

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of October 31, 2022 (the “Reconsideration”), in which the Ministry determined that the Appellant:

- was not eligible for a dental supplement for a porcelain/ceramic/polymer glass crown (the “Porcelain Crown”), as the fee code for the service (27201) is not provided for in any of the fee schedules set out in the Ministry’s Dental Supplement (the “Dental Supplement”), as required by section 4.1 of Schedule C to the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”); and
- was eligible for a cast metal crown (the “Metal Crown”) but only at the rate set out in the appropriate fee schedule in the Dental Supplement, pursuant to section 4.1 of Schedule C to the EAPWDR.

Part D – Relevant Legislation

EAPWDR- sections 63, 63.1, and 64
EAPWDR, Schedule C- sections 1, 4, and 4.1, and 5

Part E – Summary of Facts

The appellant is a recipient of disability assistance.

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

- The Dental Supplement – Dentist, which includes the following fee schedules:
 - Dentist (the "Dentist Schedule")
 - Emergency Dental (the "Emergency Schedule"); and
 - Crown and Bridgework (the "Crown Schedule");
- letter to the Ministry's benefits administrator, Pacific Blue Cross ("PBC"), from a treating physician of the Appellant, which set out that:
 - the Appellant suffered a stroke on February 4, 2018 and had difficulty with fine motor control and upper limb dexterity, both of which precluded him from removing a prosthetic crown; and
 - a permanent crown was recommended for the Appellant;
- a certificate of health status, dated March 24, 2022, from a different treating physician which also recommended a permanent molar crown, due to the Appellant's motor difficulties; and
- the Appellant's Request for Reconsideration, dated October 19, 2022.

The Reconsideration makes reference to correspondence between PBC and the Appellant's dentists regarding the request for coverage, including:

- December 29, 2021, wherein the Appellant's dentist made a request for the Porcelain Crown;
- January 11, 2022, wherein the Appellant's dentist requested the Porcelain Crown, which had a fee code of 27201, again and PBC requested an x-ray and further information regarding dental prostheses;
- February 16, 2022 and March 4, 2022, wherein the Appellant's dentist again requested coverage for the Porcelain Crown and PBC denied the request on the basis that there was insufficient information confirming that a removable prosthetic could not be used in the Appellant's circumstances; and
- September 7, 2022 wherein the Appellant's dentist again requested the Porcelain Crown and PBC acknowledged that it would consider the provision of the Metal Crown, which had a fee code of 27301, in the Appellant's circumstances, seemingly indicating that PBC was satisfied that a permanent crown was required in the Appellant's circumstances.

Following the Reconsideration, the Ministry wrote to the Appellant's dentist advising that approval had been granted for the Metal Crown under fee code 27301, which is provided for in the Crown Schedule, in the amount of \$539.90.

The Appellant filed a Notice of Appeal by telephone on November 4, 2022 but no specific reason for the appeal was given in the Notice of Appeal.

Both the Appellant and the Ministry provided written submissions to the tribunal prior to the hearing of this written appeal.

In the Appellant's submission, the Appellant stated that:

- he did appreciate that the Ministry was prepared to approve the Metal Crown but that the coverage amount would leave him having to pay an additional \$600.00 for the Metal Crown (the full cost of which was \$1,139.00) out of pocket and that he could not afford that;
- he had been out of work for over 8 years following a workplace injury;
- he has cut down on all of his expenses to be able to make ends meet; and
- his understanding of the EAPWDR was that he had \$1,000.00 in coverage available to him in every two year calendar period and that he wished to apply all of that amount to the Metal Crown, which would leave him with having to pay only \$139.00 out of pocket, an amount that was affordable to him.

In the Ministry submission, the Ministry stated that it relied on the Reconsideration for the purposes of this appeal.

The panel admits the submissions of both the Appellant and the Ministry as evidence that is not part of the record but which is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, pursuant to section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

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 the Porcelain Crown, as the fee code for the service (27201) is not provided for in any of the fee schedules set out in the Dental Supplement, as required by section 4.1 of Schedule C to the EAPWDR; and
- was eligible for the Metal Crown but only at the rate set out in the appropriate fee schedule in the Dental Supplement, pursuant to section 4.1 of Schedule C to the EAPWDR.

Panel Decision

Section 63 of the EAPWDR authorizes the Ministry to provide the dental supplements set out in section 4 of Schedule C to the EAPWDR to eligible family units. Section 63 sets out the basic eligibility requirements for dental supplements and the Ministry found that the Appellant met the criteria set out in section 63.

Likewise, section 63.1 of the EAPWDR authorizes the Ministry to provide the crown and bridgework supplements set out in section 4.1 of Schedule C to the EAPWDR to eligible family units. Section 63.1 sets out the basic eligibility requirements for crown and supplements and the Ministry found that the Appellant met the criteria set out in section 63.1.

Finally, section 64 of the EAPWDR authorizes the Ministry to provide the emergency dental supplements set out in section 5 of Schedule C to the EAPWDR to eligible family units. Section 64 sets out the basic eligibility requirements for dental supplements and the Ministry found that the Appellant met the criteria set out in section 64.

Section 1 of Schedule C to the EAPWDR defines the following terms “basic dental service” and “emergency dental service”. In short, a “basic dental service”, if provided by a dentist, is a service set out in the Dentist Schedule and provided at the rates set out in the Dentist Schedule. An “emergency dental service”, if provided by a dentist, is a service set out in the Emergency Schedule and provided at the rates set out in the Emergency Schedule.

The effect of these definitions is to limit the Ministry’s legislative authority to paying supplements only in respect of services which are expressly provided for in the appropriate fee schedule and only up to the rates that are set out in Dentist Schedule or the Emergency Dental Schedule.

Section 4 of Schedule C to the EAPWDR imposes some additional limits on the Ministry’s ability to provide dental supplements, including capping the total that can be paid for all eligible dental services to persons aged 19 or over at \$1,000.00 in each two year period. Section 4, however, does not authorize the Ministry to exceed the limit provided for in any of the fee schedules for specific dental services.

Section 4.1 of Schedule C to the EAPWDR defines “crown and bridgework” as a dental service provided by a dentist, set out in the Crown Schedule, payable at the rate set out for in the Crown Schedule, and which has been pre-authorized by the Ministry. While there is no specific limit on the total amount that may be paid as a crown and bridgework supplement in any specific time period, the Ministry is limited to providing supplements at the rate set out in the Crown Schedule. Section 4.1(2) of Schedule C to the EAPWDR also restricts the Ministry to paying a crown and bridgework supplement where an individual’s disability precludes the use of a removable prosthetic such as a denture. While PBC appears to have initially had questions, the information provided by the Appellant’s dentist seems to have eventually satisfied PBC that a removable dental prosthetic was not appropriate for the Appellant and whether or not the Appellant satisfied the requirements of section 4.1(2) of Schedule C to the EAPWDR was not an issue in the Reconsideration.

Finally, section 5 of Schedule C to the EAPWDR describes emergency dental services and imposes no specific limits on the amount that may be paid in any specific time period. Nevertheless, the Ministry is, again, limited to providing supplements only if they are provided for in the Emergency Schedule and only at the rates set out in the Emergency Schedule, by virtue of the definition of “emergency dental service” set out above.

Given that the fee code, 27301, for the Porcelain Crown is not provided for in any of the Dentist Schedule, the Crown Schedule, or the Emergency Schedule, the Ministry, by virtue of the definitions of “basis dental service” and “emergency dental service” in section 1 of Schedule C to the EAPWDR and the definition of “crown and bridgework” in section 4.1 of Schedule C to the EAPWDR, does not have the legislative authority to provide a supplement for the Porcelain Crown and the panel finds that the Ministry reasonably determined that it was not authorized to do so.

While the fee code, 27201, for the Metal Crown *is* provided for in the Crown Schedule, the amount provided for it in the Crown Schedule is \$539.90, which is the maximum that the Ministry may provide as a supplement, pursuant to section 4.1 of Schedule C to the EAPWDR. In the result, while the Appellant meets the basic eligibility requirements for all three types of dental supplements- basic, emergency, and crown and bridgework- and the Ministry has accepted the need for a permanent crown in the Appellant’s circumstances, as is required by section 4.1(2) of Schedule C to the EAPWDR, the panel finds that the Ministry nevertheless reasonably determined that its legislative authority only allows it to provide a supplement for crown and bridgework in the amount set out in the Crown Schedule (\$539.90).

In the result, the Appellant is not successful in this appeal.

Relevant Legislation

Section 63 of the EAPWDR describes the basic eligibility requirements for 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.

Section 63.1 of the EAPWDR describes the basic eligibility requirement for crown and bridgework supplements:

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.

Section 64 of the EAPWDR describes the basic eligibility requirements for emergency dental supplements:

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.

Section 1 of Schedule C to the EAPWDR defines “basic dental services” and “emergency dental services” as follows:

"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 dentist,
 - (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 limits on otherwise eligible basic dental services:

Dental supplements

4 (1) In this section, "**period**" means

- (a) in respect of a person under 19 years of age, a 2 year period beginning on January 1, 2017, and on each subsequent January 1 in an odd numbered year, and

(b) in respect of a person not referred to in paragraph (a), 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

(a) \$2 000 each period, if provided to a person under 19 years of age, and

(b) \$1 000 each period, if provided to a person not referred to in paragraph (a).

(c) Repealed. [B.C. Reg. 163/2005, s. (b).]

(2) Dentures may be provided as a basic dental service only to a person

(a) who has never worn dentures, or

(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,

(b) a person requires a partial denture to replace at least 3 contiguous missing teeth on the same arch, at least one of which was extracted in the previous 6 months to relieve pain, or

(c) a person who has been a recipient of disability assistance or income assistance for at least 2 years or a dependant of that person requires replacement dentures.

(4) Subsection (2) (b) does not apply with respect to a person described in subsection (3) (a) who has previously had a partial denture.

(5) The dental supplements that may be provided to a person described in subsection (3) (b), or to a person described in subsection (3) (c) who requires a partial denture, are limited to services under

(a) fee numbers 52101 to 52402 in the Schedule of Fee Allowances — Dentist referred to in paragraph (a) of the definition "basic dental service" in section 1 of this Schedule, or

(b) fee numbers 41610, 41612, 41620 and 41622 in the Schedule of Fee Allowances — Denturist referred to in paragraph (b) of the definition "basic dental service" in section 1 of this Schedule.

(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, or

(b) fee numbers 31310, 31320 or 31330 in the Schedule of Fee Allowances — Denturist referred to in paragraph (b) of the definition "basic dental service" in section 1 of this Schedule.

(7) A reline or a rebase of dentures may be provided as a basic dental service only to a person who has not had a reline or rebase of dentures for at least 2 years.

Section 4.1 of Schedule C to the EAPWDR defines "crown and bridgework" and sets out some limits on what types of services may be eligible for a crown and bridgework supplement

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.

Section 5 of Schedule C to the EAPWDR describes emergency dental supplements, quite simply, as:

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.

Finally, the Crown Schedule sets out the limit on what the Ministry is able to pay for a Metal Crown, which has fee code 27201:

MINISTRY OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION

Schedule of Fee Allowances – Crown and Bridgework

Effective April 1, 2010

FEE NO.	FEE DESCRIPTION	FEE AMOUNT (\$)
	CROWNS	
	Note: Limited to one per tooth in a five-year period. Only full cast metal crowns will be considered for tooth numbers 6, 7, and 8	
27301	Crown, Full Cast Metal	*539.90

2022-0271

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/December/3

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2022/December/7

Print Name

Edward Wong

Signature of Member

Date (Year/Month/Day)

2022/December/3