapist registered with the College of Occupational Therapists of British Columbia established under the *Health Professions Act*;

"ophthalmologist" means a medical practitioner who practises ophthalmology;

"optician" means an optician registered with the College of Opticians of British Columbia established under the *Health Professions Act*;

"optometrist" means an optometrist registered with the College of Optometrists of British Columbia established under the *Health Professions Act*;

"orthotist" means a person who is certified by and in good standing with the Canadian Board for Certification of Prosthetists and Orthotists;

"pedorthist" means a person who is certified by and in good standing with the College of Pedorthics of Canada;

"physical therapist" means a physical therapist registered with the College of Physical Therapists of British Columbia established under the *Health Professions Act*;

"physical therapy" has the same meaning as in the Physical Therapists Regulation, B.C. Reg. 288/2008;

"pre-authorized eyewear and repairs" means eyewear and repairs provided by an optometrist, ophthalmologist or optician and for which pre-authorization is given by the minister, but does not include basic eyewear and repairs;

"specialist" means a medical practitioner recognized as a specialist in a field of medicine or surgery in accordance with the bylaws made by the board for the College of Physicians and Surgeons of British Columbia under section 19 (1) (k.3) and (k.4) of the *Health Professions Act*.

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.

(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.

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)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name
Jennifer Smith

Signature of Chair

Date (Year/Month/Day)
2021/08/27

Print Name
Patrick Cooper

Signature of Member

Date (Year/Month/Day)
2021/08/30

Print Name
Robert Kelly

Signature of Member

Date (Year/Month/Day)
2021/08/30