

**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 9, 2022, which denied the Appellant's request for a Crown, Commercial Lab Fees and Restoration on a tooth (collectively the Dental Work).

Specifically, the Ministry determined that the Appellant is not eligible for coverage of the Dental Work as a basic dental service under the Schedule of Fee Allowances – Dentist, Emergency Dental – Dentist, effective September 1, 2017 (the Fee Schedule) as a crown and bridge supplement, as an emergency dental service, as a crisis supplement, or because it represented a direct and imminent life threatening health need.

**Part D – Relevant Legislation**

*Employment and Assistance Act (EAA), Section 22(4)*

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 63.1

EAPWDR, Schedule C, Sections 1 and 4.1

The Fee Schedule

***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 July 20, 2022, which included:

- The reasons for the RFR, which the Appellant says are as follows:

The Appellant's dentist (the Dentist), who the Appellant said she trusts and knows well, told her that she was approved for a single denture instead of the Dental Work she had requested. The Appellant described the services related to a single denture as *"(a) process and procedure that involves another molar extraction. This long procedure sounds very scary and painful as well as being unnecessarily invasive"*.

She also said:

*"The negative impact to my physical, emotional, mental and financial wellbeing are MAJOR for the following reasons:*

1. *I have Fibromyalgia and live daily with extensive and severe all over body pain with extreme sensitivity to touch. This ... condition prevents me from doing day to day tasks and I rarely leave my apartment except for medical appointments. Also because of my severe pain I can't drive for long periods of time;*
2. *I have an extensive mental health history due to childhood abuse that's left me with lifelong trauma ... and I struggle daily with complex post-traumatic stress disorder so the option of getting a single denture from a team of new people ... who don't know anything about me ... doesn't take into account my mental health history ... and leaves me with major anxiety ...;*
3. *I already live in poverty (and) rely on the food bank week to week ...*

*The (single denture) option requires me to drive to (another community some distance from my home) more than once (and) ... I don't have the financial means to cover the cost ... (F)or these reasons I'm asking ... (for approval of) the only realistic and accessible alternative for me of having a crown done by my dentist instead";*

- A one-page letter, dated July 20, 2022, referring to the Appellant and signed by a Psychiatrist, asking for reconsideration of the Ministry's decision not to approve the cost of the Dental Work (the Psychiatrist's July 20 Letter). The Psychiatrist also writes *"(The Appellant) is unable to commute to (the other community) for this procedure due to her comorbid medical and psychiatric conditions, not to mention cost of travel/commuting. I understand there is also likely to be more pain associated with the procedure (compared with a crown) and any procedure likely to increase pain is relatively contraindicated for her due to chronic pain/central sensitization syndrome."*;
- A three-page report, dated March 9, 2022 referencing the Appellant, and signed by a medical practitioner specializing in rheumatology and internal medicine (the Referral

Report). The Referral Report provides an “assessment of polyarthralgia” and includes sections headed “Impression and Plan”, “Follow Up”, “History of Presenting Illness”, “Rheumatological review of system”, “Past Medical History”, and “Current Medications”. The Referral Report also includes the results of a physical examination;

- A two-page Pacific Blue Cross (PBC) form titled “Dental Predetermination Summary” in the name of the Appellant, and dated May 20, 2022 (the PBC Summary Form). The PBC Summary Form includes details of the Dental Work that the Appellant had requested, including a cost estimate and fee codes for the dental Work, totalling \$1,637.00, and the eligible amounts (\$0.00 in all cases). Also included are some hand-written comments, including:
 

*“(Tooth) #36 extracted Sept 2020, (5 additional teeth) extracted prior to (the Appellant’s) first visit with us – no existing prosthesis – (tooth) #16 root canal treatment completed distal open contact. Buildup – new crown recommended”*; and
- A two-page standard dental form in the name of the Appellant, dated May 27, 2022 referring to the Dental Work with corresponding dental fees, as set out above.

### **Additional Information**

In the Notice of Appeal (NOA), dated August 16, 2022, the Appellant wrote “*After I provided all the evidence and information required to prove why a crown is the best procedure for me ... [taking my medical history into consideration as well as my current medical condition and my financial condition] I was still denied. I would like the Tribunal (sic) to ... explain why they won’t take into consideration the information, evidence and proof I’ve provided ... I’d like to ask the Tribunal (sic) ... (exactly what information) they are looking for ... so I can get what they require. There was no one at the ministry who could explain this decision to me in lay persons terms and it ... does not make sense to me ... (The Dental Work) is the most preventative, least traumatic ... option ... I’m hoping you will ... be able to provide more clarity around why exactly I am being denied (as) ... I do not understand the reasoning behind this decision ...*”.

The Appellant also provided a submission on October 6, 2022 (the Appellant Submission). The Appellant Submission comprised:

- A one-page letter, dated September 7, 2022, addressed “To whom it may concern” and signed by a nurse practitioner, who identifies themselves as the Appellant’s primary care provider (the NP’s Letter). The NP writes, in part, “*I am aware that (the Appellant) has significant physical disability at times due to her fibromyalgia. This includes not being able to lift her arms above her head without severe pain. I am concerned that she has a physical disability that would prevent her from using dentures safely ...*”;
- A one-page letter, dated September 12, 2022, signed by a psychiatrist and referring to the Appellant (the Psychiatrist’s September 12 Letter). The Psychiatrist indicates that the September 12 Letter relates to the Appellant’s RFR for dental and orthodontic services. The September 12 Letter also says, in part, “*(The Appellant) has been*

*approved for molar removal followed by a single denture and her request for a dental crown was refused. I am writing this medical note in support of her appeal of this decision. (The Appellant) has fibromyalgia and central sensitization syndrome which prohibit her from being able to insert and remove dentures due to pain and associated mobility limitations.”; and,*

- A six-page letter dated, dated October 5, 2022, addressed to the Employment and Assistance Appeal Tribunal (the Tribunal) and signed by an advocate (the Advocate) acting on behalf of the Appellant (the Advocate’s Letter). The Advocate’s Letter summarizes the decision under appeal and refers to two attached documents (the NP’s Letter and the September 12 Psychiatrist’s Letter). The Advocate’s Letter further provides “Background Facts” and summarizes the new evidence contained in the NP’s Letter and the September 12 Psychiatrist’s Letter. The Advocate’s Letter concludes “*We have submitted further evidence to show that (the Appellant) also meets the requirement of a person who has a physical impairment that makes it impossible for them to place a removable prosthetic, as per EAPWDR, Schedule C, subsection 4.1(2)(b). As such, the Ministry’s decision is not reasonably supported by the evidence and must be rescinded*”.

### **Evidence Presented at the Hearing**

The Appellant was joined at the hearing by the Advocate.

At the hearing, the Ministry said that it had received and reviewed the Appellant Submission. The Ministry also explained that if it had had the evidence contained in the Appellant Submission it would have approved the Appellant’s request for the Dental Work because it would have been satisfied that the Appellant also meets the requirement of a person who has a physical impairment that makes it impossible for them to place a removable prosthetic, as per EAPWDR, Schedule C, subsection 4.1(2)(b). As a result, the Ministry now finds that all of the requirements of EAPWDR, Schedule C, Section 4.1(2) have been met.

The Appellant asked the Ministry about how and when she could arrange to have her application for coverage for the Dental Work re-submitted and approved if the RD was rescinded by the Tribunal. The Ministry said that when the Ministry office that looks after reconsiderations receives a decision from the Tribunal that rescinds a Ministry decision it contacts the appellant about next steps. In this situation it would provide the Appellant with whatever is necessary to allow her to re-submit an application for coverage to PBC through the Dentist to ensure that it is not denied. The Ministry said it would telephone the Appellant and provide more details.

EAA Section 22(4) 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 if any additional evidence is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal

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

The Panel admits the new evidence contained in the Appellant's Submission because it is reasonably required for a full and fair disclosure of all matters relating to the appeal and gives it full weight.

**Part F – Reasons for Panel Decision**

The issue under appeal is whether the Ministry's RD dated August 19, 2022, which denied the Appellant's request for Dental Work because she is not eligible under any of the provisions set out in the EAPWDR.

In other words, was it reasonable for the Ministry to deny the additional coverage because the Appellant is not eligible for a crown and bridgework supplement?

***Position of the Parties***

The Appellant's position is that she should have been approved for the Dental Work because she meets the requirements for a crown and bridgework supplement under EAPWDR 4.1(2)

The Ministry's position is that it would have approved the Dental Work as an eligible crown and bridgework supplement if it had had the evidence contained in the Appellant Submission when it made the RD.

***Panel Decision***

The Ministry originally denied the Appellant's request for the Dental Services because it determined that there were no provisions in the EAPWDR that would allow for approval. After making its RD, the Ministry received the Appellant Submission. Based on the new evidence in the Appellant Submission, the Ministry determined that the Appellant did qualify for a crown and bridgework supplement based on the evidence in the Appellant Submission.

EAPWDR Section 63.1 says that the Ministry may provide a crown and bridgework supplement under EAPWDR Schedule C, Section 4.1 to someone who receives disability assistance, if the supplement is provided to someone in the family unit who is a person with disabilities. The Ministry has acknowledged in the RD that the Appellant receives disability assistance as a person with disabilities.

EAPWDR Section 4(1) defines "*crown and bridgework*" as a dental service that is provided by a dentist, that is included in the Part E of the Fee Schedule of Fee Allowances (Crown and Bridgework), that is provided at the rate set out for the service in that Schedule, and for which a person has received the pre-authorization of the Ministry.

EAPWDR Section 4(2) says that a health supplement may be paid under EAPWDR Section 63.1 for crown and bridgework if the Minister finds that the applicant has a dental condition that cannot be corrected by providing basic dental services because they can't be provided with the restorative services listed in the restorative services section of the Fee Schedule, and if the applicant has a physical impairment that makes it impossible for them to use a removable prosthetic, such as removable dentures. The Ministry said in its RD that it was satisfied that the Appellant's dental condition cannot be corrected by restorative services as listed in the restorative services section of the Fee Schedule.

In the Appellant Submission, the NP said that the Appellant was unable to lift her arms above her head without severe pain and that she has a physical disability that would prevent her from using dentures safely. The Psychiatrist said that the Appellant's fibromyalgia and central sensitization syndrome prohibit her from being able to insert and remove dentures due to pain and associated mobility limitations.

Based on the new evidence provided by the medical professionals in the Appellant Submission, the Panel finds that it was not reasonable for the Ministry to determine that the Appellant did not have a physical impairment that makes it impossible for her to use removable dentures.

*Conclusion*

Having considered all the evidence, the Panel finds that the Ministry's RD was not reasonably supported by all of the admissible evidence. Accordingly, the Panel rescinds the Ministry's decision, and the Appellant is successful in her appeal.

**APPENDIX - LEGISLATION**

**EMPLOYMENT AND ASSISTANCE ACT**

**Panels of the tribunal to conduct appeals**

**22** (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

**EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION**

**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 ...

**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*;

**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 ...

**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)

2022/10/20

Print Name

Effie Simpson

Signature of Member

Date (Year/Month/Day)

2022/10/20

Print Name

Dawn Wattie

Signature of Member

Date (Year/Month/Day)

2022/10/20