

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 August 23, 2022, which denied the Appellant's request for funding for two teeth implants and other related dental procedures.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Sections 16
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62, 63, 63.1, 64, 65, and 71
EAPWDR, Schedule C, Sections 1, 4, 4.1 and 5
Schedule of Fee Allowances – Dentist - effective September 1, 2017 (the Fee Schedule)

The relevant legislation is provided in the Appendix

Part E – Summary of Facts

The Appellant is a recipient of disability assistance.

According to information included in the Ministry's RD:

- On April 19, 2022, the Appellant submitted a Pacific Blue Cross (PBC) predetermination summary and a dental quote from a health authority (the Health Authority Implant Quote) to seek coverage for dental procedures that had been denied by PBC;
- On the same date, the Ministry confirmed with PBC that the Appellant's claim was rejected due to the duplicate submissions for Fee Code 1204 (*Examination and Diagnosis*), and that the other fee codes were not eligible for coverage;
- Also on that date, the Ministry contacted the Health Authority which confirmed that it was aware that it had submitted duplicate requests, and reported that it did so at the Appellant's request as she would need the procedure twenty times over the next two years, and;
- On July 22, 2022, the Appellant provided a letter "*discussing (the) two quotes provided*". The details included in that letter are included in the Appellant's reasons for the RFR as summarized below.

The evidence before the Ministry at reconsideration included the Appellant's Request for Reconsideration (RFR), dated August 1, 2022, which included:

- The Appellant's reasons for the RFR, as follows:
 - "*Legislation allows dental coverage, however the cost for treatment must be lower than the cost of other options*";
 - In the Appellant's specific case "*the only other option would be to remove my entire mouth of teeth and purchase two dentures, which would be increasingly higher (than) the original predetermination by PBC*";
 - The Appellant has "*has had a partial (denture) for over 13 years*", which "*at the time was the most effective way*"; and,
 - The Appellant "*is now in need of a bone (graft) and the implants, as (her) teeth are now 'caving in' towards the partial denture, making (the partial denture) of no use anymore*".
- A three-page PBC statement dated March 22, 2022 in the "Patient Name" of the Appellant (the PBC Statement), identifying many procedures, with amounts submitted totalling \$10,081.40, and eligible amounts and plan-approved amounts totalling \$43.50;
- A one-page Health Authority Implant Quote in the amount of:
 - \$50 for a "*Pan Xray*";
 - \$60 for a "*CT Scan*"; and,

- \$350 for “10 visits over 2 years to check the implant”

Additional Information

In the Notice of Appeal (NOA), dated, 2022, the Appellant wrote “*the dental work is a medical need that has been long standing. The legislation is over 20 years outdated, the ministry workers need to start assessing requests on a case-by-case basis with more time, looking at each person’s history on PWD*”.

Evidence Presented at the Hearing

At the hearing, the Appellant provided some background about her earlier dental health. About thirteen years ago, she had had some teeth pulled and a partial denture provided which she paid for herself. She said that six years ago she had first applied to the Ministry for dental coverage for a crown and related bridge work. While the Ministry had approved coverage for this work, she said that she did not proceed with the dental work at that time. Regarding the denial for funding that is the subject of this appeal, the Appellant explained that the request for coverage was originally supported by the assessment that was done 6 years ago (“*based on the old dental records*”), but the Ministry told her that she would have to get a new quote and file a new claim through PBS.

The Appellant also said that the legislation and policy is 22 years old (adding “*I think we can all agree that the policy and legislation is all outdated*”), and that the Ministry should base any decision on funding the cost of a request for dental work on a case-by-case basis, not on the out-dated legislation. She argued that some other Ministry clients are eligible for the type of dental services she requires, and wondered why she wasn’t. She also said that other Ministry clients were able to get crisis grants to cover the cost of having dental and medical procedures done in other countries.

The Appellant stated that in August 2021 she was referred to a health authority dentist who provided a quote at a “*discount amount*” and received a root canal and a crown at that time. She also said that she was told she would need a bone graft and she noted that the partial denture she had received previously no longer fit properly (“*it fell out of my mouth all the time*”).

The Appellant said that she had two options: she could continue to receive root canals from time-to-time, as required, and have replacement partial dentures fitted; or she could have all of her teeth pulled and get a full denture, which would cost more.

In response to a question from the Panel, the Appellant said she had not provided a request for funding to the Ministry based on the Health Authority Implant Quote. The Appellant acknowledged that the Health Authority Implant Quote seemed to describe different dental services than the more detailed information in the PBC Statement and said that she didn’t know why. In response to another question from the Panel, the Appellant said that she doesn’t recall asking the dentist to submit a claim for the multiple examinations and diagnoses in advance of that work being done. In response to a follow-up question, the Appellant said that she thought that she had contacted her dentist to ask that they make another claim for only the single

examination and diagnosis service that had been done after the initial claim was denied, but that she wasn't absolutely sure had asked for that.

At the hearing, the Ministry relied on its RD, and emphasized that the dental services that the legislation permitted were covered under the health supplement provisions set out in EAPWDR Schedule C. The Ministry also said that if a dental service fee code was not listed in the Fee Schedule it was not an eligible benefit. The Ministry explained that a client was entitled to \$1,000 in basic total dental coverage every two years for eligible benefits and that it can't provide coverage in advance of services being provided. The Ministry said that there are exceptions that allow for costs over the \$1,000 every two years in the event of an emergency, but only if the dental work is required for the immediate relief of pain.

In response to a question from the Panel, the Ministry said it does not have the authority to assess claims on a case-by-case basis or to exceed the limits of coverage set out in the legislation, adding "*the legislation is written so it is equitable – everyone is at the same level*".

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 presented in the NOA.

New oral evidence presented at the hearing by the Appellant comprised information about the Appellant's past history of her dental service requirements dating back thirteen years. EAPWDR Section 16(1) says that a person may ask the Ministry to reconsider any decision that results in a refusal to provide a supplement to or for someone in a person's family unit. The decision under appeal in this case is the Ministry's August 23, 2022 decision to deny the Appellant's request for funding for two teeth implants and other related dental procedures that were included in the March 22, 2022 PBC Statement. This PBC Statement does not include any previous dental service claims. Therefore, the Panel does not admit the new oral evidence presented at the hearing by the Appellant because it is not reasonably required for a full and fair disclosure of all matters related to *the decision under appeal*.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's RD dated August 23, 2022, which denied the Appellant's request for funding for two teeth implants and other related dental procedures 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 some of the additional coverage because those services are not set out in the Fee Schedule and the Ministry is not authorized to provide coverage for services that are not set out in that schedule? And was it reasonable for the Ministry to deny some of the additional coverage because the claims represent duplicate charges for one of the fee codes?

Position of the Parties

The Appellant's position is that the Ministry should base any decision on funding the cost of a request for dental work on a case-by-case basis rather than on out-dated legislation, and that the Ministry should treat all clients equitably.

The Ministry's position is that the specific services the Appellant has requested are either not included in the Fee Schedule or, in the case of the nineteen examination and diagnosis fees, in excess of the rates set out in the Fee Schedule. In addition, there are no exceptions in policy or legislation and the Ministry has no discretion in this matter. Therefore, the Ministry is not able to provide coverage for the dental services.

Panel Decision**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 for Fee Codes 07011, 99111, 79941, 05102, 03001, 72421, and 27204

In the RD, the Ministry determined that the Appellant was not currently eligible for coverage for Fee Codes 07011, 99111, 79941, 05102, 03001, 72421, and 27204 because none of those fee codes are included in the Fee Schedule.

EAPWDR Schedule C, Section 1 defines "*basic dental service*" as a service that, if provided by a dentist, *is set out under fee codes in the Fee Schedule* (emphasis added), and which is provided at the rate set out in the Fee Schedule for a particular service and the category of person receiving that service. Because the services in question are provided by a dentist, the Panel finds that the Ministry reasonably determined that they meet the definition of a "*basic dental service*".

Having reviewed the fee codes in the Fee Schedule, the Panel notes that none of the above-noted fee codes are listed. Therefore, the Panel finds that the Ministry reasonably determined

that the Appellant did not qualify for coverage for Fee Codes 07011, 99111, 79941, 05102, 03001, 72421, and 27204.

Eligibility for Pre-emptive Coverage for Nineteen Instances of Fee Code 01204 – Specific Oral Examination and Examination, Evaluation, Diagnosis and Recording of a Specific Situation

In its RD, the Ministry determined that the Appellant was entitled to coverage for the cost of one examination (Fee Code 01204), (as also determined by PBC). In addition, the Ministry determined that in the other nineteen instances the claims for Fee Code 01204 were “duplicate claims” because the dentist had only performed one examination relating to the claim in question. At the hearing, the Appellant acknowledged that the other nineteen examinations were expected to be required in the future.

Regardless of whether the additional nineteen claims for Fee Code 01204 were duplicate claims or anticipated future claims, the Panel finds that the Ministry reasonably determined that the Appellant is not eligible for more than one examination as no evidence was presented to suggest that more than one examination occurred.

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 and was reasonably supported by the evidence. 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

Reconsideration and appeal rights

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

(a) a decision that results in a refusal to provide ... a supplement to or for someone in the person's family unit ...

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

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

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

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

EMPLOMMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

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 ...

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) 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.

How a request to reconsider a decision is made

71 (1) A person who wishes the minister to reconsider a decision referred to in section 16 (1) [*reconsideration and appeal rights*] of the Act must deliver a request for reconsideration in the form specified by the minister to the ministry office where the person is applying for or receiving assistance.

(2) A request under subsection (1) must be delivered within 20 business days after the date the person is notified of the decision referred to in section 16 (1) of the Act and may be delivered by

- (a) leaving it with an employee in the ministry office, or
- (b) being received through the mail at that office.

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 ...

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 ...

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.

APPEAL NUMBER 2022-0209

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)

2022/10/08

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2022/10/08

Print Name

Effie Simpson

Signature of Member

Date (Year/Month/Day)

2022/10/08