

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated November 2, 2021, in which the ministry:

1. decided that it could not give a reconsideration decision about the appellant’s request for coverage for a partial upper replacement denture or extraction of 2 teeth because no claim for coverage for those services had been submitted to Pacific Blue Cross (“PBC”), and
2. denied the appellant’s request for coverage for a partial lower replacement denture over the \$1,000 two-year limit for basic dental services.

Part D – Relevant Legislation

Section 85(2) of the Employment and Assistance Act Regulations (“EAAR”)

Sections 16 and 25 of the Employment and Assistance for Persons with Disabilities Act (“EAPWDA”)

Sections 63, 63.2 and 64 of the Employment and Assistance for Persons with Disabilities Regulations (“EAPWDR”)

Sections 1, 4 and 5 of Schedule C of the EAPWDR

Schedule of Fee Allowances – Dentist

Part E – Summary of Facts

A teleconference hearing began on December 6, 2021, and was adjourned at the appellant's request because they had recently contacted an advocate who would appear on their behalf, but who needed additional time to review the appellant's documents and prepare for the hearing.

The rescheduled hearing took place on January 12, 2022. Neither the appellant nor the advocate attended the hearing. The panel confirmed that the appellant had been notified of the date, time and place of the hearing at least 2 business days before the hearing, as required under section 85(2) of the Employment and Assistance Act ("EAA"), and the hearing proceeded in the absence of the appellant.

Evidence Before the Ministry at the Reconsideration:

The appellant is in receipt of benefits under the EAPWDA.

The ministry has authorized Pacific Blue Cross ("PBC") under section 25 of the EAPWDA to assess and approve or reject requests for coverage on behalf of the ministry.

On September 17, 2021, the appellant's dentist sent a request for coverage to PBC for "Partial Dentures, Cast, Free End with Clasps, Mandibular" (Fee Code 53102) in the amount of \$1,747.25.

PBC approved the request in the amount of \$743.09, which was the balance of the maximum \$1,000 coverage available to the appellant for basic dental services for the current 2-year period (January 1, 2021 to December 31, 2022), as of the date of approval.

On September 29, 2021, when the appellant contacted the ministry to say that only a portion of the cost of the dentures had been approved, the ministry asked the appellant to provide a pre-determination summary.

On October 4, 2021, the appellant gave the ministry 2 dental claim forms, one for a partial upper cast denture (Fee Code 53101) and one for a partial lower cast denture (Fee Code 53102). The appellant also gave the ministry a printout of a dental x-ray and a letter from the dentist, dated September 29, 2021, which said:

[The appellant] has been a patient of ours since January of 2019. [The appellant] requires upper and lower partial dentures. [Their] current partial lower denture that was made elsewhere in 2009 has broken and is deemed unrepairable. [They are] missing all [their] lower molars and requires the remaining molars on the top (#16/#17) to be extracted as well due to deep decay.

We are asking for your reconsideration for coverage for both [their] partial upper, and partial lower dentures this year. The missing teeth without dentures are impacting [their] quality of life. [They have] stated that [they are] unable to chew [their] food properly, which has led [them] to choking on [their] food and needing the Heimlich Maneuver on multiple

occasions.

Please consider coverage for both appliances for this patient.

In a letter dated October 7, 2021, the appellant stated that they cannot chew their food properly, and they have choked on food passing through the gaps in their teeth. They have needed the Heimlich Maneuver “in December and twice in the past 3 weeks.” As a result, when they eat they need supervision, which is not always possible. They described their situation as a “medical emergency.”

The Request for Reconsideration dated October 20, 2021, included a written statement from a witness who stated that they had performed the Heimlich Maneuver on the appellant twice in the last 3 months. The witness was concerned about the appellant eating without someone else present.

By the date of the Reconciliation Decision, the balance of coverage available to the appellant for basic dental services until December 31, 2022 was \$676.58. The ministry confirmed that the appellant had not received either upper or lower dentures in the past 5 years. The ministry also confirmed that, as of November 2, 2021, the dentist had not requested coverage through PBC for partial upper dentures or tooth extractions.

Additional Evidence:

The appellant provided a further written submission. In an email dated January 4, 2022, the appellant said that they were attaching “information about the upper partial denture.” The documents attached are the September 29, 2021 letter from the dentist, the 2 dental claim forms that were given to the ministry on October 4, 2021, and a printout of a dental x-ray. However, the forms attached to the January 4 email have a handwritten note on each to indicate whether it is for the upper or lower denture. The dental x-ray appears to be the same as the one they gave to the ministry on October 4, 2021 that is included in the Panel Record, although this copy is more clear.

The panel finds the claim forms and dental x-ray to be admissible under EAA s. 22(4) because they provide some clarification of the same documents previously provided to the ministry, and therefore are reasonably required for the full and fair disclosure of all matters relating to the decision under appeal.

Part F – Reasons for Panel Decision

The issues to be decided are:

1. whether the ministry was reasonable in its decision that it did not have legislative authority to make a reconsideration decision about the appellant's request for coverage for a partial upper replacement denture or extraction of 2 teeth because no claim for coverage for those services had been submitted to PBC, and
2. whether the ministry was reasonable in its decision to deny the appellant coverage for a partial lower replacement denture over the \$1,000 two-year limit for basic dental services.

Legislation:

Under section 16(1) of the Employment and Assistance for Persons with Disabilities Act ("EAPWDA") a person may ask the ministry to reconsider a variety of decisions in relation to disability assistance and supplements, including decisions about health supplements for dental services. Under EAPWDA section 16(3), a person who is dissatisfied with the outcome of a request for a reconsideration may appeal the decision that is the outcome of that request to the Employment and Assistance Appeal Tribunal.

Under EAPWDR section 63 and Schedule C sections 1 and 4(5) the ministry may provide a health supplement for "basic dental services" listed in the Schedule of Fee Allowances – Dentist, up to a maximum of \$1,000 in a 2-year period. The current 2-year period runs from January 1, 2021 to December 31, 2022 (Schedule C section 4(1)).

If the cost of dentures, including replacement dentures, is more than the \$1,000 coverage limit, the ministry can give a denture supplement for acrylic dentures (Schedule C section 4(5)(a) and Schedule of Fee Allowances – Dentist, Fee Codes 52101 to 52402).

Appellant's Position:

The appellant maintains that their need for dentures is a medical emergency because without dentures they have choked on their food. They are afraid of what would happen if they choked and did not have someone there to perform the Heimlich Maneuver. They have given the dental claim forms and dentist's letter to the ministry and repeat their request for full coverage for both upper and lower partial dentures.

Ministry's Position:

The ministry says that, as a person receiving disability benefits from the ministry, the appellant may be eligible for coverage for basic dental services and emergency dental services.

1. Partial Upper Denture and Extractions:

The ministry maintains that it cannot make a reconsideration decision about a partial upper denture and extractions because the appellant and their dentist have not submitted a request for

coverage to PBC for those services. Therefore, neither PBC nor the ministry have made a decision that can be reconsidered under EAPWD section 16.

2. Partial Lower Denture:

a. Basic Dental Service:

The ministry says that dentures are covered as a “basic dental service” if they are provided to someone who has never worn dentures or if they are replacing dentures that are more than 5 years old. The dentist has confirmed that the appellant’s dentures are more than 5 years old. Therefore, the appellant would be eligible for coverage for the partial lower replacement cast dentures, but only at the rate set out in the Schedule of Fee Allowances – Dentist, and only up to the limit of the unused balance of the \$1,000 limit for basic dental services for the current 2-year period.

Under EAPWDR Schedule C section 4(3)(c), the \$1,000 limit can be exceeded by an amount necessary to provide replacement dentures for a person who has been a recipient of disability assistance for at least 2 years. The appellant meets that requirement. However, under section 4(5), coverage for partial replacement dentures is limited to Fee Codes 52101 to 52402 in the Schedule of Fee Allowances – Dentist. A note in the Schedule of Fee Allowances - Dentist says that cast dentures cannot be covered in excess of the \$1,000 limit.

The ministry suggests that the appellant and their dentist consider submitting a request to PBC for coverage for acrylic dentures if those would meet their needs.

b. Emergency Dental Service:

The ministry says that the appellant is not eligible for coverage for partial replacement lower dentures as an emergency dental service under EAPWDR section 64 and Schedule C sections 1 and 5. Emergency dental services are “a dental service necessary for the immediate relief of pain” and are limited to those services listed in the Schedule of Fee Allowances – Dentist (emergency dental section). While denture repairs and adjustments are included in that section, provision of the dentures themselves is not. Therefore, the ministry cannot provide coverage of the partial lower replacement denture as an emergency dental service.

c. Life-threatening Health Need:

The ministry says that the appellant is not eligible for coverage of the partial lower replacement denture as a health supplement for a life-threatening health need under EAPWDR section 69 because that section only applies to medical transportation, medical equipment/devices and some types of medical supplies, as set out in EAPWDR Schedule C, section 2(1)(a)-(f) and section 3. Dental services and dentures are not included in those sections.

Panel Decision:

1. Upper partial denture and extractions:

Before the ministry can reconsider a decision about a dental supplement such as replacement dentures, there must be an initial decision about whether the dental services requested are covered.

The ministry has authorized PBC to assess and approve requests for coverage. While the appellant gave the dental claim forms and dentist's letter to their local ministry office in October 2021, the request has not gone to PBC for an initial decision. Without an initial decision, the ministry does not have any jurisdiction under EAPWDA section 16 to make a reconsideration decision about the upper partial denture and extractions. Therefore, the panel finds that the ministry's decision that it could not give a reconsideration decision about the upper denture and extractions was a reasonable application of the legislation in the appellant's circumstances.

The panel has no information about what the appellant was told, or what the ministry did with the claim form for the upper partial denture when the appellant gave that claim form, the dental x-ray and the dentist's letter to their local ministry office in October 2021. Especially where the benefit recipient must deal with a delegated decision maker, it would be helpful for the ministry to either forward the request to PBC or give the appellant clear directions about where the request should have been delivered.

2. Lower Partial Denture:

a. Basic dental services:

Basic dental services listed in the Schedule of Fee Allowances - Dentist are covered up to a maximum of \$1,000 in a 2-year period. Partial dentures, including cast dentures, are included as a basic dental service, at the fee set out in the Schedule of Fee Allowances – Dentist.

If the cost of providing the partial denture is more than the amount left in the person's \$1,000 coverage limit, the ministry may provide additional coverage for dentures under EAPWDR Schedule C section 4(3). However, under Schedule C section 4(5), that additional coverage is limited to services under Fee Codes 52101 to 52402 in the Schedule of Fee Allowances – Dentist, which cover acrylic dentures. Cast dentures are listed under other Fee Codes (53101 to 53202) and are not included in section 4(5). A note in the Schedule of Fee Allowances -Dentist highlights that information.

The partial lower cast denture for the appellant is covered as a basic dental service at the fee set out in the Schedule of Fee Allowances, up to the amount remaining in the appellant's \$1,000 policy limit. The dentist submitted a fee of \$1,747.25 for the lower partial denture. PBC considered the claim up to \$947.25 for Fee Code 53102 as set out in the Schedule of Fee Allowances – Dentist. When PBC approved the request, there was \$743.09 left; by the time of the Reconsideration Decision, there was \$676.68 left.

The rest of the cost of the partial lower cast denture cannot be covered as a denture

supplement because the denture supplement does not cover cast dentures. Therefore, the panel finds that the ministry was reasonable in its decision not to cover the additional cost of providing the lower partial cast denture.

The panel notes the ministry's advice in the Reconsideration Decision and at the hearing, that if the appellant could use acrylic dentures instead of cast dentures, the appellant and the dentist could submit that claim for to PBC for consideration as a denture supplement.

b. Emergency dental services:

Dentures are not included as emergency dental services for immediate relief of pain, under EAPWDR Schedule C section 5, although repair and adjustment of dentures may be covered. Therefore, the panel finds that the ministry was reasonable in its decision that the partial lower dentures were not covered as emergency dental services.

c. Life-threatening health need:

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 and dentures are not included as eligible benefits under that section.

The appellant and the witness describe situations where the appellant has needed the Heimlich Maneuver, which could indicate a life-threatening need. However, because dental services and dentures are not included as eligible benefits under section 69, the panel finds that the ministry was reasonable in its decision not to provide coverage for the partial lower denture as a life-threatening health need.

d. Crisis supplement:

EAPWDR section 59(3) 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 and dentures are a supplement described in Schedule C and therefore cannot be provided as a crisis supplement. The panel finds that the ministry was reasonable in its decision not to provide a crisis supplement for the partial lower denture.

Conclusion:

The panel finds that the ministry's decision that it did not have legislative authority to provide a reconsideration decision about the request for coverage for the upper partial denture and extractions was a reasonable application of the legislation in the appellant's circumstances.

The panel also finds that the ministry's decision to deny coverage of the lower partial denture over the amount remaining in the appellant's coverage for basic dental services was a reasonable application of the legislation in the appellant's circumstances.

The panel confirms the ministry decisions. The appellant is not successful in the appeal.

Legislation:

Employment and Assistance Appeal Regulation

Time period for scheduling and conducting hearing

s. 85 (1) A hearing must be held within 15 business days after the appeal form is delivered under section 84, unless the chair of the tribunal and the parties consent to a later date.

(2) The chair of the tribunal must notify the parties of the date, time and place of a hearing described in subsection (1) at least 2 business days before the hearing is to commence.

Employment and Assistance for Persons with Disability Act

Reconsideration and appeal rights

s. 16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

(a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;

(b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;

(c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;

(d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of

(i) the maximum amount of the supplement under the regulations, and

(ii) the cost of the least expensive and appropriate manner of providing the supplement;

(e) a decision respecting the conditions of an employment plan under section 9 [*employment plan*].

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

(3) Subject to a regulation under subsection (5) and to sections 9 (7) [*employment plan*], 17 and 18 (2) [*overpayments*], a person who is dissatisfied with the outcome of a request for a

reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the [Employment and Assistance Act](#) and the regulations under that Act.

(5) The Lieutenant Governor in Council may designate by regulation

(a) categories of supplements that are not appealable to the tribunal, and

(b) circumstances in which a decision to refuse to provide disability assistance, hardship assistance or a supplement is not appealable to the tribunal.

Delegation of minister's powers and duties

s. 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.

Employment and Assistance for Persons with Disabilities Regulation:

Dental supplements

s. 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.

Denture supplement

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

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

(a) the person is not eligible for a supplement under section 63 [*dental supplements*], and

(b) the person has had tooth extractions that were performed in the last 6 months because of pain and resulted in the person requiring a full upper denture, a full lower denture or both.

Emergency dental and denture supplement

s. 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.

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,

(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;

"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,

(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;

Dental supplements

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

(a) in respect of a person under 19 years of age, a 2 year period beginning on January 1, 2017, and on each subsequent January 1 in an odd numbered year, and

(b) in respect of a person not referred to in paragraph (a), a 2 year period beginning on January 1, 2003 and on each subsequent January 1 in an odd numbered year.

(1.1) The health supplements that may be paid under section 63 [*dental supplements*] of this regulation are basic dental services to a maximum of

(a) \$2 000 each period, if provided to a person under 19 years of age, and

(b) \$1 000 each period, if provided to a person not referred to in paragraph (a).

(c) Repealed. [B.C. Reg. 163/2005, s. (b).]

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

(a) who has never worn dentures, or

(b) whose dentures are more than 5 years old.

(3) The limits under subsection (1.1) may be exceeded by an amount necessary to provide dentures, taking into account the amount remaining to the person under those limits at the time the dentures are to be provided, if

(a) a person requires a full upper denture, a full lower denture or both because of extractions made in the previous 6 months to relieve pain,

(b) a person requires a partial denture to replace at least 3 contiguous missing teeth on the same arch, at least one of which was extracted in the previous 6 months to relieve pain, or

(c) a person who has been a recipient of disability assistance or income assistance for at least 2 years or a dependant of that person requires replacement dentures.

(4) Subsection (2) (b) does not apply with respect to a person described in subsection (3) (a) who has previously had a partial denture.

(5) The dental supplements that may be provided to a person described in subsection (3) (b), or to a person described in subsection (3) (c) who requires a partial denture, are limited to services under

(a) fee numbers 52101 to 52402 in the Schedule of Fee Allowances — Dentist referred to in paragraph (a) of the definition "basic dental service" in section 1 of this Schedule, or

(b) fee numbers 41610, 41612, 41620 and 41622 in the Schedule of Fee Allowances — Denturist referred to in paragraph (b) of the definition "basic dental service" in section 1 of this Schedule.

(6) The dental supplements that may be provided to a person described in subsection (3) (c) who requires the replacement of a full upper, a full lower denture or both are limited to services under

(a) fee numbers 51101 and 51102 in the Schedule of Fee Allowances — Dentist referred to in paragraph (a) of the definition "basic dental service" in section 1 of this Schedule, or

(b) fee numbers 31310, 31320 or 31330 in the Schedule of Fee Allowances — Denturist referred to in paragraph (b) of the definition "basic dental service" in section 1 of this Schedule.

(7) A reline or a rebase of dentures may be provided as a basic dental service only to a person who has not had a reline or rebase of dentures for at least 2 years.

Emergency dental supplements

s. 5 The health supplements that may be paid for under section 64 [*emergency dental and denture supplements*] of this regulation are emergency dental services.

Ministry of Social Development and Poverty Reduction

Part A – Preamble - Dental Supplement – Dentist

Denture Policy

Replacement Dentures (partial or complete) in excess of the 2-year basic dental limit

It is important to note that not all Ministry clients qualify for replacement dentures. Eligible clients must have 2 years continuous Ministry coverage. Eligibility for this service must be confirmed prior to beginning treatment. See the Eligibility Information section on page (v).

The Ministry will pay for denture(s) only once every five years. Note: an exception to this would be if the current denture(s) was a partial and the replacement denture(s) is complete in conjunction with full clearance of teeth (see above under Initial Placement – Complete Dentures).

Fee items will be restricted to the 51100 series for complete dentures and 52000 for partial dentures outlined in the Schedule of Fee Allowances - Dentist. No cast dentures will be covered in excess of the patient's 2-year limit. Funds still available within the patient's limit will be utilized first with the remaining balance for denture(s) paid over limit.

Part B – Schedule of Fee Allowances

Schedule of Fee Allowances –
Dentist
Effective September 1, 2017

PARTIAL DENTURES

Includes:

- diagnostic models, analysis and design
- tooth preparation and master impression
- bite registration, mold selection and shade
- try-in, insertion and occlusal equilibration
- adjustments – (up to 6 months post-insertion)

Note: These services are not billable if to be followed by fixed prosthetic replacements. Temporary or provisional appliances are not covered.

Partial dentures, Acrylic

52101	Acrylic base, with or without clasps Maxillary	306.00	353.69
52102	Mandibular	320.25	385.85
52201	Acrylic partial with Resilient Retainer Maxillary	630.00	928.76
52202	Mandibular	696.75	1011.61
52301	Acrylic partial with metal wrought/cast clasps and/or rests Maxillary	468.00	555.27
52302	Mandibular	489.00	604.74
52401	Acrylic partial with metal wrought palatal/lingual bar and clasps and/or rests Maxillary	510.00	623.29
52402	Mandibular	539.25	678.94

Partial dentures, Cast

53101	Free End, Cast Frame/Connector with clasps and rests Maxillary	902.25	1215.67
53102	Mandibular	947.25	1325.73
53201	Tooth Borne, Cast Frame/Connector with clasps and rests Maxillary	819.75	1036.35
53202	Mandibular	809.25	1036.35

APPEAL NUMBER 2021-0220

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)

2022/01/14

Print Name

Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)

2022/01/14

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2022/01/14