

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision (RD) of the Ministry of Social Development and Poverty Reduction (the Ministry) dated March 22, 2022 which denied the Appellant’s request for the full cost of a complete lower replacement denture because the requested coverage was for a supplement that is identified as a “*basic dental service*” in the Ministry’s “*Schedule of Fee Allowances - Denturist*” (the Fee Schedule), and that dentures can only be provided to an eligible person who has never worn dentures or whose dentures are more than five years old, neither of which conditions apply to the Appellant.

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

Part D – Relevant Legislation

Employment and Assistance Act (EAA) Section 24

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

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

Schedule of Fee Allowances – Denturist, Part B - effective September 1, 2017

The relevant legislation is provided in the Appendix

Part E – Summary of Facts

The Appellant is a recipient of disability assistance (DA).

According to the Ministry's records:

- Pacific Blue Cross (PBC) denied the Appellant's request for coverage of a complete lower denture on February 11, 2022, noting "*We are unable to approve your request for replacement dentures, as (the Appellant) has already used their one-time exception on October 20, 2020 through (the Denturist's) office.*"; and,
- On March 21, 2022, the Ministry reviewed the Appellant's claims history with PBC and noted that PBC provided coverage for a Complete Lower Denture on July 4, 2019, and on November 4, 2020 PBC provided coverage for a Complete Lower Replacement Denture (placed on October 20, 2020). PBC has indicated on the Appellant's file "*This payment has been made on an exception basis and does not set a precedent for future claims.*" A copy of the PBC document confirming coverage for the October 20, 2020 replacement denture is included in the Appeal documents

The evidence before the Ministry at reconsideration included:

- The Appellant's Request for Reconsideration (RFR) completed by the Appellant on March 10, 2022, in which the Appellant wrote:
"I am trying to improve my quality of life and I am also trying to improve my health. Swimming is an activity which gives me immense pleasure and it also provides me with an excellent physical workout. I was swimming (in the ocean) and my dentures fell out ... they sank to the bottom and I was unable to retrieve them. I was informed by the receptionist of my denturist that it was common for peoples dentures to fall out whilst swimming ... I am not receiving the proper nutrition in my diet because I cannot chew food at all. My diet is therefore limited to soft food, lacking protein and vitamins that I would receive from salads, etc. Trying to consume any nuts or grains ... is entirely out of the question.";
- A March 11, 2022 letter written by a Nurse Practitioner (NP) expressing support for approval of funding for the Appellant's replacement dentures. The letter also says that "*These dentures are essential in her ability to maintain proper nutrition particularly during her recovery from various chronic health conditions.*"; and,
- A February 11, 2022 "*Dental Predetermination Summary*" (the Summary) from PBC to the Appellant indicating a total submitted amount of \$597.25 and an amount approved by the PBC plan of \$16.00. The details provided on the second page of the Summary indicate that the approved amount of \$16.00 is for Procedure 10104 and none of the balance of the total amount submitted (\$581.25), which was for Procedure 31320, was covered.

Additional Information Provided after Reconsideration

In her March 28, 2022 Notice of Appeal (NOA) the Appellant said that she disagreed with the RD because she can't chew food properly and as a result lacks proper nutrition in her diet.

The Appellant also provided a submission which was received by the Tribunal on April 13, 2022 (the Appellant Submission). The Appellant Submission comprised a one-page letter from the NP, dated April 8, 2022.

Evidence Presented at the Hearing

At the hearing, the Appellant said that she had provided her reasons for disagreeing with the Ministry's RD in her RFR and the NOA, reasons which had been restated in the NP's March 11, 2022 letter and the Submission. She said that eventually she thought that by not receiving the replacement denture she might end up being more of a burden on the health system, stating that she has in the past had anemia and that she has been "*clean and sober*" for 101 days.

The Appellant said that when she looks in the mirror she feels self-conscious because of her appearance without lower teeth. She said she very much wants to find work, but her appearance makes it exceedingly difficult for her to think about having to go through an in-person job interview. She said that not having her lower denture was "*not just physical; it's also psychological*". She also said that she very much wishes to keep "*trying to get back to the way life used to be*" but is concerned that with the stress, anxiety and lack of self-confidence she feels without a lower denture, continuing with her recovery might be very difficult.

The Appellant also said that she had wanted to be represented at the hearing by an advocate and had tried to find one, but the community services agency she approached for assistance in finding an advocate was unable to locate one due to the pandemic.

At the hearing, the Ministry relied on the RD, adding that the Ministry was definitely sympathetic and wanted to try to find a way to "*get around*" the policy that would not allow it to provide a replacement denture in this instance. In response to a question from the Panel, the Ministry said that the policy in question was a written policy, but the Ministry was unable to provide the Panel with a copy of the policy at the hearing.

In response to another question from the Panel, the Ministry said that there was nothing in the NP's March 11, 2022 letter or the Submission that could represent a "*life threatening need*" to satisfy the requirement as set out in EAPWDR Section 69. The Ministry also said that even if the Appellant were unable to chew without a lower denture, she could still obtain sustenance from nutritional supplements, at which point the Appellant said that she thinks that vitamin and protein supplements were great, but they were too expensive and she can't afford them. The Ministry replied that the Appellant's file indicates that she has already been approved for nutritional supplements.

Admissibility of New Evidence

Section 22(4) of the *Employment and Assistance Act* (EAA) says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision

under appeal was reasonable based the requirements set out in the legislation and on all admissible evidence.

The Panel finds the new evidence in the Submission providing additional information on the Appellant's "*chronic health conditions*" referred to in the NP's March 11, 2022 letter (specifically, that she has lost 20 lbs in the past year, she is unable to eat solid meals due to the lack of a lower denture, and that she is in the early stages of recovery form an addiction) to be admissible because the information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The Panel assigns this new information full weight as it is provided by an NP.

The Panel finds the new evidence presented at the hearing regarding the Appellant's prior diagnosis of anemia and that she has been clean and sober for 101 days (the implication being that she was at greater risk of relapse should she not receive a replacement denture), to be new evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Therefore, the Panel admitted the new evidence. However, the Panel assigns the new evidence little weight because, while the Panel has no reason to doubt its veracity, the Ministry indicated in the RD that it has already acknowledged that failure to provide a replacement denture would compromise the Appellant's health. Furthermore, the Panel's authority is limited to determining whether the Ministry's RD was a reasonable application of the applicable enactment i.e., the EAPWDA and the EAPWDR. Any Ministry policies that extend benefits beyond those provided in the EAPWDA and the EAPWDR are beyond the limits of the Panel's authority, as discussed in more detail below.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's RD dated March 22, 2022, which denied the Appellant's request for the full cost of a lower replacement denture was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

Was it reasonable for the Ministry to deny the additional coverage because the Appellant had received a replacement denture within the past five years? Was it reasonable for the Ministry to deny the additional coverage because the Appellant is not eligible for coverage of replacement lower denture as an emergency dental service, an orthodontic treatment, or a crisis supplement? Was it reasonable for the Ministry to deny the additional coverage because the denture was not required to meet a life-threatening need?

Position of the Parties

The Appellant's position is that she is in dire need of a complete lower denture, without which she is unable to chew the foods necessary for her to maintain a healthy diet, she can't afford nutritional supplements, there is a psychological element to her not having a lower denture because when she looks in the mirror she feels self-conscious and therefore lacks the confidence to attend job interviews, and that she worries she will be an even greater burden on the health system in the long run without a lower denture.

The Ministry's position is that it sympathizes with the Appellant and wanted to try to find a way to provide a replacement lower denture but that there are no circumstances under which it could be provided under existing legislation or Ministry policy.

Panel Decision

Eligibility for Coverage of the Denture as a Basic Dental Services

"*Basic dental services*" are defined in EAPWDR Schedule C, Section 1 as any dental service appearing in the Fee Schedule. The Panel notes that a complete lower replacement denture is listed in the Fee Schedule and is covered to a maximum amount of \$581.25 for a member of a family unit in receipt of DA.

The Appellant is a person receiving DA. In the Appellant's circumstances, coverage for the first complete lower denture was provided on July 4, 2019, and a replacement denture was provided on October 20, 2020 based on a Ministry policy which allows for an additional one-time replacement denture within the 5 year period if the following conditions are met: the denture being replaced was lost or damaged beyond repair and failure to provide replacement denture would compromise health. The cost of the Appellant's replacement denture was covered In October 2020 because the Ministry had determined at that time that the required conditions set out in the Ministry's policy had been met.

As mentioned in Part E above, the Panel's authority is limited to determining whether the Ministry's RD was a reasonable application of the applicable enactment. Any Ministry policies that extend benefits beyond those provided in the EAPWDA and the EAPWDR are beyond the limits of the Panel's authority. Therefore, the Panel must determine whether the Ministry's decision not to provide coverage in this case is reasonable based on the circumstances under which it may provide coverage for a replacement lower denture as a basic dental service as expressed in the EAPWDA and EAPWDR. EAPWDR Schedule

Section 4(2) says that the Ministry may provide a complete lower denture as a basic dental service to a person who has never worn dentures or whose dentures are more than five years old. The Appellant was provided with coverage for her first complete lower denture on July 4, 2019. Accordingly, the Panel finds that the Appellant would not be entitled to replacement lower denture under the basic dental services provisions of the applicable legislation until July 4, 2024.

Based on the applicable legislation, the Panel finds that the Ministry reasonably determined that the Appellant was not eligible under the applicable enactment for a replacement lower denture as a basic dental service at this time.

Eligibility for Coverage of the Denture as an Emergency Dental Service

EAPWDR Schedule C Section 1 defines "*emergency dental service*" as a dental service necessary for the immediate relief of pain. The Panel notes that no evidence has been presented to indicate that the Appellant needs the dentures for the immediate relief pain. In fact, at the hearing the Appellant said that she did not experience pain as a direct result of not having the lower denture.

Because a replacement lower denture was not needed for the immediate relief of pain, the Panel finds that the Ministry reasonably determined that the Appellant was not eligible for coverage of dentures as an emergency dental service.

Eligibility for Coverage of the Denture as a Life-Threatening Health Need

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

At the hearing, the Ministry confirmed that there had been no evidence provided by the Appellant, including evidence contained in the March 11, 2022 NP's letter and the Submission, which would be considered to be a direct and imminent life threatening need. The Panel notes that the Appellant did not dispute this point at the hearing.

Based on the available evidence, the Panel sees no indication that the Appellant faces a direct and imminent threat to her life if she is not provided with a replacement lower denture and finds that Ministry reasonably determined that this was the case.

Regardless, the Panel notes that the denture could not be provided under section 69 even if there was a direct and life threatening need: EAPWDR Section 69 only applies to medical transportation, specified medical equipment or devices, and the medical supplies (named in EAPWDR, Schedule C, Sections 2 and 3), and none of these categories include new or replacement dentures.

Eligibility for Coverage of Dentures as a Crisis Supplement

In the RD, the Ministry determined that it could not provide the Appellant with a crisis supplement because dental treatments are health care services described in Schedule C.

The Panel notes that dentures are described in EAPWDR Schedule C Section 4(2) as being among the dental supplements that may be provided to an eligible person. EAPWDR Section 57(3) says that a crisis supplement may not be provided for the purpose of obtaining a supplement described in Schedule C. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not qualify for coverage of the specialized dentures as a crisis supplement.

* * * *

The Panel very much sympathizes with the Appellant in this case. The Appellant has made a reasonable argument that, without a replacement lower denture, the long term burden on the health care system represented by the impact on the Appellant's health and the possible resulting need for more medical treatments might well exceed the \$581.25 cost of a replacement lower denture.

Unfortunately for the Appellant, the *legislation* allows for coverage for a replacement denture only once every 5 years. EAA Section 24, which sets out the powers and duties of an Employment and Assistance Appeal Tribunal panel, says that a panel must determine whether the Ministry's RD was "*a reasonable application of the applicable enactment*" and cannot rescind or overturn a decision that it considers unreasonable if it determines that the Ministry applied the applicable *legislation* reasonably.

The Ministry has a *policy* allowing a one-time exemption to this legislated restriction if certain conditions are met. However, while the Ministry acknowledges that in this case the other conditions for a replacement denture have been met, the Appellant has already received a replacement denture within the 5 year period. While the Ministry said at the hearing that it "*wanted to try to find a way to get around the policy*", apparently it could not do so. In any event, the Panel has no authority to rescind a decision made based on the application of Ministry policy.

Conclusion

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

APPENDIX – LEGISLATION

EMPLOYMENT AND ASSISTANCE ACT

Decision of panel

24 (1) After holding the hearing ... the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

- (a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and
- (b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister ...

EMPLOMMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Crisis supplement

57 (3) A crisis supplement may not be provided for the purpose of obtaining ...

- (a) a supplement described in Schedule C ...

General health supplements

62 The minister may provide any health supplement set out in section 2 [*general health supplements*] ... of Schedule C to or for

- (a) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age ...

Dental supplements

63 The minister may provide any health supplement set out in section 4 [*dental supplements*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,
 - (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age ...
- Emergency dental and denture supplement**

64 The minister may provide any health supplement set out in section 5 [*emergency dental supplements*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance ...

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

69 (1) The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] ... of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) the adjusted net income of any person in the family unit ... does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

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

- (a) "**adjusted net income**" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and
- (b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit ...

Schedule C

Health Supplements

Definitions

1 In this Schedule: ...

"**basic dental service**" means a dental service that ...

(b) if provided by a dentist,

- (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 ...

"denture services" means services and items that ...

(b) if provided by a dentist

(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 ...

(b) if provided by a dentist,

(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;**Medical equipment and devices**

General health supplements

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

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

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

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

(ii) the supplies are

- (A) prescribed by a medical practitioner or nurse practitioner,
- (B) the least expensive supplies appropriate for the purpose, and

- (C) necessary to avoid an imminent and substantial danger to health;
- (iii) there are no resources available to the family unit to pay the cost of or obtain the supplies ...

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

- (i) an office, in the local area, of a medical practitioner or nurse practitioner,
- (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
- (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
- (iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,

provided that

- (v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and
- (vi) there are no resources available to the person's family unit to cover the cost.

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

- (a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and
- (b) all of the following requirements are met:

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

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

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

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

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

Medical equipment and devices — canes, crutches and walkers

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

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

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

Medical equipment and devices — wheelchairs

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

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

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

Medical equipment and devices — wheelchair seating systems

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

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

Medical equipment and devices — scooters

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

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

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

Medical equipment and devices — toileting, transfers and positioning aids

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

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

Medical equipment and devices — hospital bed

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

- (a) a hospital bed;
 - (b) an upgraded component of a hospital bed;
 - (c) an accessory attached to a hospital bed;
 - (d) a positioning item on a hospital bed ...
- (3) The following items are not health supplements for the purposes of section 3 of this Schedule:
- (a) an automatic turning bed;
 - (b) a containment type bed.

Medical equipment and devices — pressure relief mattresses

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

Medical equipment and devices — floor or ceiling lift devices

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

Medical equipment and devices — breathing devices

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

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

- (ii) an accessory that is required to operate an inhaler accessory device, or
- (iii) a supply that is required to operate an inhaler accessory device ...

Medical equipment and devices — orthoses

3.10 (1) In this section:

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

"**orthosis**" means

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

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

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

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

Medical equipment and devices — hearing instruments

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

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

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

Medical equipment and devices — non-conventional glucose meters

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

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

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

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

Dental supplements

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

- (b) ... a 2 year period beginning on January 1, 2003 and on each subsequent January 1 in an odd numbered year.

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

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

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

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

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

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

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

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

Emergency dental supplements

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

APPEAL NUMBER 2022-0058

Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2022/04/23

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2022/04/24

Print Name

John Pickford

Signature of Member

Date (Year/Month/Day)

2022/04/25