

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 June 24, 2022, which denied the Appellant's request for coverage of surgical standard upper dentures and surgical standard lower dentures (collectively the Upper and Lower Dentures) over the \$1,000 limit for basic dental services because the Ministry is not authorized to provide the requested coverage.

In addition, the Ministry determined that the Appellant is not eligible for coverage of Upper and Lower Dentures as an emergency dental service 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 for Persons with Disabilities Act (EAPWDA), Section 25(1)

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 57, 62, 63, 64, 65, and 69

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

Schedule of Fee Allowances – Dentist, Emergency Dental – Dentist, Parts A and 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.

The evidence before the Ministry at reconsideration included the Appellant's Request for Reconsideration (RFR), dated June 6, 2022, which included:

- The Appellant's reasons for the RFR, which are as follows:
 - Pacific Blue Cross (PBC) only approved \$238 of the \$18,000 required for the procedure and the Appellant does not have the financial resources to pay for the uninsured addition costs;
 - Her medical condition causes her teeth to become opalescent and brittle and as a result they break easily and require special care; and treatment for another medical condition causes additional dental problems;
 - Lack of having proper teeth does not allow her to chew food well, and due to another medical condition she is unable to take required nutritional supplements; and,
 - She is in a lot of pain most of the time due to the condition of her teeth.
- A one-page letter, dated June 3, 2022 and addressed "*To whom it may concern*", signed by the Appellant's "general dentist", describing the Appellant's dental condition and describing the best treatment path (the General Dentist's Letter);
- A one-page letter, dated June 5, 2022 and addressed "*To Whom it May Concern*", signed by a medical practitioner, describing the Appellant's dental condition and stating the "*(The Appellant) should receive coverage for her dental costs and dentures*" (the Medical Practitioner's Letter);
- A one-page letter, dated June 6, 2022 and addressed "*To Whom it May Concern*", signed by a Prosthodontist, describing the Appellant's dental condition and describing the proposed treatment (the Prosthodontist's Letter). In part, the Prosthodontist's Letter states:

"(The Appellant) has oligodontia, opalescent and malformed teeth, recurrent carries and small, irregular arch forms. Her existing dentation does not inter-articulate and she is currently restored with maxillary and mandibular natural tooth overdentures (dentures that fit over top of her natural teeth) [the Overdentures]. As (the Appellant's) own teeth do not inter-articulate, she is unable to properly masticate her food without her dentures in place, and as such, having well-fitting functional dentures is essential for her regular function and proper nutrition.

To address her failing dentition, we would like to propose extraction of her remaining dentation and replacement using implant supported Overdentures. The use of traditional dentures was considered, however due to (the Appellant's) small irregular arch forms, the palatal vault, underdeveloped residual ridges and shallow vestibules

the anatomical expectations for complete denture use are poor support, stability and retention ... our tentative treatment plan includes:

- *Extraction of remaining dentation*
- *Interim tooth placement using immediate dentures*
- *Placement of 4 maxillary and 4 mandibular implants*
- *Definitive restoration with upper and lower implant Overdentures using locator attachments”;*
- An eleven-page research publication titled “*Direct radiation-induced effects on dental hard tissue*”;
- Three pages of what appears to be a four page pamphlet discussing the effect of head radiation on the mouth;
- Ten pages of excerpts from a medical foundation publication on the topics of “*Nutrition and Osteogenesis Imperfecta (OI)*”, “*Fast Facts on OI*”, and “*Dental Care for People with Osteogenesis*”;
- Six X-Ray images of the Appellant’s teeth;
- A three-page PBC claim coverage details report (the PBC Coverage Report) in the Appellant’s name, dated June 24, 2022, providing a summary of coverage provided between January 1, 2021 and June 24, 2022 showing an amount claimed total in the amount of \$1,561.08 and an amount paid total of \$933.46; and,
- A three-page PBC report titled “*Denture Request – Made February 17, 2022*” which identifies the estimated cost of the Appellant’s prescribed dental services (\$18,000) and the amount covered by PBC insurance (\$235.79).

Additional Information

In the Notice of Appeal (NOA), dated July 19, 2022, the Appellant wrote “*I disagree with the decision as I have a severe medical condition amongst other medical issues that effects my teeth and am unable to eat and get proper nutrition. I have a dentist that is specialized in working with people with disabilities and the costs are too high for me to afford*”.

Evidence Presented at the Hearing

The Appellant was joined at the hearing by a representative (the Representative).

At the hearing, the Appellant described her medical condition (OI) and said that said 50% of those with OI also develop Dentinogenesis Imperfecta, as she has. She explained that when she was a child her mother could not afford to get her braces which might have been at least partly effective in treating her condition. She said that her teeth wear down over time and that she has already had 6 or 7 teeth removed. When she was about 20 years old she was able to have Overdentures made using funds she had inherited.

The Appellant explained that her Overdentures cover and protect her remaining seven teeth, but those Overdentures need to be replaced. Without new Overdentures she will lose more teeth, and if she loses any more teeth she will not be able to wear Overdentures. She said that she can't have any of her remaining teeth extracted because the bone in her gums will wear down to the point that posts to hold dentures can't be inserted, and this means that she won't be able to wear dentures. As a result, she will be unable to chew food and faces the risk of developing infections. She also said that her jaw was misaligned, and that specialized dentures can be adjusted to fit her misaligned jaw.

The Appellant also referred to the information contained in the Prosthodontist's Letter, emphasizing that she is unable to get proper nutrition without Overdentures, and without Overdentures she won't be able to eat solid foods because she won't be able to chew. She said her lack of proper dentures has already caused her to choke and throw up, referring to the General Dentist's Letter, the Medical Practitioner's Letter, the Prosthodontist's Letter, and the X-Ray images in the appeal materials.

The Appellant also said that her dental condition is exacerbated by radiation she had for treatment of brain cancer, that she has a "*breathing condition*" which might be asthma, and that better dentures might improve her breathing. She stated that her mouth is always in pain.

Speaking from his personal experience, the Representative said that the Ministry has some discretion in these situations, because he is aware that Ministry policy sometimes allows for "*exceptions in unusual circumstances*". He said that he has a disability, and when he has had to go to the Ministry for something that the Ministry won't fund, they do sometimes provide the funding with medical justification. In response to a question from the Panel, the Representative said he didn't know where the legislation provides for this kind of discretion, and when asked, the Ministry stated that such discretion does not exist.

In response to a question from the Panel, the Appellant said that in addition to the care and treatments she has been provided with by her Dentist she had been referred to the Prosthodontist who had developed the treatment plan referred to in the Prosthodontist's Letter. She said that he has offered her his services at a discounted rate and that the normal fee for the services he and the Dentist were recommending was \$20,000. Without the Ministry's assistance she said that she could not possibly afford to pay for the treatment herself, and that she has approached the BC Dental Association for financial support but had been told they couldn't help her because the required dental treatments were the result of a pre-existing condition.

At the hearing, the Ministry relied on its RD, and was asked by the Panel whether there was a different fee schedule for dental services provided by a prosthodontist. The Ministry said that there was a different fees schedule for dental services provided by certified specialists, and that a prosthodontist was considered a certified specialist. The Ministry said that it would need a few minutes to review the differences between the two fee schedules, and the hearing was adjourned for 20 minutes.

When the hearing reconvened, the Ministry said that it has delegated the power and duties set out in the legislation to PBC for determining whether any coverage for specific dental services applies based on the information in the fee schedules, and if it does, the amount of coverage available to the client. Regarding the fee schedule for dental service provided by certified specialists, the Ministry said that the basic eligibility criteria are the same with respect to most aspects of coverage. The Ministry said that this applied, for example, to the total amount available for basic dental services in the two year period, the types of dentures that are covered, and the required conditions for emergency dental services, including that if the dentures are required as a result of extractions for the relief of pain resulting in full clearance of the arch or arches, the clearance must have taken place in the preceding six months.

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.

No new evidence was provided in the NOA.

New evidence presented at the hearing by the Appellant comprised the further details about the nature of her dental condition and the challenges she would face if she were not provided with the financial assistance she requires. The Panel admits the new information as it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The Panel assigns moderate weight to the new information because, while the Panel has no reason to doubt the Appellant's testimony, the possible effects of not having the prescribed dental treatment done was not provided by a dentist, a dental specialist or other medical practitioner, and therefore has not been corroborated by a dental or medical professional.

The Ministry did not object to the admittance of any of the new evidence.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's RD dated June 24, 2022, which denied the Appellant's request for the full cost of the fees related to the Upper and Lower Dentures and the Overdentures was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. In other words, was it reasonable for the Ministry to deny the additional coverage because the requested dental treatment is not set out in the Schedules of Fee Allowances – Dentist (the Fee Schedule)? And was it reasonable for the Ministry to deny the additional coverage because the Appellant is not eligible for coverage of the Upper and Lower Dentures or the Overdentures as an emergency dental service, as a crisis supplement, or because the dentures were not required to meet a life-threatening need?

Position of the Parties

The Appellant's position is that she has a rare dental condition that causes her teeth to break easily and require special care, which is exacerbated by previous radiation treatment she required for brain cancer, and she is appealing the Ministry's RD because she is unable to afford the \$18,000 cost of the dental treatment necessary to address the problem with her teeth.

The Ministry's position is that the legislation does not permit funding for the required dental procedure, and the Ministry has no discretion in providing funding for dental costs in excess of the permitted limits as set out in the legislation.

Panel Decision

EAPWDR Schedule C, Section 1 defines "*denture services*" as services and items that, if provided by a dentist, are set out under fee codes 51301 to 51302 in the Fee Schedule, which accordingly is determined by the Ministry and published on the Ministry's website. EAPWDA Section 25(1) permits the Ministry to "*delegate to any person or category of persons any or all of the minister's powers, duties or functions under this Act*", and that the review of insurance claims on behalf of Ministry to determine the amount of coverage for dental services has been delegated to PBC by the Ministry. Therefore, while PBC manages the review of claims for payment, it is the Ministry, not PBC, that sets the limits to the rates of reimbursement for dental services that appear in the Fee Schedule.

Basic Eligibility

In the RD, the Ministry said that the Appellant was eligible for coverage of basic dental services, so this criterion is not at issue in this appeal.

Eligibility for Coverage of Services in Excess of the Ministry Rates

In the RD, the Ministry determined that the Appellant was not currently eligible for coverage for Upper and Lower Dentures as a basic dental service over the \$1,000 two year limit for basic dental services. The Ministry further determined that EAPWDR Schedule C, Section 4(3)(a)

says that a client may exceed this limit if they require a full upper and lower denture because of extractions made in the previous 6 months to relieve pain. Because the Appellant has not had her extractions yet, the Ministry determined that it is unable to approve coverage over the basic limit. Once the Appellant's extractions are complete, the Ministry said that the Appellant may qualify for coverage for full upper and lower dentures over the basic limit, up to the rate set out in the Schedule of Fees-Dentist, providing the dentures are placed within 6 months of the extraction.

In the Appellant's original claim, PBC determined that the Appellant's coverage for the Upper and Lower Dentures was limited to \$235.79, representing the difference between the total amount of basic dental services available to a person with disabilities every two years (\$1,000) and the amount at the time of her claim remaining after other basic dental service claims that had been paid by PBC on the Appellant's behalf since the beginning of the current two year period (i.e., January 1, 2020). According to the RD, since the original claim was adjudicated, additional basic dental services have been provided to the Appellant, and as a result, the balance remaining that could be applied towards the cost of the Upper and Lower Dentures is \$66.54.

"*Basic dental services*" are defined in EAPWDR Schedule C, Section 1 as any dental service appearing in the Fee Schedule. The Panel notes that both upper and lower dentures are listed in the Fees Schedule as fee codes 51301 and 51302 respectively and are covered to a maximum amount of \$789.75 and \$816.00 respectively for an eligible adult, and that certified specialists may receive an additional 10%. However, the Ministry policy regarding the initial placement of dentures is as follows: "*All Ministry clients ... are eligible for a single complete denture (upper or lower), or complete dentures if the dentures are required as a result of extractions for the relief of pain resulting in full clearance of the arch/arches. This clearance must have taken place in the preceding six months*" (emphasis added). While the Panel is not bound by Ministry policy, this policy largely mirrors EAPWDR, Schedule C, Section 4(1)(3)(a).

The Panel finds that the Ministry reasonably determined that the Appellant qualified for coverage for Upper and Lower Dentures only up to the amount remaining on the \$1,000 two year limit because the extractions have not been made.

Eligibility for Coverage of Complete Upper and Lower Overdentures and +E Additional Expense of Materials

In the PBC Coverage report, PBC indicated that it was unable to provide reimbursement for upper and lower Overdentures because they are not a covered benefit under the Appellant's plan.

In the RD, the Ministry determined that it was unable to cover the cost of upper and lower overdentures or "*+E additional expense of materials*" because "*the requested dental treatment(s) ... (are) not set out in the Schedules of Fee Allowances – Dentist*".

The Panel notes that, while the PBC has fee codes for maxillary and mandibular Overdentures (51931 and 51932 respectively), neither fee code appears in the Fee Schedule. In addition, “+E *additional expense of materials*” (fee code 99555) is not included in the Fee Schedule. As the Ministry is only authorized to provide dental services that are listed in the Fee Schedule, the Panel finds that the Ministry reasonably determined that the Appellant is not eligible for complete upper and lower Overdentures or any additional expense of materials.

Eligibility for Coverage of Dentures 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. Part C of the Fee Schedule provides a list of codes and services that may be funded when an emergency dental service is required.

In the RD, the Ministry determined that the list of emergency dental services includes denture repairs and adjustments, but “*does not provide for coverage of dentures themselves*”.

At the hearing, the Appellant said that her mouth was “*always in pain*”. However, the Panel notes that no evidence has been provided by a medical or dental professional to indicate that the Appellant requires the dentures for the immediate relief of pain. Even if the Overdentures were required in the Appellant’s case for the immediate relief of pain, Part C of the Fee Schedule, which provides details of the plan coverage for emergency dental services, lists minor denture adjustments, denture repairs and additions, and denture relining, but does not include the initial placement of Lower or Upper Dentures or Overdentures.

The Panel finds that the Ministry reasonably determined that the Appellant is not eligible for coverage of Overdentures as an emergency dental service.

Eligibility for Coverage of Dentures 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*”.

In the RD, the Ministry determined that it was unable to provide coverage for the Appellant as a life-threatening health need because dental treatments and dentures are not listed in EAPWDR Schedule C Sections 2(1)(a) and (f) and Section 3.

Before addressing the requirement that a person is facing a direct and imminent life threatening need, the Ministry must determine if the medical device in question is an eligible device. A medical device must be one of those that are listed in EAPWDR Schedule C Sections 2(1)(a) and (f) and Section 3. Those devices are medical or surgical supplies, transportation to or from a specified type of medical facility, canes, crutches, walkers, wheelchairs and wheelchair seating systems, scooters, toileting and transfer positioning aids, hospital beds, pressure relief mattresses, floor or ceiling lift devices, breathing devices, and orthoses.

The Panel notes that most of the health supplements and medical devices or equipment identified in EAPWDR Schedule C Sections 2(1)(a) and (f) and Section 3 would clearly not include Overdentures. However, one class of medical equipment and devices listed there might be considered to be in the circumstances of the Appellant (specifically breathing devices).

At the hearing, the Appellant explained that she has a breathing problem. She suggested that Overdentures, which the Appellant said might also serve to assist her with breathing and reducing the risk of food entering her lungs, might be considered to serve as a breathing device. However, as is the case with other medical devices in Section 3, eligible breathing devices are specifically listed in Subsection 3.9, and comprise: a positive airway pressure device, an apnea monitor, a suction unit, a percussor, a nebulizer, a medical humidifier, or an inhaler accessory device (or any accessories or supplies required in conjunction with any of these devices). Because allowable devices are specifically listed, any device that doesn't fit the description of one of the listed devices cannot be included. No evidence has been presented to suggest that the Appellant's overdentures fit the description of any of the breathing devices listed in Subsection 3.9. Therefore, the Panel finds that none of the available evidence suggests that the Overdentures could reasonably be considered to be a breathing device.

Because the Appellant's specialized dentures do not qualify as any of the eligible listed medical devices, the Panel finds that the Ministry was reasonable in determining that the Appellant was not eligible for coverage of the specialized dentures as a life threatening health need.

Eligibility for Coverage of Dentures as a Crisis Supplement

EAPWDR Section 57(3) says that a crisis supplement may not be provided for the purpose of obtaining a supplement described in Schedule C.

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 finds that the Ministry reasonably determined that the Appellant did not qualify for coverage of the specialized dentures as a crisis supplement because they would be a health care supplement described in Schedule C.

* * * *

The Panel very much sympathizes with the Appellant in this case. It is clear to the Panel that the Appellant's Upper and Lower Dentures and Overdentures are specialized and of great importance to the ongoing health of the Appellant, and that the cost of the Upper and Lower Dentures and the Overdentures is much higher than the maximum amounts available under the dental plan.

The legislation allows for coverage for medical devices or equipment that are designed to address special requirements, but the legislation is exclusive in that, to be eligible for coverage, the devices must fit within the definition of a range of standard or customized medical devices or equipment. The Panel also notes that, even if the Lower and Upper Dentures and the Overdentures were specifically included as a medical device, for the Appellant to qualify for

assistance, the device would have to meet the other legislated criteria, i.e., that the person faces a direct and imminent life threatening need.

Neither the Ministry nor the Employment and Assistance Appeal Tribunal (the Tribunal) has discretion to approve funding for any allowances or supplements that exceed the limits or restrictions set out in the legislation. And under the governing legislation, a Tribunal panel's authority is limited to determining whether the Ministry's RD was "*a reasonable application of the applicable enactment*" and cannot rescind a decision that it might consider unfair if it determines that the Ministry applied the legislation reasonably.

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, and the Appellant is not successful in her appeal.

APPENDIX - LEGISLATION

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Delegation of minister's powers and duties

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 ...

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 ...

Orthodontic supplement

65 (1) Subject to subsection (2), the minister may provide orthodontic supplements to or for

(a) a family unit in receipt of disability assistance, if the orthodontic supplements are provided to or for a person in the family unit who is ...

(ii) a person with disabilities ...

(2) For a person referred to in subsection (1) to be eligible for orthodontic supplements, the person's family unit must have no resources available to cover the cost of the orthodontic supplements and the person must

(a) have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations, and

(b) obtain prior authorization from the minister for the orthodontic supplements.

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

(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 ...

"dentist" means a dentist registered with the College of Dental Surgeons of British Columbia continued under the *Health Professions Act*;

"denture services" means services and items that

(a) if provided by a dentist

- (i) are set out under fee numbers 51101 to 51302 in the Schedule of Fee Allowances — Dentist that is effective September 1, 2017 and is published on the website of the ministry of the minister, and
- (ii) are provided at the rate set out in that Schedule for the service or item and the category of person receiving the service or item ...

"emergency dental service" means a dental service necessary for the immediate relief of pain that,

(a) if provided by a dentist,

- (i) is set out in the Schedule of Fee Allowances — Emergency Dental — Dentist, that is effective September 1, 2017 and is published on the website of the ministry of the minister, and
- (ii) is provided at the rate set out in that Schedule for the service and the category of the person receiving the service ...

Medical equipment and devices

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.

(2) Subject to subsections (3) to (11) of this section, an orthosis is a health supplement for the purposes of section 3 of this Schedule if

- (a) the orthosis is prescribed by a medical practitioner or a nurse practitioner,
- (b) the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality,
- (c) the minister is satisfied that the orthosis is required for one or more of the following purposes:
 - (i) to prevent surgery;
 - (ii) for post-surgical care;
 - (iii) to assist in physical healing from surgery, injury or disease;
 - (iv) to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and
- (d) the orthosis is off-the-shelf unless
 - (i) a medical practitioner or nurse practitioner confirms that a custom-made orthosis is medically required, and
 - (ii) the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist ...

(7) For an orthosis that is a cranial helmet, in addition to the requirements in subsection (2) of this section, the cranial helmet must be a helmet prescribed by a medical practitioner or nurse practitioner and recommended for daily use ... to protect ... cranial deficits.

Table 1

| Item | Column 1 Orthosis | Column 2 Limit |
|------------|-----------------------------|--------------------------|
| ... 10 ... | cranial helmet | 1 |

... (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 ...

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.

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

- (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, ...

- (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 2022-0161

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)

2022/08/10

Print Name

Anil Aggarwal

Signature of Member

Date (Year/Month/Day)

2022/08/10

Print Name

Wendy Marten

Signature of Member

Date (Year/Month/Day)

2022/08/10