

APPEAL NUMBER
2021-0256

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (Ministry) reconsideration decision dated December 7, 2021 in which the Ministry determined that the appellant was not eligible for coverage of certain dental services.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 57(3) 63, 63.1, 64 and 69.

Employment and Assistance for Persons with Disabilities Regulation, Schedule C
Schedule of Fee Allowances – Dentist, Schedule of Fee Allowances – Emergency Dental Services

Employment and Assistance Act (EAA) – Section 22

PART E – SUMMARY OF FACTS

The appellant is an adult recipient of disability assistance.

In October 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 dental services provided by their dentist in relation to a dental infection associated with a root canal. Portions of the treatment were refused by PBC because the services were not covered benefits.

On November 25, 2021 the appellant's sought reconsideration of the PBC decision denying coverage for their dental treatment. With the Request for Reconsideration the appellant provided records from the dentist listing the dental services they had received. These documents indicated that the dental services provided were emergency services for immediate relief of pain.

On December 7, 2021 the Ministry issued its reconsideration decision. At reconsideration, the Ministry noted that while there were 2 dental services fee codes for which the appellant had requested reconsideration, one had been paid by PBC. As such, the Ministry found that it could not complete a reconsideration decision in relation to that fee code. In relation to the other fee code, the Ministry found it was not set out in the Schedule of Fees and denied the appellant's request for a coverage. This is the decision being appealed.

Notice of Appeal

In the Notice of Appeal dated December 20, 2021, the appellant indicated that they had been unable to eat or sleep because of a dental infection and argued that the associated dental costs should be covered because it was an emergency.

Appeal Submissions

At the hearing, the appellant explained that their understanding was that the dental services had not been covered because the Ministry or PBC had determined that they were not provided as a result of an emergency. The appellant reiterated that they had been in significant pain, unable to eat or sleep, and this was a dental emergency. The appellant also argued that additional dental services provided in November 2021 were a part of the dental services needed to address this dental emergency. The appellant expressed their opinion that all of these dental services should be covered by PBC because of the emergency situation.

The Ministry relied on the reconsideration decision at the hearing.

Admissibility

The panel finds that the only new information that was not in evidence at reconsideration is the appellant's evidence relating to additional costs associated with a November 2021 dental bill. While this additional bill is not addressed in the reconsideration, the panel finds it is information relating to the dental emergency the appellant experienced and is admissible under section 22(4) of the *Employment and Assistance Act*. However, despite finding this new information admissible, the panel notes here that coverage for this additional dental cost is not at issue in this appeal. This was explained by the panel at the hearing.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's determination, that the appellant was not eligible for coverage of the dental services 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, as a recipient of disability benefits, is eligible for basic and emergency dental services and crown/bridge work as described in the legislation. 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.

In the reconsideration decision two specific dental services, with distinct fee codes, were discussed. The Ministry noted that the services associated with one of these fee codes had already been covered by Pacific Blue Cross and determined that it could not complete a reconsideration for benefits that had already been paid. At the appeal hearing, the appellant agreed that service for one of the two fee codes listed had been paid, and that coverage for that service was no longer at issue. As such, the only issue before the appeal panel is the Ministry's conclusions at reconsideration in relation to the second fee code.

Basic and Emergency Dental Services

The Ministry first considered the appellant's eligibility for funding of treatment under dental fee codes associated with basic and emergency dental services, as set out in EAPWDR sections 63 and 64 and Schedule C sections 1, 4 and 5. The Ministry noted that it may only provide funding for dental services that are included in the *Schedule of Fee Allowances – Dentist or Schedule of Fee Allowances – Dental Emergency* ("Schedules of Fee Allowances") and that the treatment requested under the specific fee code is not included. The Ministry, therefore, concluded that the appellant was not eligible for coverage for that service as either a basic or emergency dental service. The Ministry explained that it may only 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 noted that the fee code submitted was for a dental exam, and while dental exams are covered, the specific fee code for the service provided is not listed in the Schedules of Fee Allowances. The Ministry concluded that, because the specific service requested by the appellant is not set out in the Schedules of Fee Allowances, the Ministry cannot cover that service. 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.

Life-Threatening Health Need

The Ministry next found that the appellant is not eligible for dental fees as a life-threatening health need under section 69 of the EAPWDR. The Ministry noted section 69 contemplates coverage for medical transportation, equipment/devices and some medical supplies as described in EAPWDR Schedule C. The Ministry concluded that it is not authorized to cover dental services as a life-threatening health

need because dental and denture supplements are not set out in the sections of Schedule C that apply to section 69.

Crisis supplement

The Ministry went on to consider whether the appellant was eligible for coverage of the dental services as a crisis supplement under section 57(3) of the EAPWR and found that they were not. The Ministry explained that it may not provide a crisis supplement for items described in EAPWDR Schedule C or for any health-care good or services. The Ministry found that a dental exam is both a health-care service and described in Schedule C and concluded that the appellant was not eligible to receive a crisis supplement for the cost of the dental service.

The appellant's arguments and submissions do not specifically address the legislative requirements for the benefit discussed in the reconsideration decision. Rather the appellant argued that because the dental service provided was emergency in nature, due to pain and infection, it should be covered by PBC.

The panel notes that the legislated benefits scheme allows funding for basic and emergency dental treatment only in certain circumstances and for certain services. The Ministry is only permitted to approve funding for the services specifically listed in the Schedules 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 Schedules of Fee Allowances.

Panel findings

The panel finds, according to the evidence presented, the appellant required dental treatment relating to a root canal and associated dental infection. The panel finds that Ministry is permitted to fund the provision of basic and emergency dental services only for 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 has requested coverage for a dental service that is not included in the dental care scheme that the Ministry is permitted to approve.

In summary, the panel finds that appellant has requested funding a dental service that the Ministry has no legal authority to approve as either basic or emergency dental services, a life-threatening health need, or a crisis supplement. The panel finds the Ministry's conclusions in relation to the outstanding funding request discussed in the reconsideration decision to be reasonable, taking into account the legislative context in which the reconsideration decision was made. As such, the panel finds the Ministry's conclusions in relation to this benefit are 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

- 57** (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if
- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
 - (b) the minister considers that failure to meet the expense or obtain the item will result in
 - (i) imminent danger to the physical health of any person in the family unit, or
 - (ii) removal of a child under the *Child, Family and Community Service Act*.
- (2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.
- (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or
 - (b) any other health-care goods or services.
- (4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:
- (a) if for food, the maximum amount that may be provided in a calendar month is \$40 for each person in the family unit;
 - (b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of
 - (i) the family unit's actual shelter cost, and
 - (ii) the sum of
 - (A) the maximum set out in section 2 of Schedule A and the maximum set out in section 4 of Schedule A, or
 - (B) the maximum set out in Table 1 of Schedule D and the maximum set out in Table 2 of Schedule D,as applicable, for a family unit that matches the family unit;
 - (c) if for clothing, the amount that may be provided must not exceed the smaller of
 - (i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and
 - (ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.
- (5) Repealed. [B.C. Reg. 248/2018]
- (6) Repealed. [B.C. Reg. 248/2018]
- (7) Despite subsection (4) (b), a crisis supplement may be provided to or for a family unit for the following:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro.

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.]

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.]

Health supplement for persons facing direct and imminent life-threatening health need

69 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) a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and (B.C. Reg. 145/2015)
- (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

Schedule C

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,

(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;

"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;

[...]

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 dependents 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)

2022/01/15

Print Name

Cherri Fitzsimmons

Signature of Member

Date (Year/Month/Day)

2022/01/16

Print Name

Wes Nelson

Signature of Member

Date (Year/Month/Day)

2022/01/16