

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of September 7, 2022 (the “Reconsideration Decision”), in which the Ministry determined that the Appellant was not eligible for a dental supplement for one of two services requested and was eligible for another only up to rates set out in the Dental Supplement (the “Dental Supplement”) for the Ministry’s Insurer, pursuant to section 4 of Schedule C to the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”). The Ministry also determined that the Appellant was not eligible for coverage of one of the requested services or coverage in excess of the rates set out in the Dental Supplement for another as either a crisis supplement or as a life threatening health need.

**Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act (“EAPWDA”), section 25  
EAPWDR- sections 57, 63, 63.1, 64, 65, 69, and Schedule C- Section 1, 4 and 5  
Schedule of Fee Allowances - Dentist

## Part E – Summary of Facts

The Appellant is a recipient of disability assistance.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- The Dental Supplement (Dentist), which included the Schedule of Fee Allowances – Dentist (the “Basic Dental Schedule”), the Schedule of Fee Allowances -- Emergency Dental (the “Emergency Schedule”), and the Schedule of Fee Allowances -- Crown and Bridgework (the “Crown and Bridge Schedule”);
- Treatment plan, dated July 24, 2022 (the “Treatment Plan”), for Appliances Periodontal Max, with fee code 14611 (“Code 14611”) in the amount of \$298.00 and Commercial Laboratory Procedure, with fee code 99111 (“Code 99111”), in the amount of \$193.00;
- A letter from Pacific Blue Cross (“PBC”), dated July 18, 2022 (the “PBC Letter”), indicating that coverage in the amount of \$244.35 was available for Code 14622;
- Letter from the Appellant’s otolaryngologist, dated July 14, 2022 (the “ENT Letter”), setting out that:
  - the Appellant has had right-sided ear pain since April 2022;
  - the Appellant also had complaints of throat irritation, choking, and food regurgitation;
  - the Appellant had right sided otalgia, with signs of eustachian tube dysfunction and laryngopharyngeal irritation;
- Dental Pre-treatment form, dated July 28, 2022 (the “Pretreatment Form”);
- Handwritten fax cover sheet from the Appellant to the Ministry, dated July 28, 2022;
- The Appellant’s Request for Reconsideration, dated August 23, 2022 (the “RFR”), with which was enclosed:
  - A letter from a local society;
  - A handwritten note from the Appellant, in which the Appellant wrote that:
    - the Appellant was seeking reconsideration of the Ministry denial;
    - the Appellant was out of money;
    - the Appellant’s health issues went back to March 2022;
    - the Appellant’s jaw problem was likely to worsen;
  - the Treatment Plan;
  - the PBC Letter;
  - the ENT Letter; and
  - the Pretreatment Form.

In the Appellant’s Notice of Appeal, the Appellant stated that the dental devices recommended by the Appellant’s dentist were the Appellant’s best hope of alleviating pain. The Appellant stated further that the pain interferes with daily functioning and has required attendance at the emergency room on two occasions. The Appellant stated that without the devices, she would be required to continue to use emergency services that were, in the words of the Appellant, ineffective.

At the hearing of the appeal, the Appellant stated that since March, she has been prescribed five different medications and has seen multiple doctors, including in the emergency room, an ear, nose, and throat specialist, and a dentist.

The Appellant described having significant pain with an impaired quality of life.

The Appellant stated that the legislation governing dental supplements needs to be re-vamped and is not realistic, given the cost of dental devices, and that the Ministry should have some exceptions. The Appellant described contacting at least one MLA about other potential resources to obtain the device.

The Appellant also described having discussions with both the dentist and the Ministry about other possible resources, but none were available. The Appellant stated that family was not able to help and that negotiating a payment plan was also not an option.

The Ministry relied on the Reconsideration Decision and stated that the EAPWDA authorizes the Ministry to delegate its powers and duties which, with respect to dental supplements, it has done. Specifically, it has delegated those powers to its insurer, PBC. In the result, the Ministry is limited to providing supplements in respect of dental services or equipment at the rates provided for in the Basic Schedule, the Emergency Schedule, or the Crown and Bridge Schedule and does not have the authority to pay supplements in respect of items not provided for in those schedules.

The panel admits the oral evidence given at the hearing of this appeal as evidence not part of the record but which the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

**Part F – Reasons for Panel Decision*****Issue on Appeal***

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant was not eligible for a dental supplement for one of two services requested and was eligible only up to rates set out in the Dental Supplement for another requested service, pursuant to section 4 of Schedule C to the EAPWDR. Whether the Ministry was reasonable in its determination that the Appellant was not eligible for coverage of one of the requested services or for coverage in excess of the rates set out in the Dental Supplement for the other as either a crisis supplement or as a life threatening health need is also an issue.

***Panel Decision***

Section 25 of the EAPWDA authorizes the Ministry to delegate its powers and duties under the EAPWDA. In the case of dental supplements, the Ministry has delegated its powers and duties to its insurer, PBC, to administer coverage for dental services and equipment.

Sections 63 through 65 of the EAPWDR set out the basic eligibility criteria for various types of dental-related supplements, including basic dental supplements (section 63), crown and bridgework supplements (section 63.1), emergency dental and denture supplements (section 64), and orthodontic supplements (section 65).

In addition to the basic eligibility set out in sections 63 through 65 of the EAPWDR, an applicant for a dental supplement must also meet the eligibility requirements set out in Schedule C to the EAPWDR.

Section 1 of Schedule C to the EAPWDR defines the specific dental items and services in respect of which the Ministry may provide supplements.

In that section, “basic dental service” is defined as a dental service, provided by a dentist, set out in the Basic Dental Schedule. As such, if a specific service or equipment is not referenced in the Basic Dental Schedule, the Ministry has no legal or statutory authority to provide it as a supplement. Likewise, “emergency dental service” is defined as a dental service necessary for the immediate relief of pain that is provided for in the Emergency Schedule. As Code 99111 is not listed in either of these schedules or, for that matter, the Emergency Dental Schedule or the Crown and Bridge Schedule, the Ministry has no legal authority to provide a supplement for that treatment and the panel finds that the Ministry was reasonable when it determined that it had no statutory authority to provide a supplement for Fee Code.99111.

The definitions of “basic dental service” and “emergency dental service” also set out that supplements for each of those services is also limited to the rate that is set out in the Basic Dental Schedule and the Emergency Schedule, respectively. In the Appellant’s case, the Basic Dental Schedule does reference Code 14611, which specifically references a maxillary periodontal appliance. However, the rate, as contemplated by the definition in section 1 of Schedule C to the EAPWDR, at which coverage is available is \$244.35 for an adult. Again, the

Ministry is, by the definitions in section 1 of the EAPWDR, limited to providing coverage at that rate and no more. Accordingly, the panel finds that the Ministry was reasonable in its determination that it had no authority to provide a supplement for this item at an amount in excess of the \$244.35 set out in the Basic Dental Schedule. While the Appellant's position is that the amount provided for in the Basic Dental Schedule is not realistic, the Ministry has no discretion to provide supplements at rates in excess of those provided in the schedules.

The Ministry also gave consideration to whether the Appellant might be eligible for assistance with obtaining either of the items sought as a crisis supplement. However, section 57 of the EAPWDR specifically excludes coverage for any supplement described in Schedule C, which includes dental supplements or, for even greater clarity, any other health care goods and services. As such, the panel also finds that the Ministry reasonably determined that it had no statutory authority to provide coverage for either of the items sought, as a crisis supplement.

Finally, the Ministry considered whether it could provide coverage to the Appellant as a person facing a direct and imminent life threatening need under section 69 of the EAPWDR. However, like section 57, section 69 limits what types of health related items are eligible for coverage. In this case, the items under Schedule C that could be eligible for coverage as an imminent or life threatening need are those set out only in sub-paragraphs (a) and (f) of section 2(1) of schedule C to the EAPWDR and the items provided for in section 3 through 3.12 (other section 3(1)(a) of Schedule C) of Schedule C to the EAPWDR. However, all dental and dental-related supplements are referenced in sections 4, 4.1, and 5 of Schedule C to the EAPWDR. As such, dental supplements are not eligible for coverage under section 69 and the panel finds that the Ministry was reasonable in its determination that it had no statutory authority to provide either of the items as a direct and imminent life threatening need.

In view of all of the foregoing, the panel confirms the Reconsideration Decision. The Appellant is not successful in this appeal.

### ***Relevant Legislation***

Section 25 of the EAPWDA authorizes the Ministry to delegate some of its powers and duties:

#### **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 except

(a) the power to prescribe forms, and

(b) the power to enter into an agreement under section 21 (2) or (2.1), unless section 21 (2.2) applies in relation to the agreement.

(2) A delegation of the powers, duties or functions of the minister must be in writing and may include any limits or conditions the minister considers advisable.

Section 57 of the EAPWDR authorizes the Ministry to pay a crisis supplement where an applicant meets the criteria for same:

**Crisis supplement**

- 57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if
- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
  - (b) the minister considers that failure to meet the expense or obtain the item will result in
    - (i) imminent danger to the physical health of any person in the family unit, or
    - (ii) removal of a child under the *Child, Family and Community Service Act*.
- (2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.
- (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.
- (4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:
- (a) if for food, the maximum amount that may be provided in a calendar month is \$40 for each person in the family unit;
  - (b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of
    - (i) the family unit's actual shelter cost, and
    - (ii) the sum of
      - (A) the maximum set out in section 2 of Schedule A and the maximum set out in section 4 of Schedule A, or
      - (B) the maximum set out in Table 1 of Schedule D and the maximum set out in Table 2 of Schedule D,as applicable, for a family unit that matches the family unit;
  - (c) if for clothing, the amount that may be provided must not exceed the smaller of
    - (i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and
    - (ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.
- (5) and (6) Repealed. [B.C. Reg. 248/2018, App. 2, s. 2.]
- (7) Despite subsection (4) (b), a crisis supplement may be provided to or for a family unit for the following:
- (a) fuel for heating;

- (b) fuel for cooking meals;
- (c) water;
- (d) hydro.

Sections 63 through 65 of the EAPWDR authorize the Ministry to provide various types of dental supplements:

#### 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, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

#### 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, or
- (b) a family unit, if the supplement is provided to or for a person in the family unit who
  - (i) is a continued person, and
  - (ii) was, on the person's continuation date, a person with disabilities.

#### Denture supplement

**63.2 (1)** Subject to subsection (2), the minister may provide any health supplement set out in section 4.2 [*denture supplements*] of Schedule C to or for a family unit in receipt of hardship assistance.

(2) A person is not eligible for a health supplement under subsection (1) unless

- (a) the person is not eligible for a supplement under section 63 [*dental supplements*], and
- (b) the person has had tooth extractions that were performed in the last 6 months because of pain and resulted in the person requiring a full upper denture, a full lower denture or both.

#### 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, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

#### **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
  - (i) under 19 years of age, or
  - (ii) a person with disabilities, or
- (b) a family unit, if the orthodontic supplements are provided to or for a person in the family unit who
  - (i) is a continued person, and
  - (ii) meets any of the following criteria:
    - (A) the person is under 19 years of age;
    - (B) the person was, on the person's continuation date, 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.

(2.1) and (2.2) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 5 (b).]

(3) Repealed. [B.C. Reg. 313/2007, s. 2 (e).]

Section 69 of the EAPWDR authorizes the Ministry to pay out certain types of medical supplements for persons facing a direct and imminent life threatening need:

#### **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:
  - (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, other than a dependent child.

Section 1 of Schedule C to the EAPWDR defines what dental services and emergency dental services may be provided for and at what rates:

#### 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,
- (b) if provided by a denturist,
  - (i) is set out in the Schedule of Fee Allowances — Denturist that is effective September 1, 2017 and is published on the website of the ministry of the minister, and

(ii) is provided at the rate set out in that Schedule for the service and the category of person receiving the service, and

(c) if provided by a dental hygienist,

(i) is set out in the Schedule of Fee Allowances — Dental Hygienist 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 the person receiving the service, and

(b) if provided by a denturist,

(i) is set out in the Schedule of Fee Allowances — Emergency Dental — Denturist, that is effective September 1, 2017 and is published on the website of the ministry of the minister, and

(ii) is provided at the rate set out in that Schedule for the service and the category of the person receiving the service;

Section 4 of Schedule C to the EAPWDR sets out that dental supplements are a “basic dental service”:

**Dental supplements**

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

Section 5 of Schedule C to the EAPWDR sets out that emergency dental supplements are those set out in the definition for “emergency dental service”:

**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.

The Schedule of Fee Allowances – Dental sets out the fee codes and the amounts payable:

2022-0218

**Schedule of Fee Allowances – Dentist**

<b>Fee Code</b>	<b>Description</b>	<b>Adult</b>
14611	Maxillary	244.35

2022-0218

**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  
Adam Shee

Signature of Chair

Date (Year/Month/Day)  
2022/12/2022

Print Name  
Susan Ferguson

Signature of Member

Date (Year/Month/Day)  
2022/12/2022

Print Name  
Peter Mennie

Signature of Member

Date (Year/Month/Day)  
2022/12/2022