

Part C – Decision Under Appeal

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated April 17, 2023, that denied the appellant's request for coverage for a crown for tooth number 27.

The ministry determined that the appellant's dental condition cannot be corrected by restorative services, and therefore she meets the eligibility requirement of Schedule C section 4.1(2)(a) of the Employment and Assistance for Persons with Disabilities Regulation.

However, the ministry determined that her request does not meet the eligibility requirement of Schedule C section 4.1(2)(b). The ministry could not establish that the appellant's dental condition precludes the use of a removable prosthetic.

The ministry also determined that the appellant was not eligible for coverage as a Life-Threatening Health Need (section 69) or as a Crisis Supplement (section 57).

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation sections 57 and 69 and Schedule C, section 4.1

Schedule of Fee Allowances – Dental, Emergency Dental, Crown and Bridgework

Part E – Summary of Facts

From the ministry file:

o Under the Employment and Assistance for Persons with Disabilities Act and applicable regulations, the minister may authorize any person or category of persons to take on any or all of the minister's powers, duties or functions. In the case of dental supplements, the minister's powers, duties or functions are assigned to Pacific Blue Cross (PBC).

o Coverage for the following services is requested:

Tooth No.	Fee Code	Description	Dentist Fees	PBC Approved Amount
27	27201	Crown – Porcelain/Ceramic/Polymer/Glass	\$1,349.00	\$0.00
TOTAL:			\$1,349.00	\$0.00

The amount quoted by the dentist for the requested crown (\$1,349.00) includes applicable lab fees.

o On March 27, 2023 the ministry spoke with the dentist's office manager, who advised that the dentist will not pull a "perfectly good tooth" and that they could fill it with a 5 surface filling, but this would be a temporary solution only. The office manager did not provide any information regarding the option of a removeable prosthetic.

o On April 13, 2023 Pacific Blue Cross replied to the ministry's email and advised that they have never received any documentation to confirm that the appellant is precluded from using a removable prosthetic due to a dental condition, a physical impairment, an allergic reaction or other intolerance to the composition or materials used in a removeable prosthetic, or a mental health condition that makes it impossible for the appellant to assume responsibility for a removeable prosthetic.

The following documents were provided:

o Dental Claim forms prepared by the appellant's dentist (dated July 6, 2022, January 4, 2023, February 15, 2023, and March 16, 2023) summarize the requested crown with the same information indicated on the Dental Claim form previously submitted. The form dated March 16, 2023 includes a note stating "#27 has cracked tooth syndrome painful to biting pressure and cold. Gum inflamed and sore where tooth is split at gumline. Necessitating full coverage to restore strength, comfort and function to avoid possible endodontic tx."

o A Pacific Blue Cross predetermination document (dated July 15, 2022) addresses the requested crown, with handwritten information added to indicate that the appellant is missing teeth #18, #14, #24, #28, #38, #34, #44, and #48, and that tooth #27 has a large pre-existing filling with distal decay.

o Pictures and X-Rays of the affected tooth (dated March 16, 2023) include the following dentist's statement: "Very large and deep composite with recurrent decay extending buccally and distally undermining buccal cusp necessitating full coverage to restore strength, comfort, and function. Currently tooth is painful."

In her Request for Reconsideration, the appellant explained:

o The dentist cannot fill a cavity on her upper left molar, as it would likely split from the drilling due to the crack and extensive filling already there. This would continue to cause pain and deterioration and eventually the tooth would split on its own, after which the appellant would need a root canal. She will not get a root canal due to difficulty fighting infections, even with 2-3 courses of antibiotics.

o The dental office explained she needs a crown, as removing the tooth is not an option. She has already had 8 teeth removed and has 24 left, so she would not be able to chew on that side of her mouth anymore.

o She has had jaw surgery in the past, which is regressing, and her jaw has already started locking in place while chewing, so only being able to chew on the right side would cause further problems with her jaw. The pain from her tooth is now extending all along the gumline without teeth to the back of the jaw.

o The appellant has also asked the dentist about a partial denture that would be covered by PBC, but they also said this would not be a good option, as [she understands] that this would require other teeth to anchor the denture.

o The office manager made it clear they will not remove the tooth.

Information provided on appeal:

On April 26, 2023 the appellant provided her Notice of Appeal to the Tribunal over the phone. Her reasons are summarized in an email to the Tribunal:

"[The appellant] has a split tooth. The dentist said it needs a crown. [The appellant] couldn't afford a crown, the dentist won't pull it, and an implant won't work ... The dentist says there is a cavity, it's also cracked, and they can't fill the cavity. If they drill it, it will split. Blue Cross says to pull it and put in a denture. [The appellant] says a denture is not a good option. [The appellant] has never had any major dental work done. The dentist is saying they won't fill it and won't pull it. [The appellant] is scared about lasting damage

and a nerve is starting to hurt. When it does split she will need a root canal. Dentist is saying [she] has to get this figured out. [She] does not have the money to deal with this.”

In a letter dated April 1, 2023 the appellant’s dentist writes:

“This is a letter to inform you that [the appellant] has presented us with cracked tooth syndrome on tooth # 27... This condition necessitates full coverage to restore strength, comfort and function to avoid possible endodontic treatment. I highly recommend a crown on this tooth which still has a healthy tooth structure and is salvageable. In my opinion, it would be unprofessional to extract such a healthy tooth. A denture is contraindicated to replace a single posterior second molar as the dentition has previously been corrected using orthodontics with the removal of wisdom teeth and four bicuspids. Such that further tooth loss would affect the stability of the occlusion obtained from orthodontics and a removal denture would pose difficulty when inserting and removing because of previous jaw surgery and her jaw now locking when opening too wide.”

At the hearing the appellant repeated information she had previously given and added: She finds it difficult to always have to be the “go-between” between the ministry, the dentist and Pacific Blue Cross. Each time she contacts the ministry, she has to talk to a different representative. This complicates communication, especially because the dentist is not clear whether to communicate with Pacific Blue Cross or directly with the ministry. She is worried she will lose her dentist if she has to keep asking him for written notes. She does not need the crown for cosmetic reasons but for chewing. After an accident she had major jaw surgery and as a result her jaw is locking if she opens her mouth too wide. That is why a denture would not work.

Without a crown her tooth will eventually split and then she will need a root canal. The base of the tooth is fine. It is already very painful.

She had talked to other dentists, but they all want payment up-front which she cannot afford.

She feels she is not taken care of properly.

To a question of the panel the appellant answered that there is a tooth in front of #27 but not behind it.

The ministry summarized the reconsideration decision and stated that at reconsideration they did not have the dentist letter dated April 1. They needed this information. In response to a panel question the ministry stated that their opinion was that if the ministry had had the April 1 [sic - according to the appellant the date should read May 1] dentist letter at reconsideration it would have decided in the appellant’s favour. The ministry referred specifically to the dentist’s letter, the last sentences starting with “in my opinion...”

Admissibility of New Information

The panel finds that the information provided by the appellant in her Notice of Appeal and at the hearing, as well as the dentist letter, is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances surrounding the appellant's dental claim. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

Issue on Appeal

The issue in this appeal is whether the ministry's denial of funding a crown for the appellant's tooth # 27 is reasonably supported by the evidence or a reasonable application of the relevant legislation in the appellant's circumstances.

Specifically, was the ministry reasonable when it was not satisfied that the appellant's dental condition precludes the use of a removable prosthetic?

Also, was the ministry reasonable when it determined that the appellant was not eligible for coverage as a Life-Threatening Health Need (section 69) or as a Crisis Supplement (section 57).

Panel's Analysis

Among other eligibility criteria, section 4.1(2)(b)(i) of Schedule C sets out that to be eligible for a crown supplement the appellant's dental condition must preclude the use of a removable prosthetic.

In its reconsideration decision, the ministry determined that the appellant did not meet this criterion and was therefore not eligible for funding for a crown for tooth #27.

Based on the following evidence, the panel finds that this decision was not reasonable:

- The dentist writes:

- “[The appellant] has presented us with cracked tooth syndrome on tooth # 27... This condition necessitates full coverage to restore strength, comfort and function to avoid possible endodontic treatment. I highly recommend a crown on this tooth which still has a healthy tooth structure and is salvageable. In my opinion, it would be unprofessional to extract such a healthy tooth. A denture is contraindicated to replace a single posterior second molar as the dentition has previously been corrected using orthodontics with the removal of wisdom teeth and four bicuspids. Such that further tooth loss would affect the stability of the occlusion obtained from orthodontics and a removal denture would pose difficulty when inserting and removing because of previous jaw surgery and her jaw now locking when opening too wide.”

- “#27 has cracked tooth syndrome painful to biting pressure and cold. Gum inflamed and sore where tooth is split at gumline. Necessitating full coverage to restore strength, comfort and function to avoid possible endodontic tx.”
- “Very large and deep composite with recurrent decay extending buccally and distally undermining buccal cusp necessitating full coverage to restore strength, comfort, and function.”

- The dentist’s office manager advised that the dentist will not pull a “perfectly good tooth”.

The Panel finds that there is sufficient evidence that the appellant’s dental condition precludes the use of a removable prosthetic as set out in section 4.1(2)(b)(i) of Schedule C. Also, there is sufficient evidence that the appellant has a physical impairment that makes it impossible for her to place a removable prosthetic as set out in section 4.1(2)(b)(ii).

Conclusion

The panel finds that the ministry’s determination that the appellant is not eligible for a crown supplement under section 4.1(2)(b) of Schedule C is not reasonably supported by the evidence. The ministry’s reconsideration decision is rescinded, and the appellant is successful on appeal.

Although the above is sufficient to dispose of the appeal, as the ministry considered several other sections of the EAPWDR in its reconsideration decision, the panel will briefly discuss these.

The panel finds that the ministry reasonably determined that the appellant is not eligible for coverage of a crown as a life-threatening health need. The ministry stated correctly that section 69 only applies to medical transportation, medical equipment / devices, and some types of medical supplies; dental and denture supplements are not set out in these sections.

The panel also finds that the ministry was reasonable when it denied coverage for a crown as a crisis supplement. The ministry correctly quoted and interpreted section 57(3) which says that the ministry may not provide a crisis supplement to obtain a supplement described in Schedule C (where dental supplements are listed) or for any other health care goods or services.

Employment and Assistance for Persons with Disabilities Regulation

Crisis supplement

57 (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.

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: ...

Schedule C - Health Supplements

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.

APPEAL NUMBER 2023-0120

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

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

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2023/05/17

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

(2023/05/19)

Print Name

Melissa McLean

Signature of Member

Date (Year/Month/Day)

(2023/05/19)