

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated December 8, 2021, in which the ministry denied the appellant’s request for coverage for a crown and restoration on a tooth because:

- the request was for dental services that were not listed in the Schedule of Fee Allowances – Dental (“Dental Schedule”) and therefore were not covered as basic dental services or emergency dental services under Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”);
- the request did not meet the criteria for coverage as a crown and bridgework supplement under Schedule C of the EAPWDR;
- the request did not meet the criteria for coverage as a life-threatening health need under the EAPWDR; and
- the ministry cannot provide a crisis supplement for health care services, which includes dental services.

Part D – Relevant Legislation

Sections 25, 57(3), 63, 63.1, 64 and 69 of the EAPWDR
Sections 1, 4, 4.1 and 5 of Schedule C of the EAPWDR

Part E – Summary of Facts

The appellant is in receipt of benefits under the Employment and Assistance for Persons with Disabilities Act (“EAPWDA”).

Evidence Before the Ministry at the Reconsideration:

On August 21, 2021, the appellant went to her dentist’s office for an emergency visit because a large filling in one of her teeth had fallen out. The dentist told her that she needed a crown, and the appellant and the dentist’s office began the process of getting approval for the dental treatment through Pacific Blue Cross (“PBC”). The ministry has authorized PBC under section 25 of the EAPWDA to assess and approve or reject requests for coverage for dental services on behalf of the ministry.

The dentist sent a request for coverage for “Crown, Porcelain/Ceramic/Polymer Glass, Fused to Metal Base” (Fee Code 27211) and “Restoration, Tooth Coloured in conjunction with a crown: (Fee Code 23602). On November 21, 2021, the appellant was advised that PBC rejected the appellant’s request for coverage for the crown and restoration.

The appellant provided the ministry with a letter from the dentist “to whom it may concern” dated November 22, 2021, stating that the appellant “requires to have a crown on tooth 15 as the previous large amalgam has been fractured off and lost; because of the size of the restoration if another large direct filling is done it will not have the longevity to which a full cuspal crown would have. Please approve the treatment plan for a full cuspal coverage crown. If you have any questions please feel free to contact our office.”

The computer printout titled Authorized Products and Services for the appellant dated November 20, 2021, lists the requested dental services, Crown (fee code 27211) and restoration (fee code 23602), and shows status as “rejected” on November 18, 2021. Explanatory notes for each requested service state:

- “The documentation provided does not indicate that the dental condition precludes the provision of restorative services set out under the restorative services section the ministry of social development and poverty reduction schedule of fee allowances – dentist” (sic)
- “the clinical explanation submitted does not confirm that this patient’s needs cannot be met through the ministry basic dental program.”
- “the information provided does not confirm that one of the circumstances listed: (a) the dental condition precludes the use of a removable prosthetic; (b) the person has a physical impairment that makes it impossible for him or her to place a removable prosthetic (c) the person has a mental condition that makes it impossible for him or her to assume responsibility for a removable prosthetic.” (sic)

Additional Evidence:

The appellant provided a further written submission on December 21, 2021.

In an email dated December 21, 2021, the appellant stated:

- She went to the dentist on August 21, 2021, on an emergency basis because half of her tooth fell out although some of the filling in that tooth remained in place.
- Between August 21 and November 2021, as she was waiting for PBC to approve her request for dental services, “having to wait over three months caused all of my fillings to fall out.”
- On November 27, 2021, the appellant saw her dentist again and was told that she now may have irreversible nerve damage in the tooth. The tooth has been chipped away and there is only a thin layer of tooth left. The dentist told her that the tooth is in much worse condition than it was in August, it has been “severely traumatized”.
- If the appellant had received the recommended crown and restoration when she first saw the dentist about the problem in August 2021, the tooth would have been fully protected and would not have suffered the further damage that has resulted from the delay in approving the request. The tooth may continue to suffer more damage in future until the appellant receives the recommended treatment.
- The appellant reproduces an undated email from one of the dentist’s staff that states:

“I discussed the matter of your concerns regarding your tooth with [the dentist] and he has made the following recommendations and comments:

A tooth, such as yours that has been severely traumatized, may demonstrate irreversible nerve damage in time. The initial nerve testing of this tooth showed hypersensitivity to cold. A normal response to stimuli needs to be verified in a reasonable span of time after any traumatic tooth injuries.

The second matter is the weakness of the remaining structure of your tooth, because of the trauma endured. This makes the prognosis of a crown as guarded at best. That means, the remaining structure may fail to support the forces of mastication (chewing) even with a crown and result in further fracture.

A prophylactic root canal therapy and a post could add additional support; nevertheless, it requires additional treatment and exposure to more radiograms and there is never a guarantee that this treatment would be successful long term.

You should refrain from applying too much pressure at this site until we can verify the health and normal responses to vitality tests prior to the crown preparation.”

The appellant also provided copies of dental x-rays, one undated which she advised was from August 21, 2021, and one dated November 27, 2021.

Appellant's Evidence at the Hearing:

The appellant stated that, after PBC rejected the request for coverage, she decided to try to borrow the money for the treatment because more of the tooth had fallen out in the 3rd week of November. However, when she saw the dentist on November 27, 2021, the dentist was not able to begin the recommended treatment because of the nerve damage that had occurred since August. In response to a question from the ministry, the appellant said that the dentist had told her that a filling alone would not be enough to protect the root or the tooth. The appellant is sure that if a filling had been an option the dentist would have told her or would have written that in the November 21 letter. While the condition of the appellant's tooth was worse in November than in August, the dentist did not give the appellant the option of a filling in August either. The dentist told the appellant that a filling would only be a temporary repair.

In response to questions from the ministry about whether the dentist had discussed dentures as a possible treatment, the appellant stated that she cannot use a prosthetic device because she cannot tolerate any objects in her mouth because she gags, even when she is having her teeth cleaned.

In response to questions from the panel, the appellant described the process of trying to get a response from PBC between August 21 and November 18, 2021, when PBC rejected the request. The appellant contacted the ministry repeatedly about the request for dental services, as did the dentist's staff. PBC would not talk to the appellant about the request for coverage. The dentist's staff also called PBC about the request repeatedly but were frustrated in their efforts to get clarification about what information was needed and to get a decision about the request. PBC would not accept phone or email communications but required all documents to be sent by regular mail. It took weeks for PBC to respond to mail communications. In the 3 months it took to get a decision from PBC, the appellant's tooth was irreversibly damaged and eventual treatment is likely to be more expensive and unaffordable for the appellant.

The ministry did not object to any of the additional evidence submitted by the appellant.

The panel considers part of the written submission to be argument but finds the additional evidence about the appellant's dental condition, the communications from the dentist and the process with PBC to be admissible under s.22(4) of the Employment and Assistance Act ("EAA") because it provides further details about the need for the dental services requested and the ministry process for considering the request for coverage, and is therefore reasonably required for the full and fair disclosure of all matters relating to the decision under appeal.

Part F – Reasons for Panel Decision

Majority Reasons:

The issue to be decided is whether the ministry was reasonable in its decision to deny the appellant coverage for a crown and restoration.

Legislation:

Under EAPWDR section 63 and Schedule C sections 1 and 4(5) the ministry may provide a health supplement for the “basic dental services” listed in the Schedule of Fee Allowances – Dentist.

Under EAPWDR section 63.1 and Schedule C sections 1 and 4.1 the ministry may provide a health supplement for crown and bridgework if:

1. the dental condition cannot be corrected with basic restorative services listed in the Schedule of Fee Allowances - Dentist (for example, a filling) and;
2. a “removable prosthetic”, such as dentures, is not an option because of the nature of the dental condition, or because the person has a physical impairment, allergic reaction or mental condition that makes it impossible for them to use a “removable prosthetic.”

Under EAPWDR section 64 and Schedule C sections 1 and 5 the ministry may provide a health supplement for “emergency dental services” for immediate relief of pain. Emergency dental services provided by a dentist are limited to those services set out in the Schedule of Fee Allowances – Emergency Dental – Dentist.

At the reconsideration, the ministry decided that:

1. the dental services requested, Crown, Porcelain/Ceramic/Polymer Glass, Fused to Metal Base (fee code 27211) and Restoration, Tooth Coloured in conjunction with a crown (fee code 23602), were not covered as basic dental services because they were not listed in the Schedule of Fee Allowances – Dentist;
2. the dental services requested were not covered as a crown and bridgework supplement because:
 - a. the ministry was not satisfied that the dental condition could not be corrected by restorative services listed in the Schedule of Fee Allowances – Dentist, and
 - b. the ministry was not satisfied that the appellant was unable to use a removable prosthetic for one of the reasons listed in Schedule C section 4.1(2)(b);
3. the dental services requested were not covered as a life-threatening health need under EAPWDR section 69 because that section does not apply to dental services;
4. the dental services requested were not covered as a crisis supplement because the ministry is not authorized to provide a crisis supplement for dental services.

Appellant's Position:

The appellant maintains that the delay of 3 months in waiting for PBC to approve the request for coverage has resulted in further damage to her tooth. She points to the 2 x-rays from August and November 2021, and the statements by the dentist, to demonstrate that she needed the crown in August, and has lost more of the tooth and suffered nerve root damage in the intervening months without treatment.

She expressed extreme frustration and distress at the process of seeking approval from PBC, which meant that a request for coverage that began in August did not get a decision until November. She described repeated efforts on her part, and by the dentist and their staff, to get clarity and a response from PBC or the ministry. She did not understand why, from her perspective, the ministry and PBC delayed her treatment and then denied the procedure, when the result was more damage to her tooth and increased costs for treatment. She maintained that the ministry and PBC did not respond appropriately to a medical emergency. She also insisted that she and the dentist's office have provided all the information requested, and followed all the instructions given by PBC, only to have the request refused for not providing certain information.

The appellant says that, if a filling had been a treatment option in August, the dentist would have told her that, and would have included that information in his email. The fact that a filling is not mentioned should be an indication that a filling was not appropriate treatment. It should not be necessary for the dentist to state explicitly that he had ruled out doing a filling; either that, or PBC or the ministry should have told the appellant and the dentist specifically that this statement was necessary.

Ministry's Position:

In the reconsideration decision, the ministry considered the request for coverage under 5 possible categories: basic dental services, emergency dental services, crown and bridgework, life-threatening health need and crisis supplement.

Basic dental services:

The ministry stated that the dental services requested were not eligible for coverage as basic dental services because the ministry is only authorized to provide coverage for dental services set out in the Schedule of Fee Allowances – Dentist. The dental services requested (fee codes 27211 and 23602) are not listed in that Schedule. The ministry says that it does not have any discretion to provide basic dental services coverage for dental services that are not listed in that Schedule.

Emergency dental services:

Similarly, the services requested were not eligible for coverage as emergency dental services for immediate relief of pain because the dental services requested (fee codes 27211 and 23692) are not listed in the Schedule of Fee Allowances – Dentist.

Crown and bridgework:

The ministry maintains that the appellant is not eligible for coverage for a crown and bridgework because she has not shown that she met the conditions for coverage in EAPWDR Schedule C section 4.1(2).

Specifically, the ministry was not satisfied:

1. that the dental condition could not be corrected by a filling;
2. that the dental condition precluded the use of a removable prosthetic;
3. that the appellant had a physical impairment that made it impossible for her to place a removable prosthetic;
4. that the appellant had an allergic reaction or other intolerance to the composition or materials used in a removable prosthetic;
5. that the appellant had a mental condition that made it impossible for her to assume responsibility for a removable prosthetic.

At the hearing the ministry stated that the main reason for denying coverage for the dental services was that the email from the dentist did not rule out a filling as a possible treatment. The ministry also pointed out that the dentist did not indicate that he had considered dentures.

The ministry did not provide an explanation for the length of time it took for PBC to process the request for coverage.

Majority Decision:

The ministry is only authorized to provide coverage for dental supplements if the service requested meets the criteria in the EAPWDR. The ministry does not have discretion to provide coverage for other dental services, even if the dentist recommends the treatment.

The dental services requested, (fee codes 27211 and 23692), are not listed in the Schedule of Fee Allowances – Dentist, and therefore the ministry is not permitted to provide a dental supplement for those services, either as basic dental services under EAPWDR Schedule C section 4, or emergency dental services under Schedule C section 5. Therefore, the majority panel finds that the ministry was reasonable in its decision that the dental services requested were not covered as basic dental services or as emergency dental services.

While the panel has admitted the additional evidence of the appellant, that the dental condition could not be corrected with a filling, and that she could not tolerate a denture in her mouth, the majority panel gives that evidence little weight, because this evidence amounts to medical opinion that needs to come from the dentist rather than the patient. It is unfortunate that the dentist did not address these necessary points in his correspondence to PBC and the ministry. The majority panel cannot speculate on the reason for this omission. However, in the absence of a clear statement from the dentist confirming that the appellant's situation met the conditions for a crown and bridgework supplement set out in EAPWDR Schedule C, section 4.1(2), the majority panel finds that the ministry was reasonable in its decision that the request for dental services did not meet those conditions.

The majority panel also finds that the ministry was reasonable in its decision that the dental services requested were not eligible for coverage as a life-threatening health need or as a crisis supplement. EAPWDR section 69 authorizes the ministry to provide general health supplements and certain specified medical equipment, devices and supplies if an eligible person faces “a direct and imminent life-threatening need,” but dental services are not included as eligible benefits under that section. EAPWDR section 59(3) of the EAPWDR specifically states that the ministry cannot provide a crisis supplement “for the purpose of obtaining a supplement described in Schedule C” or “for any other health care goods or services.” Dental services are a supplement described in Schedule C and therefore cannot be provided as a crisis supplement.

Conclusion of the Majority Panel:

The majority panel finds that the ministry’s decision to deny coverage of the dental services requested is a reasonable application of the legislation in the appellant’s circumstances.

The majority panel confirms the ministry’s decision. The appellant is not successful in the appeal.

Dissenting Reasons:

The Ministry of Social Development and Poverty Reductions (Ministry) is the policy holder with Pacific Blue Cross (PBC) for all Persons with Disabilities, as designated by the Ministry. The benefits of the Basic Dental Plan are determined by the Ministry and form part of Schedule C of the applicable regulations. These facts were confirmed by the Ministry Representative (MR) during the appeal hearing.

Further, as stated in the reconsideration decision of December 8th, 2021 the Ministry provided a note referring to the Employment and Assistance for Persons with Disabilities Act, Section 25 for information regarding the delegation of minister’s powers, duties or functions:

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 except

- (a) the power to prescribe forms, and
- (b) the power to enter into an agreement under section 21(2) or (2.1), unless section 21 (2.2) applies in relation to the agreement.

(2) a delegation of the powers, duties or functions of the minister must be in writing and may include any limits or conditions the minister considers advisable.

This notation referring to the above legislation has little meaning without an understanding of the contract between the Ministry and PBC.

What is known and factual is that the appellant is a current client of the Ministry and designated a Person with Disabilities (PWD). The Ministry pays the appellant a living expense and provides

a variety of supplements, based on eligibility as outlined in legislation. What is also known is that the Ministry is a client of PBC and has delegated the administration of the Basic Dental Plan to PBC, but it is the Minister that has the power to decide whether or not a PWD can have a crown or bridgework as per the Employment and Assistance Persons with Disabilities Regulation (EAPDR) Section 4.1(2) and (3) under Crown and bridgework supplement, it states:

- (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 him or her 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 him or her 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.

During the hearing the Ministry Representative read out section 4(2) (b) and asked the appellant if any of these circumstances applied to her. The appellant was unsure of the question and replied no, but went on to explain that due to her 'gag reflex' she could not have a prosthetic and that her dentist was aware of her gag reflex and thus did not consider a prosthetic. Therefore, in the Dissenting Member's view section 4(2)(b)(ii) would apply in this case and thus the appellant meets this criterion.

With respect to section 4(2)(a) the letters from the dentist clearly stated that a crown was the appropriate solution. The opinion of the PBC did not agree. The Ministry upheld the opinion of PBC. The Ministry Representative repeatedly stated the letter from the dentist did not rule out an alternative to a crown, ie: a filling.

The letter by the dentist, dated November 22, 2021 states:

To whom it may concern

(the appellant) requires to have a crown on tooth 15 as the previous large amalgam has been fractured off and lost; because of the size of the restoration if another large direct filling is done it will not have the longevity to which a full cuspal crown would have. Please approve the treatment plan for a full cuspal coverage crown.

If you have any questions, please feel free to contact our office.

It is the opinion of the Dissenting Member that the dentist was clear in stating the appellant needed a crown and went on to explain why a filling was not a viable solution because it would have no lasting effect.

With respect to the codes referred to in the pre-authorization by the dentist to PBC, which is the usual and expected procedure as per the terms and conditions of PBC, the rejection by the Ministry was that the codes 27211 and 23602 are not included in the Schedule of Fees. However, the Ministry provided the Schedule of Fee Allowances - Crown and Bridgework, and these fee codes are included. (Page 38 of the Appeal Record). The insured amount of the fee however differs from the fee the dentist would charge. The fee code 27211 is included at an insured amount of \$624.20. The dentist would charge \$1,555.75. The insured amount for code 23602 is \$90.56 whereas the dentist would charge \$187.00. The decision to pay the difference is up to the appellant but the appellant was never given this option because PBC rejected the need for a crown which was upheld by the Ministry.

The appellant explained that during the time when she first learned of the rejection by PBC for a crown, which was a few weeks following the initial dentist visit on or about August 21, 2021 she contacted PBC and the Ministry's office several times in attempts to resolve what she considered was a misunderstanding. On one visit to the Ministry's office, she was given a form to give to her dentist. The appellant stated that after a while PBC refused to take her calls. The Ministry did not contact the dentist directly. The investigation was solely based on documents submitted by PBC, the appellant and legislation.

On November 23, 2021 the appellant formally requested reconsideration by the Ministry and presented the printout by PBC and the letter dated November 22, 2021 by her dentist. The appellant had a second visit to the same dentist on November 27th, 2021 because the remaining filling on tooth 15 fell out which was supported in her submission of x-rays taken August 21st and November 27th. In addition the appellant stated that the dentist wrote a second email dated November 27th, 2021 explaining that the tooth has been severely traumatized since August and the dentist provided treatment advice until a crown could be put in place.

On December 8, 2021 the Ministry provided the reconsideration decision which upheld the initial decision of PBC and their reasons in the reconsideration decision. The appellant then applied for an appeal of this decision.

The Dissenting Member empathizes with the appellant's situation in that the appellant was expected to act as an intermediary between PBC and the dentist. It also appears that the dentist, an independent health professional, is expected to have a full understanding of the Assistance for Persons with Disabilities Regulation (EAPWDR) and thus to write letters addressing specific criteria in the regulation that would satisfy PBC. For PWD clients, more assistance in navigating the complexity of the dental provisions would likely be helpful.

In summary, in the opinion of the Dissenting Member, the appellant met the criteria of section 4(2)(b)(ii) which precludes prosthetics as an alternative, and the letter from the dentist clearly stated a crown was needed and that a filling was not a viable solution.

APPEAL NUMBER 2021-0242

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
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2022/01/08

Print Name
Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)
2022/01/08

Print Name
Diane O'Connor – Dissenting

Signature of Member

Date (Year/Month/Day)
2022/01/10