

**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 October 27, 2021 which denied the Appellant’s request for the full cost of the fees related to her complete upper and lower dentures because the requested coverage was for services that exceed the maximum rates specified in the Ministry’s “*Schedule of Fee Allowances - Dentist*” (the Fee Schedule) and are therefore amounts above the maximum rates that the Ministry may provide.

In addition, the Ministry determined that the Appellant is not eligible for coverage of complete upper and lower dentures as an emergency dental service, an orthodontic treatment, or a crisis supplement. The Ministry also determined that the information provided does not establish a direct and imminent life threatening health need.

**Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), Section 25(1)

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 57, 62, 63, 64, 65, and 69

EAPWDR, Schedule C, Sections 1, 2(1), 3.1 – 3.12, 4, and 5

Schedule of Fee Allowances – Dentist, Emergency Dental – Dentist, Parts A and B - effective September 1, 2017

***The relevant legislation is provided in the Appendix***

**Part E – Summary of Facts**

The Appellant is a sole recipient of disability assistance.

The evidence before the Ministry at reconsideration included the Appellant's Request for Reconsideration (RFR) dated October 12, 2021 which included:

- The Appellant's reasons for the RFR and annotated copies of photographs of the Appellant, provided by a Dental Consultant at the Regional Health Authority (RHA) in the Appellant's home community who is a Registered Dental Hygienist (RDH) and who also serves as the Appellant's Advocate (the Advocate). The notes included with the copies of the photographs describe abnormal conditions present in each of the photographs;
- A two-page letter to the Ministry dated October 5, 2021 from the Advocate arguing that the Appellant's dentures should be considered medical devices;
- A one-page letter to a Medical Specialist dated June 1, 2021 from a Family Physician regarding a referral of the Appellant to the Medical Specialist;
- A two-page letter to the Ministry dated May 31, 2021 from a Prosthodontist (the Prosthodontist's Letter) in which the Prosthodontist, writing on behalf of the Appellant, explains the Appellant's medical condition and why specialized dentures are required;
- A one-page letter to the Ministry dated October 13, 2021 from a Registered Nurse explaining the Appellant's medical condition and why correct fitting dentures are required; and,
- Three pages of email correspondence dated July 12, 2021 between a Registered Speech Language Pathologist and a Clinical Practice Educator at the RHA referring to recent problems that the Appellant has experienced with her new dentures and discussing the possible need for the Appellant to repeat an instrumental swallowing assessment.

**Additional Information**

In the Notice of Appeal (NOA) dated November 10, 2021, the Advocate, on behalf of the Appellant, provided the following additional evidence:

1. A two-page letter dated November 17, 2021 from the Advocate (the November 17 Letter) in which the Advocate provides a medical history of the Appellant, including current difficulties the Appellant has with eating and swallowing which have resulted in her being hospitalized three times over a six month period for aspiration pneumonia. As a result, a medical team determined that specialized dentures should be made *"to cover the (Appellant's) fistula ... and (to) cover (her) cleft palate"*, with an extension of the denture toward the throat *"to help reduce the many medical issues and reduce risk of mortality"*. The Advocate also says that a lower denture is also needed *"for many mouth processes to work correctly"*, and that *"if the vertical ... (and horizontal) jaw dimensions ... (are) not maintained there would be jaw joint ... issues leading to jaw pain, headaches and the lack of chewing ability just to mention a few"*;
2. Two pages of copies of photograph's of the Appellant's mouth (reproduced more clearly in the Appellant's November 18 Submission referred to below). Unattributed hand-written notes are included beside several of the photographs;

3. Two pages from the BC Dental Association's (BCDA) 2014 Abbreviated General Practitioner's Suggested Fee Guide (the 2014 Fee Guide), showing suggested fees for upper and lower dentures of \$736.00 and \$834.00 respectively;
4. Two pages from the BCDA's 2021 Abbreviated General Practitioner's Suggested Fee Guide (the 2021 Fee Guide) showing suggested fees for upper and lower dentures of \$828.00 and \$903.00 respectively;
5. A two page letter dated November 10, 2021 from the Practice Manager at the Appellant's Prosthodontist's office, the second page of which is a fee table showing the total cost of the Appellant's treatment as \$4,600 of which PBC reimbursed \$935.39. The cover letter says that a further \$756.69 is expected to be paid by PBC; and,
6. A two page letter from the Ministry dated October 27, 2021 confirming that on reconsideration PBC and the Ministry have approved coverage for a complete lower denture for the Appellant in the amount of \$759.69. Included with the letter is an undated two-page document showing Pacific Blue Cross (PBC) dental claim information for the Appellant, including claim information and the total amounts claimed and paid by PBC for complete standard maxillary and mandible dentures.

The Appellant also provided a Submission on November 18, 2021 (the Appellant Submission). The Appellant Submission comprised clearer quality images of the photographs identified under the list of NOA evidence under item 2 above.

### **Evidence Presented at the Hearing**

The Advocate represented the Appellant at the hearing.

At the hearing, the Advocate relied on the Appellant's evidence contained in the RFR and the NOA, emphasizing that the dentures in this case had been significantly modified by a medical team and more reasonably fit into the category of medical equipment than dentures (specifically the Advocate said that they were a type of orthosis because they also addressed the Appellant's congenital deficits). The Advocate also said that dental extractions that occur in a hospital get billed to the Medical Services Plan (MSP) but if done by a dentist they are considered dental work, which the Advocate suggested did not make sense. In response, the Ministry said that a patient in a hospital receives additional care in a hospital that is not provided in a dentist's office, so if the dental work had been done in a hospital "*it might have been covered*".

The Advocate also pointed out that the available funding for dentures has not kept up with inflation. She said that the fee schedule amounts have not been increased since 2009, despite an 18.46% increase in the consumer price index since then. The fact that the maximum claim amounts for dentures have not increased in line with the increase in the suggested BCDA fees together with the increased cost of the required denture customization in this case, has resulted in a situation where the Appellant was covered for \$1,756.69 of the cost of her specialized dentures and left with a bill for \$2,986.31 which she can't afford. The Advocate also said that wheelchairs and hearing aids were covered at much higher rates.

In response to a question from the Ministry, the Advocate said that the Appellant had not sought preauthorization for the required treatments because the medical team thought that it was necessary to begin treatment "*before there was a full answer*" due to the seriousness of the Appellant's medical

condition. The Advocate said that the Appellant had been hospitalized 6 times in a 3 month period and asked, “*why risk the Appellant’s life by delaying?*”

In response to another question from the Ministry, the Advocate said that work started on the specialized dentures on June 30, 2021 and a claim for the cost was submitted to PBC on August 19, 2021. The Ministry said that the dentist is supposed to calculate and submit an approval request to PBC in advance, and that the Ministry “*does not have control over rates*” as the BCDA does that.

In response to another question from the Ministry, the Advocate said that no estimates from other medical or dental practitioners for the specialized dentures would have been available to submit to PBC because there was only one prosthodontist in the Appellant’s community.

In response to a question from the Panel as to why the Appellant had not had her dentures replaced for 40 years, the Advocate said that for much of that time the Appellant was in a “*different living arrangement*” and didn’t have the funds to manage replacement of her existing dentures.

In response to another question from the Panel about whether there was any written evidence available from anyone on the medical team to confirm that the Appellant’s life was at risk without the specialized dentures, the Advocate said that there were documents in the Appellant’s file that suggested that the Appellant’s condition without treatment might be life threatening but that she was unable to release any other documents without the approval of the medical practitioners who had written them.

At the hearing, the Ministry relied on its RD, and stressed that PBC has a list of what dental services are covered and what services are not covered, and that “*there is a different pot for ears, eyes, etc.*” The Ministry explained that the dentures would not have qualified as an emergency dental service because there was not an imminent life threatening need.

In response to a question from the Advocate, the Ministry said that “*replacement dentures*” were dentures that replace previous dentures, not dentures that replace missing teeth.

In response to a question for the Panel, the Ministry said it did not know whether PBC would have realized that it was reviewing something other than a normal denture if a claim came in at \$4,600.

### **Admissibility of New Evidence**

Section 22(4) of the *Employment and Assistance Act* (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 the requirements set out in the legislation and on all admissible evidence.

The Panel considered most of the information submitted by the Appellant in the NOA to be part of the record when the RD was made. The Panel finds the new evidence contained in the documents submitted by the Appellant in the NOA, which comprised the 2014 Fee Guide and the 2021 Fee Guide, to be admissible as the Panel considers this new information to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

As the Appellant Submission comprises better quality copies of photographs of the Appellant's mouth than were included in the RFR, the Panel finds that there was no new evidence included in the Appellant Submission.

Regarding the 2014 Fee Guide and the 2021 Fee Guide, the Panel assigns moderate weight to the new evidence. The two fee guides demonstrate that the fees suggested by the BCDA for upper and lower dentures have increased by 12.5% and 12% respectively between 2014 and 2021, which the Panel finds is a matter related to the decision under appeal as it supports the Appellant's argument that Fee Schedule rates for dentures have not kept up with inflation. However, the fact remains that the maximum amount that the Ministry can provide under the Fee Schedule for an eligible adult for these services is \$757.50 and \$780.75 respectively.

New evidence presented at the hearing comprised the dates on which work commenced and was completed on the specialized dentures and the fact that the Appellant did not seek pre-approval for the specialized dentures before a claim was initiated. The Panel admits this new evidence as it is potentially reasonably required for a full and fair disclosure of all matters related to decision under appeal. However, the Panel assigns no weight to any of the new evidence presented at the hearing as the only dental or medical services that require the prior authorization or approval from the Ministry are anticipated claims for orthodontics and crown and bridgework, which aren't at issue in this appeal. In any event, the Ministry did not deny coverage because preauthorization was not obtained.

Neither party objected to the admittance of any of the new evidence in the 2014 Fee Guide and the 2021 Fee Guide or at the hearing.

**Part F – Reasons for Panel Decision**

The issue under appeal is whether the Ministry's RD dated October 27, 2021, which denied the Appellant's request for the full cost of the fees related to her complete upper and lower dentures was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

Was it reasonable for the Ministry to deny the additional coverage because the additional cost exceeded the maximum amounts set out in the appropriate Fee Schedule? Was it reasonable for the Ministry to deny the additional coverage because the Appellant is not eligible for coverage of complete upper and lower dentures as an emergency dental service, an orthodontic treatment, or a crisis supplement? Was it reasonable for the Ministry to deny the additional coverage because the dentures were not required to meet a life-threatening need?

***Position of the Parties***

The Appellant's position is that the dentures provided to the Appellant have been specialized to address the Appellant's congenital deficits and therefore should be more accurately considered to be "*medical devices*", and that if they are considered to be dentures the Ministry's rates in the Fee Schedule for dentures are significantly below the rates currently charged by dentists and certified specialists for both upper and lower dentures.

The Ministry's position is that it can only provide assistance up to the maximum amounts provided for dentures as set out in the Fee Schedule, which are set by PBC, unless the applicant qualifies for additional assistance when applicable medical or dental services are for the immediate relief of pain or due to a life threatening need, neither of which apply in this case.

***Panel Decision***

The Panel notes that EAPWDR Schedule C, Section 1 defines "*denture services*" as services and items that, if provided by a dentist, are set out under fee numbers 51101 to 51302 in the Fee Schedule, which accordingly is determined by the Ministry and published on the Ministry's website. The Panel also notes that EAPWDA Section 25(1) permits the Ministry to "*delegate to any person or category of persons any or all of the minister's powers, duties or functions under this Act*", and that the review of insurance claims on behalf of Ministry to determine the amount of coverage for dental services has been delegated to PBC by the Ministry. Therefore, while PBC manages the review of claims for payment, it is the Ministry, not PBC, that sets the limits to the rates of reimbursement for dental services that appear in the Fee Schedule.

In the Prosthodontist's Letter, the Prosthodontist writes:

*"(The Appellant) has an oroantral fistula in the premaxillary region. Surgical correction of this was attempted multiple times to correct her cleft palate. ... (She) is in need of new dentures to achieve a proper fit, proper support of her jaw and to help obturate the oroantral fistula and to allow her to chew properly.*

*Due to the complexity of her anatomy a referral was made to (me), for optimal treatment. Obturation of the oroantral fistula can be completed using a specialized denture which would significantly reduce the risk of future aspiration pneumonia. A specialized lower denture is needed to make sure that the temporal mandibular joint functions at proper angulations as she has significant bone loss on the*

*mandibular ridge. Without all the specialized attention a loss in jaw function could create other medical and health concerns such as the wearing down of the mandibular condyles and debilitating headaches.*

*This request is sent with the hope that the full treatment cost can be considered for coverage as these needs are due to medical and health needs.”*

The Panel finds that this information, which is provided by a certified dental specialist, clearly confirms that the Appellant’s “*specialized dentures*” provide functionality beyond what a conventional denture is designed to do. The Panel notes that there is no definition in the EAPWDR to distinguish conventional dentures from any other types of dentures that might have been modified or customized to meet the needs of an individual with congenital deficits, or for dentures that have been customized for any other reason.

#### Eligibility for Coverage of Services in Excess of the \$1,000 Limit for Basic Dental Services

In its original decision, the Ministry determined that the Appellant’s coverage for the lower denture was limited to \$102.14. In the RD, the Ministry increased the maximum amount by \$756.69 to equal the maximum amount available for a lower denture with the 10% premium (\$858.33) as the lower denture was provided by a certified specialist, and because the Appellant is entitled to an additional amount under EAPWDR Schedule C Section 4(3)(c).

“*Basic dental services*” are defined in EAPWDR Schedule C, Section 1 as any dental service appearing in the Fee Schedule. The Panel notes that both upper and lower dentures are listed in the Fees Schedule and are covered to a maximum amount of \$757.50 and \$780.75 respectively for an eligible adult. The Panel also notes that the Fee Schedule says that a 10% premium can be applied if the amount of coverage for both upper and lower dentures if the services are provided by a certified specialist. The services in this case were provided by a Prosthodontist and the Ministry acknowledges that a prosthodontist is a certified specialist. When the 10% premium is applied, the maximum amounts for an upper denture and a lower denture are \$833.25 and \$858.83 respectively.

EAPWDR subsections 4(1) and 4(1.1) set the limits for basic dental services at \$1,000 every 2 years for an eligible adult. Subsections 4(3) and 4(6) say that regardless of whether an eligible adult has received any other basic dental services toward the basic dental services biannual \$1,000 limit, additional coverage up to “*an amount necessary to provide any dentures*” can be provided if an eligible adult has been receiving disability assistance for at least 2 years, up to the additional limit for dentures as set out in the Fee Schedule.

The Panel finds that the Ministry reasonably determined that the Appellant was entitled to dental coverage of \$833.25 for upper dentures and \$858.33 for lower dentures based on the eligibility criteria set out in the Fee Schedule and EAPWDR Schedule C Section 4.

#### Eligibility for Coverage of Dental Fees in Excess of Ministry Rates for a Complete Set of Replacement Dentures

Subsection 4(2) says that a full set of replacement dentures can be covered every 5 years. The Panel notes that, as explained by the Ministry at the hearing, replacement dentures are dentures that replace a previous set of dentures, not initial complete or partial dentures that are provided to replace all or some of a person’s missing teeth. While the term “*replacement dentures*” is not defined in the EAPWDR, the Panel finds that the Ministry’s interpretation of the meaning of the term is reasonable. The Panel also notes that the Appellant has not had replacement dentures for 40 years.

While not at issue in this appeal, the Panel finds that the Ministry reasonably determined that the Appellant is entitled to both upper and lower replacement dentures.

#### Eligibility for Coverage of Dentures as an Emergency Dental Service

EAPWDR Schedule C Section 1 defines "*emergency dental service*" as a dental service necessary for the immediate relief of pain. The Panel notes that no evidence has been presented to indicate that the Appellant requires the dentures to immediately relieve pain.

The Panel finds that the Ministry reasonably determined that the Appellant was not eligible for coverage of dentures as an emergency dental service.

#### Eligibility for Coverage of Dentures as Orthodontic Treatment

EAPWDR Section 65 says that the Ministry can provide orthodontic supplements to a disability assistance recipient who is a person with disabilities who does not have the resources available to cover the cost of the orthodontic supplements if they have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations, and if they have obtained the prior authorization of the Ministry.

"*Orthodontic*" is not defined in the legislation, but the Cambridge Dictionary defines it as "*relating to the job or activity of correcting the position of teeth and dealing with and preventing problems of the teeth*".

In the RD, the Ministry determined that the Appellant was not eligible for coverage of dentures as an orthodontic supplement under EAPWDR Section 65 because dentures are considered a basic dental service. The Panel notes that dentures are not teeth, and because orthodontics deals with correcting the position of teeth and dealing with or preventing problems with teeth, it would not be reasonable to consider that dentures could be covered under the legislative provisions for an orthodontic supplement.

#### Eligibility for Coverage of Dentures as a Life-Threatening Health Need

EAPWDR Section 69 says that the Ministry may provide a prescribed health supplement or prescribed medical device or piece of medical equipment if it is provided to a person receiving disability assistance who is otherwise not eligible for that supplement and if the Ministry is satisfied that, provided other specified conditions are met, the person faces "*a direct and imminent life threatening need*".

Before addressing the requirement that a person is facing a direct and imminent life threatening need, the Ministry must determine if the medical device in question is an eligible device. A medical device must be one of those that are listed in EAPWDR Schedule C Sections 2(1)(a) and (f) and Section 3. Those devices are medical or surgical supplies, transportation to or from a specified type of medical facility, canes, crutches, walkers, wheelchairs and wheelchair seating systems, scooters, toileting and transfer positioning aids, hospital beds, pressure relief mattresses, floor or ceiling lift devices, breathing devices and orthoses.

In the RD, the Ministry determined that it was unable to provide coverage for the Appellant as a life-threatening health need because dental treatments and dentures are not listed in EAPWDR Schedule C Sections 2(1)(a) and (f) and Section 3.

The Panel notes that most of the health supplements and medical devices or equipment identified in EAPWDR Schedule C Sections 2(1)(a) and (f) and Section 3 would clearly not include dentures that have been modified to meet the needs of an individual with congenital deficits. However, two classes of



medical equipment and devices listed there should be considered in the circumstances of the Appellant: breathing devices and orthoses.

In the November 17 Letter, the Advocate explains that the Appellant has “*congenitally missing bone structures*” which include a hole or fistula behind where her teeth would be which allows anything to flow from her mouth to her nasal cavity resulting in an increased potential for food to enter her lungs. This suggests that the Appellant’s dentures, which were modified at least in part to assist with reducing the risk of food entering her lungs, might be considered to serve as a breathing device. However, as is the case with other medical devices in Section 3, eligible breathing devices are specifically listed in Subsection 3.9, and comprise: a positive airway pressure device, an apnea monitor, a suction unit, a percussor, a nebulizer, a medical humidifier, or an inhaler accessory device (or any accessories or supplies required in conjunction with any of these devices). Because allowable devices are specifically listed, any device that doesn’t fit the description of any of the listed devices cannot be included. No evidence has been presented to suggest that the Appellant’s specialized dentures fit the description of any of the breathing devices listed in Subsection 3.9. Therefore, the Panel finds that none of the available evidence suggests that the Appellant’s specialized dentures would be reasonably considered to be a breathing device.

The Cambridge Dictionary defines an orthosis as “*a device made to support an injured or badly formed part of the body, or to help someone move it more easily*”. Regardless of whether the Ministry intended to cover all orthotic devices based on a broad and all-inclusive definition of the term, specific devices that are eligible for coverage are listed in Subsection 3, so if a medical device does not meet the description of any of the specific devices listed, the device is not eligible for coverage as a medical device, as previously mentioned.

In Subsection 3.10 of EAPWDR Schedule C, the term “orthosis” is restrictively defined to be one of 16 specific devices, 14 of which are devices designed to assist the user with walking or ambulation (e.g., custom-made footwear, an ankle brace, a knee-ankle-foot orthosis, a hip brace). The other two devices are a cranial helmet “*prescribed by a medical practitioner or nurse practitioner and recommended for daily use in cases of self abusive behaviour, seizure disorder, or to protect or facilitate healing of chronic wounds or cranial deficits*”, and a torso or spine brace. Clearly the specialized dentures cannot be considered a torso or spine brace.

However, the dentures in this case might fit the definition of a cranial helmet given that they have been prescribed by medical practitioners and recommended for daily use due to a congenital deficit. To fit within the legislation, the Appellant’s congenital deficit would need to be at least in part a cranial deficit. The term “cranial” is not defined in the legislation. The Cambridge Dictionary defines “*cranial*” to mean “*of the skull*” and “*skull*” to mean “*the bones of the head that surround the brain and give the head its shape*”. Based on all the available evidence, the Panel finds that the Appellant’s congenital deficit might reasonably be considered a cranial deficit.

But do the specialized dentures fit the description of a “*helmet*”? Again, the word “*helmet*” is not defined in the legislation. The Cambridge Dictionary defines helmet as “*a strong, hard hat that covers and protects the head*”. The Panel finds that the specialized dentures clearly do not fit the standard definition of helmet.

Because the Appellant’s specialized dentures do not qualify as any of the eligible listed medical devices, the Panel finds that the Ministry was reasonable in determining that the Appellant was not eligible for coverage of the specialized dentures as a life threatening health need.

Eligibility for Coverage of Dentures as a Crisis Supplement

EAPWDR Section 57(3) says that a crisis supplement may not be provided for the purpose of obtaining a supplement described in Schedule C. In the RD, the Ministry determined that it could not provide the appellant with a crisis supplement because dental treatments are health care services described in Schedule C. The Panel finds that the Ministry reasonably determined that the Appellant did not qualify for coverage of the specialized dentures as a crisis supplement.

\* \* \* \*

The Panel very much sympathizes with the Appellant in this case. It is clear to the Panel that the Appellant's "*dentures*" are not conventional dentures as they have been significantly modified to meet needs other than cosmetics or to assist with chewing.

The legislation allows for coverage for medical devices or equipment that are designed to address congenital deficits, but the legislation is exclusive in that, to be eligible for coverage, the devices must fit within the definition of a relatively narrow range of standard or customized medical devices or equipment. The fact that a cranial helmet is eligible for coverage would suggest that any orthotic device that is not a helmet but that is prescribed by a medical practitioner and recommended for daily use to protect cranial deficits should logically be covered under EMPWDR Subsection 3.10 (provided that the device meets the other legislated criteria, i.e., that the person faces a direct and imminent life threatening need, etc.).

The Panel also acknowledges that the cost of dentures appears to be higher than the maximum amounts available.

However, a panel must determine whether the Ministry's RD was "*a reasonable application of the applicable enactment*" and cannot rescind a decision that it considers unfair if it determines that the Ministry applied the legislation reasonably.

*Conclusion*

Having considered all the evidence, the Panel finds that the Ministry's Reconsideration Decision a reasonable application of the applicable enactment in the circumstances of the Appellant. Accordingly, the Panel confirms the Ministry's decision. Consequently, the Appellant is not successful in her appeal.

**APPENDIX - LEGISLATION**

**EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT**

**Delegation of minister's powers and duties**

**25** (1) Subject to the regulations, the minister may delegate to any person or category of persons any or all of the minister's powers, duties or functions under this Act ...

**EMPLOMMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION**

**Crisis supplement**

**57** (3) A crisis supplement may not be provided for the purpose of obtaining ...  
(a) a supplement described in Schedule C ...

**General health supplements**

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

**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 ...

**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 ...

**Orthodontic supplement**

**65** (1) Subject to subsection (2), the minister may provide orthodontic supplements to or for

(a) a family unit in receipt of disability assistance, if the orthodontic supplements are provided to or for a person in the family unit who is ...

(ii) a person with disabilities ...

(2) For a person referred to in subsection (1) to be eligible for orthodontic supplements, the person's family unit must have no resources available to cover the cost of the orthodontic supplements and the person must

(a) have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations, and

(b) obtain prior authorization from the minister for the orthodontic supplements.

### **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 ... 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).

(2) For the purposes of subsection (1)(c),

(a) "**adjusted net income**" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and

(b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit ...

## **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 ...

**"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 ...

### **Medical equipment and devices**

**3** (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if

(a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and

(b) all of the following requirements are met:

- (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
- (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
- (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device ...

#### **Medical equipment and devices — canes, crutches and walkers**

**3.1** (1) Subject to subsection (2) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

- (a) a cane;
- (b) a crutch;
- (c) a walker;
- (d) an accessory to a cane, a crutch or a walker.

(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

#### **Medical equipment and devices — wheelchairs**

**3.2** (1) In this section, "**wheelchair**" does not include a stroller.

(2) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

- (a) a wheelchair;
- (b) an upgraded component of a wheelchair;
- (c) an accessory attached to a wheelchair ...

#### **Medical equipment and devices — wheelchair seating systems**

**3.3** (1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain a person's positioning in a wheelchair:

- (a) a wheelchair seating system;

(b) an accessory to a wheelchair seating system ...

**Medical equipment and devices — scooters**

**3.4** (1) In this section, "**scooter**" does not include a scooter with 2 wheels.

(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

- (a) a scooter;
- (b) an upgraded component of a scooter;
- (c) an accessory attached to a scooter ...

**Medical equipment and devices — toileting, transfers and positioning aids**

**3.5** ... (1) The following items are health supplements for the purposes of section 3 of this Schedule ...:

- (a) a grab bar in a bathroom;
- (b) a bath or shower seat;
- (c) a bath transfer bench with hand held shower;
- (d) a tub slide;
- (e) a bath lift;
- (f) a bed pan or urinal;
- (g) a raised toilet seat;
- (h) a toilet safety frame;
- (i) a floor-to-ceiling pole in a bathroom or bedroom;
- (j) a portable commode chair;
- (k) a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
- (l) a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
- (m) a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another ...

**Medical equipment and devices — hospital bed**

**3.6** (1) Subject to subsection (3) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate transfers of a person to and from bed or to adjust or maintain a person's positioning in bed:

- (a) a hospital bed;
- (b) an upgraded component of a hospital bed;
- (c) an accessory attached to a hospital bed;

(d) a positioning item on a hospital bed ...

(3) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (a) an automatic turning bed;
- (b) a containment type bed.

**Medical equipment and devices — pressure relief mattresses**

**3.7** (1) A pressure relief mattress is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity ...

**Medical equipment and devices — floor or ceiling lift devices**

**3.8** (1) In this section, "**floor or ceiling lift device**" means a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person ...

**Medical equipment and devices — breathing devices**

**3.9** (1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule:

- (a) if all of the requirements set out in subsection (2) of this section are met,
  - (i) a positive airway pressure device,
  - (ii) an accessory that is required to operate a positive airway pressure device, or
  - (iii) a supply that is required to operate a positive airway pressure device;
- (b) if the minister is satisfied that the item is medically essential to monitor breathing,
  - (i) an apnea monitor,
  - (ii) an accessory that is required to operate an apnea monitor, or
  - (iii) a supply that is required to operate an apnea monitor;
- (c) if the minister is satisfied that the item is medically essential for clearing respiratory airways,
  - (i) a suction unit,
  - (ii) an accessory that is required to operate a suction unit, or
  - (iii) a supply that is required to operate a suction unit;
- (d) if the minister is satisfied that the item is medically essential for clearing respiratory airways,
  - (i) a percussor,
  - (ii) an accessory that is required to operate a percussor, or
  - (iii) a supply that is required to operate a percussor;
- (e) if the minister is satisfied that the item is medically essential to avoid an imminent and substantial danger to health,
  - (i) a nebulizer,



- (ii) an accessory that is required to operate a nebulizer, or
  - (iii) a supply that is required to operate a nebulizer;
- (f) if the minister is satisfied that the item is medically essential to moisturize air in order to allow a tracheostomy patient to breathe,
- (i) a medical humidifier,
  - (ii) an accessory that is required to operate a medical humidifier, or
  - (iii) a supply that is required to operate a medical humidifier;
- (g) if the minister is satisfied that the item is medically essential to deliver medication,
- (i) an inhaler accessory device,
  - (ii) an accessory that is required to operate an inhaler accessory device, or
  - (iii) a supply that is required to operate an inhaler accessory device ...

### **Medical equipment and devices — orthoses**

**3.10 (1)** In this section:

"**off-the-shelf**", in relation to an orthosis, means a prefabricated, mass-produced orthosis that is not unique to a particular person;

"**orthosis**" means

- (a) a custom-made or off-the-shelf foot orthotic;
- (b) custom-made footwear;
- (c) a permanent modification to footwear;
- (d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);
- (e) off-the-shelf orthopaedic footwear;
- (f) an ankle brace;
- (g) an ankle-foot orthosis;
- (h) a knee-ankle-foot orthosis;
- (i) a knee brace;
- (j) a hip brace;
- (k) an upper extremity brace;
- (l) a cranial helmet used for the purposes set out in subsection (7);
- (m) a torso or spine brace;
- (n) a foot abduction orthosis;
- (o) a toe orthosis;
- (p) a walking boot.

(2) Subject to subsections (3) to (11) of this section, an orthosis is a health supplement for the purposes of section 3 of this Schedule if

- (a) the orthosis is prescribed by a medical practitioner or a nurse practitioner,
- (b) the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality,
- (c) the minister is satisfied that the orthosis is required for one or more of the following purposes:
  - (i) to prevent surgery;
  - (ii) for post-surgical care;
  - (iii) to assist in physical healing from surgery, injury or disease;
  - (iv) to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and
- (d) the orthosis is off-the-shelf unless
  - (i) a medical practitioner or nurse practitioner confirms that a custom-made orthosis is medically required, and
  - (ii) the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist ...

(7) For an orthosis that is a cranial helmet, in addition to the requirements in subsection (2) of this section, the cranial helmet must be a helmet prescribed by a medical practitioner or nurse practitioner and recommended for daily use ... to protect ... cranial deficits.

**Table 1**

Item	Column 1 <b>Orthosis</b>	Column 2 <b>Limit</b>
... 10 ...	cranial helmet	1

... (11) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (a) a prosthetic and related supplies;
- (b) a plaster or fiberglass cast;
- (c) a hernia support;
- (d) an abdominal support ...

(12) An accessory or supply that is medically essential to use an orthosis that is a health supplement under subsection (2) is a health supplement for the purposes of section 3 of this Schedule.

**Medical equipment and devices — hearing instruments**

**3.11 (1)** A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if

- (a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and

(b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument ...

**Medical equipment and devices — non-conventional glucose meters**

**3.12** (1) In this section, "non-conventional glucose meter" includes

- (a) a continuous glucose monitoring meter, and
- (b) a talking glucose meter.

(2) A non-conventional glucose meter is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that

- (a) the glucose meter is medically essential to test blood glucose levels, and
- (b) the person for whom the non-conventional glucose meter has been prescribed is unable to use a conventional glucose meter ...

**General health supplements**

**2** (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation:

(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

(i) the supplies are required for one of the following purposes:

- (A) wound care;
- (B) ongoing bowel care required due to loss of muscle function;
- (C) catheterization;
- (D) incontinence;
- (E) skin parasite care;
- (F) limb circulation care;

(ii) the supplies are

- (A) prescribed by a medical practitioner or nurse practitioner,
- (B) the least expensive supplies appropriate for the purpose, and
- (C) necessary to avoid an imminent and substantial danger to health;

(iii) there are no resources available to the family unit to pay the cost of or obtain the supplies ...

(f) the least expensive appropriate mode of transportation to or from

- (i) an office, in the local area, of a medical practitioner or nurse practitioner,
- (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,

(iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or

(iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,

provided that

(v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and

(vi) there are no resources available to the person's family unit to cover the cost.

#### **Dental supplements**

4 (1) In this section, "**period**" means ...

(b) ... 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 ...

(b) \$1 000 each period ...

(2) Dentures may be provided as a basic dental service only to a person ...

(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 ...

(c) a person who has been a recipient of disability assistance ... for at least 2 years ...

(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 ...

#### **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.

APPEAL NUMBER 2021-0221

**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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2021/12/06

Print Name

Kim Read

Signature of Member

Date (Year/Month/Day)

2021/12/06

Print Name

Effie Simpson

Signature of Member

Date (Year/Month/Day)

2021/12/06