

Appeal Number 2022-0031

**Part C – Decision Under Appeal**

The decision under appeal is the decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated January 26, 2022, in which the ministry decided, pursuant to section 16 of the Employment and Assistance for Persons with Disabilities Act (“EAPWDA”), it could not give a reconsideration decision about the appellant’s request for coverage of dental services because there was no record of a claim for coverage for those services being submitted to Pacific Blue Cross (“PBC”). Accordingly, there was no decision made that could be reviewed and reconsidered.

**Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act section 16(1)

**Part E – Summary of Facts**

The information before the ministry at reconsideration included:

- A Request for Reconsideration (RFR) form dated December 15, 2021, signed by the appellant on January 11, 2022. The appellant cited the reasons for requesting a reconsideration are:
  - She has stomach problems because of not chewing food properly.
  - Her top denture plate is over 30 years old and has holes in it.
  - She requires a partial or whole plate for her bottom teeth.
  - She sent in a treatment plan for a total of \$2,274.00 and wrote that the regular deduction is not near enough to cover these costs.

**Additional Information**

On the Notice of Appeal form (NOA) dated February 16, 2022 the appellant wrote “The ministry won’t pay enough; professionals won’t charge less.” Along with the NOA the appellant also submitted:

- the ministry’s RD and RFR;
- a Treatment Plan (“TP”) from a dental office dated December 13, 2021 that indicates a patient portion cost of \$2,474 for dental services on Page 1.
- A Release of Information form (ROI) requesting a representative be present at the hearing.

On March 2, 2022 the appellant provided additional information consisting of the same TP of December 13, 2021 but also included Page 2 that breaks down the total cost of \$2,474. It indicates the ministry will pay \$1,186.50 and the patient portion is \$1,087.50. A handwritten note on it indicates that the appellant is requesting \$1,087.50.

At the hearing, the appellant’s advocate stated there are two parts to this appeal to address.

Part 1 is the process for getting approval for dental supplements. In the advocate’s view, the process is ridiculously complex. The advocate asks: (1) Why is the appellant required to be the one to find out from PBC what has been approved and not approved?; (2) How do they go about getting pre-approval for dentures?; (3) Why does the patient have to ask the denture clinic who then asks Blue Cross who then responds to the dentist? In the advocate’s view, the appellant is left out of the loop and receives no documents confirming what has been submitted or what hasn’t. When asked if the appellant had contacted the denture clinic to find out whether PBC had provided a decision to them, she replied that she had reached out to ask, but they hadn’t gotten back to her.

Part 2 is the rate set by the ministry, which does not pay enough, leaving people who are already living below the poverty level to have to pay out over \$1,000 for dentures. The appellant believes the rates have not increased in over 20 years. She understands that this may not affect her request, but wanted it voiced that the rates are too low.

The appellant added that the ministry has indicated that she did not provide pre-determination of

dental services, but she did, having provided the TP.

At the hearing, the ministry reviewed the Request for Reconsideration (RFR) which indicated the appellant had not been denied dentures, only that the ministry is not able to pay higher than what is set out in the Dental Fee Schedule. The ministry could not understand why the RD indicated no decision had been made because in the TP the appellant portion had been set at \$1,087. When asked for clarification about why the RD states that the dental claims records indicate no decision had been made by PBC, the ministry responded that she could not answer why this was written. The ministry was directed to a later submission of Page 2 of the TP provided by the appellant, who confirmed that this was in the ministry records. The ministry noted that this Page 2 of the TP included the denturist's calculation of the amount the ministry would pay and the amount the appellant would pay. When asked about what documentation PBC usually sent out, the ministry indicated there is no documentation in the record from PBC and that PBC usually writes out the specific codes listed in the Fee Schedule and specific amounts to be paid.

When asked how the appellant would be notified of what had been approved or not approved by PBC, the ministry indicated they would receive a letter from PBC and emphasized there is no decision letter, of this kind, in the record.

When asked about how to interpret the TP, the ministry was not able to provide an answer.

The ministry added that legislation sets out the amount the ministry is limited to paying, which is \$1,000 per year or if someone has an emergency, that emergency dental may be considered. The appellant stated she has digestive problems due to not chewing food properly but added that she has lived with this for several years and doesn't consider it to be an emergency. The ministry encouraged the appellant to always ask in case she may be eligible as an emergency.

In the RD, the minister noted they had reviewed the appellant's dental claim file with PBC and no pre-determination had been received for this request.

### **Admissibility of Additional Information**

The panel admits the appellant's NOA and the oral evidence given at the hearing under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

## **Part F – Reasons for Panel Decision**

The decision under appeal is whether the ministry decision, that there was no decision upon which to provide a RD regarding the appellant's request for coverage of dental services, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The appellant's position is she doesn't understand why she is responsible for tracking down a PBC decision when the ministry can access the records. She has a TP with the denture clinic that indicates the ministry portion for dentures has been determined to be \$1,186.50 and her portion to pay is \$1,087.50, which she cannot afford as she is living below the poverty line.

The ministry's position is that the rates are set out in the Fee Schedule, and because no decision has been made by PBC with regards to the TP for the appellant, no reconsideration decision can be made.

### **Panel Decision**

At the hearing, the ministry did not address section 16 EAPWDA legislation, however the RD indicates that no reconsideration decision can be made, pursuant to section 16 of the EAPWDA, because the appellant had not been denied dental services by PBC. Section 16 of the EAPWDA states a person may request a reconsideration of a decision that results in the refusal to provide, or reduce, disability assistance, or in respect of the amount of a supplement.

The appellant approached her denture clinic and received a TP from them that indicated the amount the ministry would pay and the amount she would have to pay. She then contacted the ministry to ask for a reconsideration of that decision in the TP because she could not afford her portion. In this appeal, the panel must determine whether the ministry's position that it has not received a PBC pre-determination is reasonably supported by the evidence. The appellant indicated she had reached out to the denture clinic to see whether the TP had been forwarded to PBC but did not receive a response from them. The appellant says that she submitted PBC's decision in the TP. The ministry submits that upon review of the appellant's dental claim, no pre-determination from PBC had been received.

The panel found no evidence in the Appeal Record to indicate that PBC received the denture clinic's TP or that a decision had been made by PBC regarding the appellant's eligibility for dentures and the services related to that. Therefore, the ministry was reasonable to determine that because they had not made a denial or a refusal, no reconsideration decision could be made, pursuant to section 16 of the EAPWA.

The panel cannot comment on the Fee Schedule amounts. Its jurisdiction is limited to whether the ministry's decision is reasonably supported by the evidence or is a reasonable application of the legislation.

The panel sympathises with the appellant as she felt she had done all that was necessary for the ministry to reconsider its decision. The panel also sympathises with the potential difficulties when someone requesting a benefit needs to rely on their health care professional to speak with

an insurer and have all of that information get to the ministry.

### **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 of dental services was a reasonable application of the legislation in the appellant's circumstances.

## **APPENDIX LEGISLATION**

### **Reconsideration and appeal rights**

**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*].

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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

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2022 March 8

Print Name

Kent Ashby

Signature of Member

Date (Year/Month/Day)

2022 March 8

Print Name

Cherri Fitzsimmons

Signature of Member

Date (Year/Month/Day)

2022 March 8