

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated December 21, 2022, in which the ministry determined that the appellant was not eligible for dental extractions:

- in excess of the ministry rates set out in the Schedule of Fee Allowances – Dentist (the Fee Schedule), pursuant to Schedule C section 1, definitions of basic dental service and emergency dental service, of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR);
- in excess of the \$1,000 per two-year period (which ends December 31, 2022) pursuant to Schedule C section 4 of the EAPWDR; or
- as a life-threatening health need pursuant to section 69 of the EAPWDR.

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulations sections 63, 64, and 69 and Schedule C sections 1, 4 and 5

Schedule of Fee Allowances - Dentist and Emergency Dental

(Relevant legislation follows the panel decision)

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 (RD) included the following:

- A Request for Reconsideration (RFR) signed by the appellant on December 5, 2022. The appellant writes as his reasons for requesting an RFR (summarized):
 - He ended up in hospital over almost a month because of sepsis caused by infected teeth. His diabetes/infection nearly killed him.
 - The doctor from acute care informed the appellant that the infection will not completely clear up without oral surgery and they cannot provide medical transport to another community for surgery.
 - His doctor and diabetic team have advised him that his sugar levels will not level out until his teeth are removed.
 - He has no resources and cannot wait 18-30 months for a surgery. His health depends on this surgery.

- A treatment plan proposal from the appellant's dentist dated November 2, 2022. The plan includes seventeen different requests, which, generally speaking, involve the removal of a number of teeth and can be summarized as follows:
 - Code 71211 (Th 17 and 27) with doctor fee \$495, insurance pays \$221.71 and patient pays \$273.29
 - Code 71219 (Th 16, 15, 14, 13, 25 and 23) with doctor fee \$357.50, insurance pays \$146.33 and patient pays \$211.17
 - Code 71109 (Th 12, 11 and 21) with doctor fee \$140, insurance pays \$50.15 and patient pays \$89.85
 - Code 72339 (Th 26, 24 and 22) with doctor fee \$303.80, insurance pays \$104.40 and patient pays \$199.40
 - Code 73111 (Th 03, 04, and 05) with doctor fee \$185, insurance pays \$71.07 and patient pays \$113.93
 - Total doctor fee \$5,021.40; total insurance pays \$1,998.26; total patient pays \$3,023.14

In the RD, the ministry added they had received information from Pacific Blue Cross (PBC), the ministry's dental insurer, that a claim had been received on December 13, 2022. The RD outlines the amounts approved by PBC for each tooth. The rates include the additional 10% that is allowed for having a specialist do the work. The claim requested by the dentist for code 73111 had \$0 paid, with a notation that the coverage maximum has been reached

and they require additional information be submitted. One of claim codes, 71109 for Th 11, had \$7.36 approved with notations that the payable amount was reduced due to payable dollar maximum rule and this expense was considered up to the maximum amount allowed under the plan. All other claim codes were approved to the ministry rate set in the Fee Schedule.

Information Received After Reconsideration

A letter from the appellant's dentist dated January 17, 2023 was provided as a submission to the appeal. They write that the appellant needs to have his remaining upper teeth extracted by an oral surgeon immediately for the following reasons (summarized):

- All remaining upper teeth are extremely decayed, broken and none are savable.
- The appellant is susceptible to jawbone infection and is missing part of the jawbone.
- It is in the appellant's best interest to have extractions done in a surgical environment to minimize risks.
- The appellant has been on four rounds of antibiotics since September 9, 2022, due to recurring infection in his teeth.
- If treatment is not provided, or is put off too long, it could result in more pain, swelling, decay, passing disease to other teeth and possible life-threatening infection. In the appellant's case is more likely due to his susceptibility to infection and being more compromised.
- The appellant was admitted to hospital due to septic shock from infected teeth and was on antibiotics at the hospital for six weeks straight.
- It is detrimental that the appellant has treatment as soon as possible.

At the hearing, the appellant explained that he has bad teeth which required hospitalization for about five weeks due to septic shock from infection in his teeth. He has been on and off antibiotics, five or six rounds, since he was hospitalized. The doctor informed him that his teeth must be removed because his insulin levels are off and cannot be controlled because of the ongoing infections.

The appellant explained that while he was hospitalized a portion of his jaw had been removed. When asked whether the hospital pulled any teeth while he was there, he explained the hospital informed him that they could not do the procedure at the hospital in his community, he would have to go to a hospital in a nearby community. However, there was no ambulance service or staff available to arrange this for him. He was also informed that, although his dentist does provide emergency dental services at a hospital, there is a year and a half wait list and he requires the removal as soon as possible to avoid his health getting worse. The appellant stated the Acute Care doctor, who cared for him when he was hospitalized, recommended they travel to the nearby hospital to have the

teeth extracted, however when they requested ministry assistance for transportation, they were told because of their proximity to the other hospital no funds could be issued for accommodation so they could not afford to travel out of their community.

At the hearing, the ministry explained that the rates are set out in the Fee Schedule and there is no legislative authority to exceed the amounts set. The ministry explained the life-threatening health need only covers items, such as medical transportation or medical supplies, which are set out in legislation. Dental is not a listed item to be considered as a life-threatening health need.

The ministry reviewed the emergency dental services requirements and commented that there was no evidence the appellant had an infection at the time the decision was made. The ministry acknowledged the letter submitted by the appellant's dentist after reconsideration confirms the appellant has an ongoing infection and does not object to its admission to the hearing. When the appellant asked if he should provide a letter from the doctor who saw him while he was hospitalized, the ministry answered that it is always helpful to have supporting letters from medical practitioners when requesting any kind of service. However, they emphasized that the rates set out in the fee schedule are the same for both dental services and emergency dental services and cannot be exceeded.

Admissibility of Additional Information

The panel admits the additional letter from the dentist as well as oral testimony provided at the hearing under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The ministry did not object to the admission of additional evidence.

Part F – Reasons for Panel Decision

The issue under appeal is whether the ministry’s decision, determining that the appellant is not eligible for dental extractions in excess of the legislative rates or as a life-threatening health need, was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant’s circumstance.

Appellant’s Position

The appellant’s position is that he urgently requires his teeth be extracted for urgent health reasons and he does not have the resources to pay the additional money needed to have this done.

Ministry’s Position

The ministry’s position is the rates are set out in the Fee Schedule and there is no discretion on the amount payable to the dentist. Dental work is not set out as an allowable medical expense to be considered as a life-threatening health need.

Panel Decision

The appellant is eligible for dental services and/or emergency dental services. The panel will make a determination on the specific requests made by the appellant.

Eligibility for Coverage for Fee Codes 71109, 71211, 71219, 72339 and 73111

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, and which is **provided at the rate set out in the Fee Schedule**. 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”.

The Fee Schedule authorizes the payment of various fee codes. In the appellant’s circumstance, the ministry indicates that PBC has authorized as follows:

Code	Tooth	Dentist Claims	Amount Authorized (includes 10% specialist)
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71109 (12)	\$140	\$ 50.15
71109 (11)	\$140	\$ 7.36
71109 (21)	\$140	\$ 50.15
71211 (17)	\$495	\$221.71
71211 (27)	\$495	\$221.71
71219 (16)	\$357.50	\$146.33
71219 (15)	\$357.50	\$146.33
71219 (14)	\$357.50	\$146.33
71219 (13)	\$357.50	\$146.33
71219 (25)	\$357.50	\$146.33
71219 (23)	\$367.50	\$146.33
72339 (26)	\$303.80	\$104.40
72339 (24)	\$303.80	\$104.40
72339 (22)	\$303.80	\$104.40
73111 (03)	\$185	\$0 (further info required/resubmit)
73111 (04)	\$185	\$0 " "
73111 (05)	\$185	\$0 " "

The total amount approved by PBC, when adding up the total from the information provided in the RD, is \$1,742.26. The panel reviewed the above codes and confirmed the authorized amounts are the amounts set out in the Fee Schedule. Because the legislation does not allow the ministry to approve any amount above the listed fees, the panel finds the ministry reasonably determined the appellant is eligible only for the amount authorized. Service code 73111 showed \$0 authorized because additional information is required from the dentist. The panel considers PBC was reasonable to not authorize payment until the information is received.

Emergency Dental Services

EAPWDR Schedule C, section 1 defines "emergency dental service" as a dental service necessary for the immediate relief of pain that, if provided by a dentist, is set out in the Schedule of Fee Allowances – Emergency Dental – Dentist. The Fee Schedule also provides a further description in the Preamble that allows treatment of an eligible person "to control infection or bleeding or if a persons' health or welfare is otherwise immediately jeopardized".

In the appellant's circumstance, he wrote in his RFR that he had been hospitalized and was

in a coma because the infection in his teeth affected his medical condition, which could not be brought under control. He continues with ongoing antibiotics because the infection does not go away. In the RD, the minister wrote there was no evidence provided by a dentist to confirm there was an infection, therefore, they could not determine the appellant was eligible for emergency dental services. The panel found no legislative requirement that confirmation of infection had to be provided by a dentist prior to a determination of eligibility for emergency dental services. The appellant did submit a letter, as part of his submission to the appeal, which confirms the appellant's statement of being hospitalized, the risk of life-threatening infection and the need to have the teeth removed to avoid further health deterioration. The panel finds this confirms that the dental services are necessary to control infection and would provide immediate pain relief to the appellant. Therefore, the panel finds the ministry was not reasonable to determine the appellant was not eligible for emergency dental services.

However, the Fee Schedule clearly states the amounts that may be issued for "emergency dental services" are the same rates as listed under "basic dental care" and there is no discretion in the amount that may be paid out. The requested fee codes are all listed above in the basic dental care section.

Not Eligible in Excess of \$1,000 per two-year period

EAPWDR Schedule C, section 4 outlines that a \$1,000 limit is set for a two-year period on odd numbered years. In the appellant's circumstance, his two-year period expired December 31, 2022, and he starts a new two-year period January 1, 2023.

In the RD, the ministry notes that PBC had already paid out \$1,000 in the two-year period, therefore, the appellant was not eligible in excess of that amount. The ministry provided an additional note that the \$1,000 limit is set for basic dental services but may be exceeded if the need for emergency dental services is identified and the requested services are listed in the emergency dental section of the Fee Schedule. The ministry went on later in the decision to determine the appellant was not eligible for emergency dental services. The Fee Schedule confirms, in the Preamble to Emergency Dental, that emergency dental services may be provided to persons who have exhausted their limit.

The panel notes that PBC has authorized \$1,742.26, which is over the appellant's \$1,000 limit. Although there is no evidence in the appeal record to explain why PBC authorized

over the \$1,000 limit, it seems they have. The panel found, above, that the appellant met the requirements of emergency dental services, which allows for exceeding the \$1,000 limit. Therefore, the panel finds the ministry was not reasonable to determine the appellant was not eligible for emergency dental services in excess of the \$1,000 limit.

Dental Services as a Life-Threatening Health Need

The panel finds the ministry reasonably determined that the appellant is not eligible for coverage of the requested fee codes as a life-threatening health need. The ministry stated correctly that section 69 only applies to medical transportation, medical equipment / devices, and some type of medical supplies. Dental services are not set out in this section.

Conclusion

The panel concludes that the ministry's determination that the appellant was not eligible for consideration of emergency dental services or dental work in excess of the \$1,000 limit was not reasonable.

The panel also concludes that the ministry was reasonable to determine that dental extractions in excess of the rates set out in the Fee Schedule are not allowed. The panel finds this is a reasonable application of the legislation in the appellant's circumstances and confirms the decision. The appellant is not successful in this appeal.

Relevant Legislation

EAPWDR

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, 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.

Schedule C Health Supplements

Definitions

1

"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.

"emergency dental service" means a dental service necessary for the immediate relief of pain that, if provided by a dentist, is set out in the Schedule of Fee Allowances –

Emergency Dental - Dentist

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).

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.

Life Threatening Health Need

EAPWDR

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).

Relevant Codes from Fee Schedule – Dentist

Code	Amount
71109	\$ 45.59 + 10% specialist
71211	\$201.55 + 10% specialist
71219	\$133.03 + 10% specialist
72339	\$ 94.91 + 10% specialist
73111	\$ 65.38 + 10% specialist

APPEAL NUMBER 2022-0327

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

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2023/01/ 24

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2023/01/24

Print Name

Sarah Bijl

Signature of Member

Date (Year/Month/Day)

2023/01/24