

Part C – Decision Under Appeal

The decision under appeal is the decision of the Ministry of Social Development and Poverty Reduction (the “**Ministry**”) reconsideration decision, dated December 8, 2022 (the “**Reconsideration Decision**”), in which the Ministry denied the Appellant’s request for a complete replacement of his maxillary upper denture, otherwise known as upper denture. More specifically, the Ministry determined that the Appellant is not eligible for a complete replacement of his upper denture (fee code 31310):

- as a basic dental service;
- as an emergency dental service;
- as a life-threatening health need; or
- as a crisis supplement.

Part D – Relevant Legislation

- *Employment and Assistance for Persons with Disabilities Regulation* (the “**Regulation**”), sections 57, 62, 63, 64, and 69
- Schedule C of the *Regulation*, sections 1, 2, 3, 4, and 5
- Schedule of Fee Allowances – Denturist – effective September 1, 2017 (updated February 18, 2020)

Part E – Summary of Facts**(a) The Reconsideration Decision**

The evidence before the Ministry at the Reconsideration Decision consisted of:

- The Appellant has been designated as a person with disabilities (“**PWD**”) and is in receipt of disability assistance.
- Pursuant to section 25 of the *Employment and Assistance for Persons with Disabilities Act*, the Ministry delegated its power and duties as set out in the legislation to Pacific Blue Cross (“**PBC**”) for determining whether any coverage for specific dental services applies to the Appellant based on information found in the Schedule of Fee Allowances and, if he does, the amount of coverage available to him.
- On November 7, 2019, the Appellant received funding for a complete set of dentures, both upper and lower.
- On August 25, 2021, the Appellant was provided with a complete replacement of his upper dentures based on a one-time exemption from the five-year replacement period as specified in the *Regulation*.
- On July 18, 2022, PBC denied the Appellant’s request for a complete replacement of his maxillary and mandibular dentures; however, PBC confirmed that the Appellant was eligible for a replacement of his mandibular (lower) denture because of a one-time exemption to the replacement period. Conversely, PBC determined that the Appellant was not eligible for an exemption for his maxillary (upper) denture, as the one-time replacement exemption had already been provided to him on August 25, 2021. The replacement costs of the upper denture were estimated to be \$1,375.00.
- On October 3, 2022, the Appellant’s advocate contacted the Ministry requesting a reconsideration of PBC’s denial of the upper denture replacement; in doing so, the Appellant’s advocate faxed the Ministry a support letter and a copy of the PBC’s predetermination decision.
- On October 6, 2022, the Ministry reviewed the Appellant’s denture request and found that, as he received a complete set of dentures in November 2019, the Ministry’s ability to provide coverage for dentures is limited to once every five (5) years; however, PBC may approve a one-time exception for lost, stolen, or broken dentures. The Ministry subsequently advised the Appellant’s advocate of same and, further, advised that it would contact PBC to confirm the Appellant’s eligibility for the one-time exception.
- On October 11, 2022 PBC advised the Ministry that the Appellant was eligible for and received the one-time exception for his upper denture in 2021. The Ministry subsequently advised the Appellant’s advocate that the Appellant was not eligible for a complete upper denture replacement as the one-time exception was already used in

2021 (the "**Decision**").

- On December 2, 2022, the Appellant applied for a reconsideration of the Decision (the "**Reconsideration Request**"). In support of the Reconsideration Request, the Appellant submitted:
 - a personal statement outlining the basis for the Reconsideration Request;
 - an email from the Appellant's denture clinic confirming coverage for the Appellant's lower denture replacement;
 - a support letter from his doctor; and
 - a support letter from his Advocate.
- Per the Appellant's undated personal statement, he explained (i) that his set of upper dentures had been stolen at the shelter where he resides (ii), the medical issues he faces as a result of not having a complete set of upper dentures, and (iii) the issues he faces in attempting to chew food.
- Per the denture clinic's November 22, 2022 email, they advise, "*... I called Pacific Blue Cross and spoke to... He approved a Once In A Lifetime authorization for a 31320 for [the Appellant] (Complete lower denture)...*"
- Per the Appellant's doctor's December 1, 2022 letter, they advise, "*... Without a replacement pair of dentures we are essentially dooming this impoverished homeless man to a life of poor nutrition, painful chewing, and risk for aspiration... [The Appellant] also has cirrhosis of the liver, which further increases the need for him to receive adequate nutrition, and particularly adequate protein intake. The best source of protein for him would be meat and fish, which he is currently unable to eat due to his lack of dentures... In short, [the Appellant] requires replacement dentures in order to maintain his health. For him, dentures are a medical necessity...*"
- Per the Appellant's advocate's December 7, 2022 letter, they advise "*... Theft and loss of belongings are sadly common place within the shelter environment. My Client reports that his dentures were stolen along with other belongings roughly six months ago. Since then his diet and overall health has been negatively impacted. Homelessness renders my Client unable to prepare foods that would provide them with Improved nutrition. Often the meals at the shelter are not an option for him as they are difficult to break down and present the risk of choking...*"

On December 8, 2022, the Ministry issued the Reconsideration Decision wherein it summarized its denial of the Reconsideration Request as follows:

"... the ministry determines the following:

- *Your request for a replacement complete upper denture (fee*

code 31310) does not meet the requirement under EAPWD Regulation Schedule C, Section 4(2)(b) because your most recently funded dentures are not more than five years old. The ministry is unable to authorize further exception to this regulation as the ministry previously authorized a one-time exemption to this regulation on August 25, 2021.

- *The ministry is not authorized to provide coverage of a denture as an Emergency Dental Service.*
- *The ministry is not authorized to provide coverage for dental services under the EAPWD Regulation, Section 69 (Life-Threatening Health Need) or Section 57 (crisis supplement)."*

(b) The Appeal

On December 16, 2022, the Appellant filed a Notice of Appeal (the "**Appeal Notice**").

The Appellant's Appeal hearing was held on January 11, 2023 via videoconference.

In advance of the Appeal hearing, the Appellant submitted an updated note from his doctor dated January 6, 2023. Per the Appellant's doctor's updated letter, they advise, "... *Without dentures, [the Appellant] is unable to eat all but pureed or extremely soft foods... Without a replacement pair of dentures we are essentially dooming this impoverished homeless man to a life of poor nutrition, painful chewing, and risk for aspiration. Furthermore, [the Appellant's] situation is particularly serious given he has a history of esophageal stricture. He is even less able to swallow partially chewed foods than a typical person would be... If his food is not appropriately chewed, he is unable to swallow it and simply regurgitates it. [The Appellant] is currently waiting on a referral to gastroenterology for consideration of repeat dilation of his stricture... [REDACTED] also has cirrhosis of the liver, which further increases the need for him to receive adequate nutrition, and particularly adequate protein intake... In short, [the Appellant] requires replacement dentures in order to maintain his health. For him, dentures are a medical necessity...*"

(c) Oral Submissions and Late Evidence

The Appellant was joined by his Advocate during the Appeal hearing.

During oral submissions, the Appellant advised (i) that his set of upper dentures had been stolen at the shelter where he resides (ii), the medical issues he faces as a result of not having a complete set of upper dentures, and (iii) the issues he faces in attempting to chew food. The Appellant acknowledged that he had received his one-time replacement exception with respect to his upper dentures.

In terms of mitigating the chances of future denture theft, the Appellant submitted that he would take steps to reduce the chances of same; for example, he would not leave his

dentures unattended. The Appellant explained that it was difficult for him to chew and swallow food. In terms of his oral health, the Appellant explained that, without dentures, his gums would likely recede and result in nerve damage and/or pain. In addition, the Appellant's advocate advised the Panel of the Appellant's future plans with respect to the securing of housing and employment with a view to placing him in a better position.

Upon questioning by the Panel, neither the Appellant nor his advocate were able to articulate how the Reconsideration Decision was unreasonably supported by the available evidence or was an unreasonable application of the applicable legislation.

In response, the Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision. In addition, the Ministry advanced that the Appellant could apply for a monthly nutritional supplement to address any nutritional deficiencies that may arise from his lack of a complete set of upper dentures.

The Ministry had no objection to the Appellant's oral submissions and additional evidence. The Panel determined that the Appellant's submissions and evidence were admissible as additional evidence pursuant to section 22(4) of the *Employment and Assistance Act* as it was reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. More specifically, the additional evidence contributed to the Panel's understanding of the circumstances surrounding the Appeal.

Part F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Reconsideration Decision in which the Ministry denied the Appellant's request for a complete replacement of his upper denture.

Appellant's Position

The Appellant argues that he should be eligible for a complete replacement of his upper dentures given the adverse impacts on his health arising from his lack of upper dentures.

Ministry's Position

The Ministry maintains that the Appellant does not qualify a replacement of his upper dentures for the same reasons as stated in the Reconsideration Decision.

Panel Decision

Section 62 of the *Regulation* permits the Ministry to provide a health supplement and/or medical equipment/devices as respectively set out in sections 2 and 3 of Schedule C to a family unit in receipt of disability assistance.

Section 63 of the *Regulation* permits the Ministry to provide a dental supplement as set out in section 4 of Schedule C to a family unit in receipt of disability assistance.

Section 64 of the *Regulation* permits the Ministry to provide an emergency dental supplement as set out in section 5 of Schedule C to a family unit in receipt of disability assistance.

Section 69 of the *Regulation* permits the Ministry to provide any health supplement as set out in sections 2(1)(a) and (f) and 3 of Schedule C to a family unit in receipt of disability assistance 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 the *Regulation* and, if amongst other things, and the Minister is satisfied that the person faces a direct and imminent life threatening.

Section 57 of the *Regulation* permits the Ministry to provide a crisis supplement to or for a family unit that is eligible for disability assistance.

(a) Section 62 Eligibility

It is undisputed that the Appellant has been designated as a PWD and is in receipt of disability assistance; as a result, the Appellant could receive a health supplement and/or medical equipment/device as provided for by section 62 of the *Regulation*. However, on review of section 2 of Schedule C, the enumerated general health supplements do not include those pertaining to basic dental services and/or dentures. Further, on review of section 3 of Schedule C, the enumerated medical equipment and devices do not include those pertaining to basic dental services and/or dentures. In other words, neither section 2 nor section 3 of Schedule C provide for the type of denture replacement requested by

the Appellant. As a result, the Panel finds that the Ministry's decision to deny the Appellant's upper denture replacement request was a reasonable application of section 62 of the *Regulation*.

(b) Section 63 Eligibility

It is undisputed that the Appellant has been designated as a PWD and is in receipt of disability assistance; as a result, the Appellant could receive a dental supplement as provided for by section 63 of the *Regulation*. On review of section 4(2) of Schedule C, the Panel notes that 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 five (5) years old. Legislation aside, the Ministry's own policy allows for a one-time exemption to the 5-year replacement regulation as provided for by section 4(2)(b) of Schedule C if:

- the dentures being replaced were lost or damaged beyond repair;
- the loss or damage was beyond the person's control; and
- a failure to provide replacement dentures would result in compromised health.

The Panel finds that, and the Appellant does not deny, the Appellant received an initial set of upper dentures in 2019 that were replaced in 2021 subject to the one-time exemption. Given the circumstances, the Panel finds that the Ministry has no legislative ability to provide the Appellant with another set of upper dentures until his five (5) year replacement period has lapsed; in this case, the five (5) year period would lapse in August 2026 as the Appellant's upper dentures were last replaced in August 2021.

As a result of the foregoing, the Ministry's decision to deny the Appellant's upper denture replacement request was a reasonable application of section 63 of the *Regulation*.

(c) Section 64 Eligibility

It is undisputed that the Appellant has been designated as a PWD and is in receipt of disability assistance; as a result, the Appellant could receive an emergency dental supplement as provided for by section 64 of the *Regulation*.

The Panel notes that section 1 of Schedule C defines an emergency dental supplement as a dental service necessary for the immediate relief of pain that, if provided by a dentist, (i) is set out in the Schedule of Fee Allowances — Emergency Dental — Denturist, that is effective September 1, 2017 (updated on February 18, 2020) 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. On review of the noted Schedule of Fee Allowances, the Panel notes that it does not provide for denture replacements as an emergency dental supplement; rather, it provides for services that could be used to fix or correct dentures. In other words, the noted Schedule of Fee Allowances does provide for the type of denture replacement requested by the Appellant.

As a result of the foregoing, the Panel finds that the Ministry's decision to deny the Appellant's upper denture replacement request was a reasonable application of section 64 of the *Regulation*.

(d) Section 69 Eligibility

It is undisputed that the Appellant has been designated as a PWD and is in receipt of disability assistance; as a result, the Appellant could receive a health supplement as provided for by section 69 of the *Regulation*. The Panel notes that, while the Appellant has attempted to provide evidence a direct threat to his life arising from his oral health condition, it is unclear if his oral health condition gives rise to an imminent threat as required by the legislation. However, even if the Appellant faced a direct and imminent threat to his life, the Panel notes that section 69 only allows for supplements provided in sections 2(1)(a) and (f), and section 3 of Schedule C. Neither section 2(1)(a) and (f) nor section 3 of Schedule C provide for the type of denture replacement requested by the Appellant. As a result, the Panel finds that the Ministry's decision to deny the Appellant's upper denture replacement request was a reasonable application of section 69 of the *Regulation*.

(e) Section 57 Eligibility

It is undisputed that the Appellant has been designated as a PWD and is in receipt of disability assistance. However, the Panel notes that section 57(3) of the *Regulation* clarifies that 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. Generally speaking, the crisis supplements referred to in section 57 of the *Regulation* pertain to food, shelter (including utilities), and clothing.

As section 57 does not provide for the type of denture replacement requested by the Appellant, the Panel finds that the Ministry's decision to deny the Appellant's upper denture replacement request was a reasonable application of section 57 of the *Regulation*.

Conclusion

The Panel finds that the Ministry's decision to deny the Appellant's request for a complete replacement of his upper denture pursuant to sections 57, 62, 63, 64, and 69 of the *Regulation* was a reasonable application of the legislation in the circumstance.

Legislation

Employment and Assistance for Persons with Disabilities Regulation

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.

...

- (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.

...

General health supplements

- 62 The minister may provide any health supplement set out in section 2 [general health supplements] or 3 [medical equipment and devices] 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.

...

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.

...

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, 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.

...

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).

Health Supplements

Schedule C

Definitions

1 In this Schedule:

"**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;

...

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.

...

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.

Medical equipment and devices — canes, crutches and walkers

3.1 ...

Medical equipment and devices — wheelchairs

3.2 ...

Medical equipment and devices — wheelchair seating systems

3.3 ...

Medical equipment and devices — scooters

3.4 ...

Medical equipment and devices — toileting, transfers and positioning aids

3.5 ...

Medical equipment and devices — hospital bed

3.6 ...

Medical equipment and devices — pressure relief mattresses

3.7 ...

Medical equipment and devices — floor or ceiling lift devices

3.8 ...

Medical equipment and devices — breathing devices

3.9 ...

Medical equipment and devices — orthoses

3.10 ...

Medical equipment and devices — hearing instruments

3.11 ...

Medical equipment and devices — non-conventional glucose meters

3.12 ...

Dental supplements

4 (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.

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.

Schedule of Fee Allowances – Denturist

Effective September 1, 2017 (updated February 18, 2020)

COMPLETE DENTURES

Note: Dentures are an eligible item once every five years. The replacement of dentures within five years of original insertion will normally not be paid by the Ministry. Refer to Denture Policy in Part A – Preamble to Dental Supplements - Denturist. Any lab costs are included in the stated fee.

Complete denture fees include:

- Impressions, initial and final jaw relation records
- Try-in; evaluation
- Records check
- Insertion
- Adjustments and 6 months post-insertion care including tissue conditioning

31310 Complete Maxillary Denture 581.25 1007.00

...

Schedule of Fee Allowances – Emergency Dental - Denturist Effective September 1, 2017 (updated February 18, 2020)

Chairside/Direct Reline – Complete Denture

...

Repair without Impression – Complete Denture

...

Chairside/Direct Reline – Partial Denture

...

Repair without Impression – Partial Denture

...

Adjustment to Denture

2022-0316

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

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2023/01/11

Print Name

Cherri Fitzsimmons

Signature of Member

Date (Year/Month/Day)

2023/01/11

Print Name

Erin Rennison

Signature of Member

Date (Year/Month/Day)

2023/01/11