

Part C – Decision Under Appeal

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated April 20, 2022 where the ministry denies funding for a crown for tooth number 27 because the appellant does not meet all eligibility requirements for a Full Cast Metal Crown (27301) as they are set out in the EAPWDR Schedule C section 4.1(2). While the ministry is satisfied that the appellant's dental condition cannot be corrected by restorative services as set out in section 4.1(2)(a) the evidence does not establish that the appellant is unable to use a removable prosthetic (e.g. denture) as set out in Schedule C section 4.1(2)(b).

In addition, the ministry determined that

- Fee code 27201 is not listed as a type of crown that may be covered under the appellant's plan.
- The ministry is not authorized to provide coverage as basic dental or emergency dental services because the requested services are not set out in the Schedule of Fee Allowances - Dentist or Emergency Dental - Dentist.
- The ministry is not authorized to provide coverage under section 69 (life-threatening health need) or section 57 (crisis supplement).

Part D – Relevant Legislation

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

EAPWDR Schedule C, sections 1, 4, 4.1, and 5

Schedule of Fee Allowances (Dental Supplements, Emergency Dental Supplements, Crown and Bridgework Supplements)

Part E – Summary of Facts

The appellant has PWD designation and is a recipient of disability assistance.

The ministry has delegated its powers, duties and functions respecting dental supplements to Pacific Blue Cross (PBC) in accordance with section 34 of the Employment and Assistance Act.

Information from ministry files on the dental service codes and dentist’s fees at issue:

| Tooth No. | Fee Code | Description | Dentist Fees | Amount Approved by PBC |
|-----------|----------|--|------------------|------------------------|
| 27 | 27201 | Crown, Porcelain/Ceramic/Polymer Glass | \$889.00 | \$0 |
| 27 | 23602 | Tooth Coloured Restoration in Conjunction with Crown | \$187.00 | \$0 |
| | 99111 | Commercial Lab Fees | \$500.00 | \$0 |
| | | TOTAL: | \$1576.00 | |

The ministry noted that

- Although the appellant’s dentist lists lab fees separately a note in the Schedule of Fee Allowances-Dentist, Crown and Bridge Work says that lab fees are included in the cost of a crown. Additionally, Fee Code 99111 is not set out in the Schedule of Fee Allowances-Dentist.
- Fee Code 27201 is not set out in the Schedule of Fee Allowances-Dentist and therefore PBC assessed the appellant’s request for a Crown using Fee Code 27301.

A copy of a Standard Dental Claim Form dated March 2, 2022 demonstrates that the appellant’s dentist claimed pre-authorization for fees for the following services for tooth 27:

Code 23602: \$187.00
 Code 27201: \$889.00
 Code 99111: \$500.00
 Total: \$1576.00

In a copy of a Standard Dental Claim Form dated March 30, 2022 the appellant’s dentist resubmits the previous Standard Dental Claims form. Code 27201 is replaced by 27301.

Code 23602: \$198.00
 Code 27301: \$882.00
 Code 99111: \$450.00
 Total: \$1530.00

The dentist writes, partially illegibly: The appellant “has a large ... filling on tooth # 27. She ... to our office Dec. 2/20 with a fractured filling ... repaired on Dec.8/20 however has ...broken again. Tooth #27 is in need of a ...”

According to ministry records the appellant said on March 7, 2022 that she cannot afford out of pocket expenses.

In a letter dated 29 March 29, 2022 the appellant wrote:

- Her dentist has recommended putting a crown on a molar in the upper left of her jaw.

- The tooth was previously fixed and broke twice within a year because it is the area she chews on the most.
- The dentist's advice was that a filling would just break again and is not a long-lasting solution.
- There is cavity space around the existing filling and food gets stuck there which increases the risk of infection.
- The dentist did not recommend an extraction because her jaw would be compromised, leading to further problems.
- The state of the tooth is affecting her day-to-day life: She has to eat food that does not require too much chewing and remind herself to chew on the other side of her mouth. She worries about further damage or infection.
- While she understands that the ministry does not cover laboratory fees she asks for coverage of "the other costs".

In her request for reconsideration dated April 1, 2022 the appellant wrote:

- "My jaw will be compromised if I lose this tooth according to my dentist.
- It's been fixed twice before and continues to break.
- Leaving it will cause it to decay as tooth is exposed.
- There is no reason to fix it with a filling as it will likely break again soon.
- My dentist recommends a crown as the best option for long term."

With her request for reconsideration the appellant included the following:

- A note dated December 16, 2021 by a Certified Dental Assistant for the appellant's dentist reads:
"Missing teeth: 18, 28; 38, 48

There is no existing prosthesis

A crown is required on this tooth because it has a large existing amalgam restoration, the tooth has already broken twice and it is a terminal tooth so it takes the most biting force. A conventional filling would break before a full coverage crown. Please re-consider a covering a crown [sic] for this patient."

- 5 images:

2 dental photographs ("17"), 2 dental photographs ("25") and 1 x-ray ("26-28")

Information provided on appeal

In her Notice of Appeal dated April 25, 2022, the appellant writes "It bothers me daily and will only keep disintegrating. Removal is not recommended by dentist. Fillings keep breaking."

The appellant repeated information she had previously given and stated that she has spoken with her dentist twice since the reconsideration decision and nothing has changed. The receptionist told her that in case of an extraction of tooth #27 her lower tooth would suffer, that a bridge is not reasonable for 1 tooth, and that in the past the ministry never approved a bridge.

The reason for her disability is anxiety - she is stressed right now and feels like throwing up. The ministry should have talked with her dentist directly. She could not find an advocate until now.

The appellant's advocate/family member stated she is an adjudicator in an area that is not connected to the ministry.

Both the appellant and her advocate/family member stated they do not understand the ministry decision.

The ministry summarized the reconsideration decision as it was written and added they can only look at the legislation. The ministry representative stated they did not know why the ministry made this decision

because it was outside the ministry representative's expertise. In response to questions from the appellant, the advocate and the panel, the ministry stated they are not an expert in this area. A supervisor of the person who wrote the assessment - in this case from the Health Assistance Branch who should have represented the ministry at the hearing. The ministry stated further they cannot call a dentist directly - they can only contact the client directly. The appellant would have to provide the ministry with a written consent from the dentist - only then they are able to contact the dentist directly. Another option would be a conference call between the appellant, the ministry and the dentist. The ministry number to call and discuss these issues is 1 866 866 0800.

Admissibility of New Information

The panel finds that the information provided by the appellant and the ministry on appeal is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances surrounding the appellant's dental claim. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant the requested funding for a crown for tooth #27 was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The EAPWDR addresses dental services as follows: Section 1 of Schedule C defines "basic dental service" and "emergency dental service", and section 4.1(1) of Schedule C defines "crown and bridgework" as a dental service set out in the applicable section of Schedule of Fee Allowances

For crown and bridgework dental services, section 4.1(2) of Schedule C of the EAPWDR imposes 2 additional requirements:

- (a) the dental condition precludes the provision of the restorative services set out in the Schedule of Fee Allowances – Dentist; and
- (b) use of a removable prosthetic is precluded.

Positions of the Parties

Appellant Position

The appellant argues her molar needs to be saved to keep her jaw intact and to avoid infections. Without a crown the tooth will keep bothering her, food will get stuck around the existing filling and she will have to keep reminding herself to chew on the right side of her mouth. The tooth is in the upper left of her jaw where she chews the most and has been repaired several times before. An extraction is not recommended because it would compromise her jaw. She cannot afford to pay for the crown. While she understands that the ministry does not cover laboratory fees she is requesting coverage of "the other costs".

The appellant's dentist reasons that the tooth in question requires a covering crown because it is a terminal tooth that takes the most biting force. They do not speak to the option of a removable prosthetic.

Ministry Position

The ministry's position is that the appellant is not eligible to receive funding for a crown for the following reasons:

- The appellant is not eligible for coverage of a Crown, Porcelain/Ceramic/Polymer Glass (fee codes 27201 or alternatively 27301), Commercial Lab Fees (99111) and Restoration (23602) as a Basic Dental Service or Emergency Dental Service because the requested dental services are not set out in the Schedules of Fee Allowances - Dentist and Emergency Dental - Dentist.
- She is not eligible for coverage of a Crown, Porcelain/Ceramic/Polymer Glass (fee codes 27201), Commercial Lab Fees (99111) and Restoration (23602) as a Crown and Bridgework Supplement because these services are not set out in the Schedule of Fee Allowances - Crown and Bridgework.
- She is not eligible for a Full Cast Metal Crown (27301). The ministry is satisfied that the appellant's dental condition cannot be corrected by restorative services. While the ministry acknowledges that the dentist does not recommend extracting the tooth and a crown is the preferred method to treat the appellant's dental condition, the evidence does not establish that the appellant is unable to use a removable prosthetic (e.g. denture) as set out in Schedule C section 4.1(2)(b).

- She is not eligible for coverage of a Crown and Composite Core as a life-threatening health need. Section 69 only applies to medical transportation, medical equipment / devices, and some types of medical supplies. Dental and denture supplements are not set out in these sections.
- Section 57(3) of the EAPWDR says that the ministry may not provide a crisis supplement to obtain a supplement described in Schedule C or for any other health care goods or services. As a result, the appellant is not eligible to receive a crisis supplement for a crown.

Majority Panel Analysis

The appellant's dentist requested coverage for a Crown, Porcelain/Ceramic/Polymer Glass (fee codes 27201 or alternatively 27301), Commercial Lab Fees (99111) and Restoration (23602). The majority panel finds that the ministry was reasonable when it determined that the appellant was not eligible for these services.

- The majority panel finds that the ministry reasonably determined that, based on the definition of basic dental service, the appellant is not eligible for coverage of a Crown, Porcelain/Ceramic/Polymer Glass (fee codes 27201), Commercial Lab Fees (99111) and Restoration (23602) as a Basic Dental Service or Emergency Dental Service because the requested dental treatment is not set out in the Schedules of Fee Allowances - Dentist and Emergency Dental - Dentist.

- The Crown and Bridgework section of the Schedule of Fee Allowances only allows for a full cast metal crown (fee code 27301) for tooth 27. There are 2 eligibility criteria and the appellant has to meet both:
 1. the dental condition precludes the provision of the restorative services set out in the Schedule of Fee Allowances – Dentist. In its reconsideration decision the ministry had determined that the appellant meets this criterion
 2. Use of a removable prosthetic is precluded.

The panel finds that the second criterion is not met because there is not enough evidence to conclude that the use of a removable prosthetic is precluded in the appellant's circumstances.

The majority panel finds the ministry was reasonable when it gave more weight to the dentist's medical evidence than to the appellant's hearsay evidence. The appellant writes that her dentist recommends a crown as the best long-term option. The dental assistant writes on behalf of the dentist: "a crown is required on this tooth" and gives the following reason: "... because it has a large existing amalgam restoration, the tooth has already broken twice and it is a terminal tooth so it takes all the biting force. A conventional filling would break before a full coverage crown." While the dentist provides reasons why the dental condition precludes the provision of the restorative services [and the ministry accepted these reasons] they do not give reasons why a removable prosthetic is precluded. The only time the dentist refers to a (removable) prosthetic reads as follows: "There is no existing prosthesis". This sentence does not imply that a removable prosthetic is precluded, and it is not clear how it relates to the appellant's request for funding for a crown. No further information is provided by the dentist.

In this case, medical information that may include information on alternative treatments has to be provided by the dentist before the ministry can determine whether the appellant's request is fundable in accordance with the legislation. While one may argue that the dentist's request that "a crown is required" is imperative, the majority panel finds that the ministry is bound by legislation which, in the appellant's case, stipulates that the criterion set out in section 4.1(2)(a) has to be met. Consequently, the majority panel finds the ministry was reasonable in its determination that the appellant was not eligible for a full cast metal crown (27301) as set out in the Fee Allowances - Crown and Bridgework because there is not enough evidence to conclude that the use of a removable prosthetic is precluded in the appellant's circumstances.

- The majority panel finds further that the ministry reasonably determined that the appellant is not eligible for coverage of a crown as a life-threatening health need. The ministry stated correctly that section 69 only applies to medical transportation, medical equipment / devices, and some type of medical supplies; dental and denture supplements are not set out in these sections. While the appellant reports that loss of her tooth would have a negative impact on the health of her jaw the majority panel finds that there is no evidence that the appellant needs a crown in order to avoid a life-threatening situation.

- The majority panel also finds that the ministry was reasonable when it denied coverage for a crown and composite core as a crisis supplement. The ministry correctly quoted and interpreted section 57(3) which says that the ministry may not provide a crisis supplement to obtain a supplement described in Schedule C or for any other health care goods or services.

Conclusion

The majority panel acknowledges that the appellant may benefit from the crown that is proposed by her dentist. However, based on the dentist's evidence and the coverage requirements set out in the EAPWDR and the Schedule of Fee Allowances, the majority panel finds that the ministry's reconsideration decision denying the requested coverage for dental services was a reasonable application of the legislation in the circumstances of the appellant. The majority panel therefore confirms the reconsideration decision and the appellant is not successful on appeal.

Dissenting Member Analysis

The dissenting member disagrees with the reasons above and concludes differently than the majority in their finding that section 4.1(2)(b)(i) of Schedule C of the EAPWDR was met and that it was unreasonable for the ministry to find otherwise, and also that the reasons given in the decision were unreasonable.

Beginning with the description of the evidence and submissions:

The dissenting member does not find the degree of illegibility in the Standard Dental Claim Form of March 30, 2022 as set out in the description of it above. That form which revised the amounts and a code for authorization contained handwriting that states:

“Resubmitting

We are requesting that you reconsider our request for preauthorization.

[The appellant] has a large [unclear] filling on tooth #27. She presented to our office Dec2/20 with a fractured DL cusp the filling was repaired on Dec 8/20 however has since broken again. Tooth #27 is in need of a crown. [sic]

The dissenting member disagrees with the majority's finding that it was the appellant's position that the dentist did not eliminate the option of a removable prosthetic (see last paragraph under Appellant Position).

The dissenting member also notes and considers that both the appellant and her advocate/family member stated they do not understand the ministry decision. The advocate made general reference to *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 and *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 as support for the proposition that reasons must be transparent, intelligible and provide justification in relation to the facts and the law. They felt that this standard was not

met. The dissenting member agrees that there is a lack of reasons by the ministry for stating that section 4.1(2)(b)(i) was not met – as will be discussed below.

The analysis of the evidence leads the dissenting member to a different point than the majority:

The dissenting member disagrees with the majority assessment of the December 16, 2021 dentist statement (signed “For” the sender by a Certified Dental Assistant). The dissenting member disagrees that the statement “There is no existing prosthesis” was referring to a removable prosthesis, as opposed to being a reference to the lack of a prosthesis of any kind – removable or permanent. That phrase read together with the next phrase “A crown is required” means that the patient does not have a crown (a permanent prosthesis) and one is prescribed. The basis of that imperative is set out in that dentist’s letter and the imperative nature is reinforced or affirmed in the note written on the dentist’s submission of the Standard Dental Claim Form dated March 30, 2022 saying that “Tooth #27 is in need of a crown”. The existence of that form was noted by the ministry as evidence but the handwritten statement does not appear to have been considered.

The ministry stated in its reasons the following – which is the full extent of the reasons on this key point and to which *Vavilov* is relevant:

While the ministry acknowledges that your dentist does not recommend extracting the tooth and a crown is the preferred method to treat your dental condition, the information submitted with your initial request and Request for Reconsideration does not establish you are *unable to use a removeable prosthetic* (e.g. denture) for one of the reasons listed above (items i, ii, iii, and iv) . As a result, your request for coverage of a Full Cast Metal Crown and Restoration (fee code 27301 and 23602) does not meet the eligibility requirements set out in the *EAPWD* Regulation, Schedule C, subsection 4.1(2) (b). [Emphasis removed]

However, the evidence from the dentist uses imperative or prescriptive language, and it is not presented as one of various options. This is clear in the mandatory wording in the December letter it states that “[a] crown is required” (with rationale given) and in the handwritten notes of the March 30, 2022 Standard Dental Claim Form where it states that “Tooth #27 is in need of a crown”.

The rationale in the December letter also supports the statements of the appellant in her reasons for requesting reconsideration. She stated that the dentist had informed her that loss of the tooth would compromise her jaw. Nothing in the evidence contradicts that. The ministry’s reasons did not indicate consideration that removal of the tooth would compromise the appellant’s jaw, nor any consideration of that statement in conjunction with the dentist’s imperative statements made without any expression that something less was an acceptable alternative. The reasonable conclusion is that the dentist did preclude the use of a removable prosthetic.

In coming to that conclusion the dissenting member considers that no document from the dentist described the treatment by way of a crown as optional or merely recommended. Only in the appellant’s communication with the ministry was treatment described as recommended or a best option. That appellant’s interpretation might be seen as suggesting that the dentist presented options but this contradicts the documents from the dentist and is, at best, lay hearsay of what an expert stated. The ministry had the expert’s statements. However, it is evident from the ministry’s ‘acknowledgement’ (in the reasons quoted above) that the ministry read down the dentist’s imperative words as if merely preferred. From the foregoing I find that the ministry had no reasonable basis to reject the dentist’s submissions in favour of the appellant’s lay interpretation and hearsay – if indeed this was the reason although it was unexplained in the Reconsideration Decision.

In making this finding the dissenting member applies the transparency and justification standards expressed in *Vavilov* and (citing paragraph 85 of that case) that “a reasonable decision is one that is based on an internally coherent and rationale chain of analysis and that is justified in relation to the facts and law that constrain the decision maker.”

The dissenting member makes no determination of the appropriateness of the fee codes or the amounts shown, as the first is unnecessary and the latter is outside our scope of decision making here.

For the foregoing reasons, and excluding consideration of fee codes and amounts, the dissenting member has determined that, in respect of section 4.1(2)(b)(i) of Schedule C of the EAPWDR, the Reconsideration Decision was not supported by the evidence nor a reasonable application of the applicable enactments in the circumstances. As these findings are in the minority the decision of the majority determines whether the ministry’s decision is rescinded or confirmed.

Employment 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, or
- (b) any other health care goods or services.

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

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

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 family unit in receipt of disability 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, other than a dependent child, 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: ...

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....

"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 person receiving the service....

Dental supplements

4 (1.1) The health supplements that may be paid under section 63 [*dental supplements*] are basic dental services.....

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.

Schedule of Fee Allowances - Crown and Bridgework Effective April 1, 2010

| FEE NO. | FEE DESCRIPTION | FEE AMOUNT (\$) |
|---------|-----------------|-----------------|
|---------|-----------------|-----------------|

CROWNS

Note: Limited to one per tooth in a five-year period. Only full cast metal crowns will be considered on numbers 6, 7 and 8.

| | | |
|-------|------------------------|---------|
| 27301 | Crown, Full Cast Metal | *539.90 |
|-------|------------------------|---------|

...

*Denotes Lab fee(s) included

APPEAL NUMBER 2022-0091

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) and Section 24(1)(b)
Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name
Inge Morrissey

Signature of Chair

Date (Year/Month/Day)
2022/06/16

Print Name
Bob Fenske

Signature of Member

Date (Year/Month/Day)
2022/06/16

Print Name
Kent Ashby

Signature of Member Dissenting member

Date (Year)
2022/06/16