

Part C – Decision Under Appeal

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated February 3, 2023, that denied the appellant's request for full coverage of his dental procedures (fee codes 01202, 02142, 02114, and 04501).

The ministry determined that they may only provide coverage up to the maximum rates listed in the ministry's Schedule of Fee Allowances – Dentist.

The ministry noted that the appellant received coverage up to the maximum rates set out in this Schedule.

The ministry also noted that they have requested that the appellant's concerns about the Schedule of Fee Allowances and ministry policy be forwarded to those who work in dental policy.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation Schedule C, section 1
Schedule of Fee Allowances – Dentist (Effective September 1, 2017)

Part E – Summary of Facts

From the ministry file:

- Coverage for the following services is requested:

Fee Code	Description	Dentist Fees	Ministry Rate
01202	Examination and diagnosis, limited, oral, previous patient	\$37	\$17.40
02142	Radiographs, Bitewing, two images	\$27	\$13.59
02114	Radiographs, Periapical, Four images	\$41.80	\$21.04
04501	Pulp Vitality test and interpretation, one unit of time	\$123	\$45.88
Total		\$228.80	\$97.91

- The dental work was performed on December 8, 2022
- The appellant received coverage of the maximum rates set out in the Schedule of Fee Allowances – Dentist
- 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).
- The appellant has been designated as a Person with Disabilities (PWD) and is in receipt of disability assistance. He has active health care coverage through MSP and PBC.

A screen shot of the ministry's website is titled Dental Coverage. Under the sub-title Dental fee schedules it says:

- "You don't have to pay out of pocket. Money for dental services is paid directly to the dentist..."
- Fee schedules determine the maximum amount the ministry will pay. You may be responsible for any additional costs."

A print-out lists amounts claimed and amounts paid for dental services provided on December 8, 2022.

A statement by the appellant's dentist lists services performed on December 8, 2022, amounts payable by the insurance and amounts payable by the appellant.

An Explanation of Benefits lists the dental work performed on December 8, 2022, fees charged by the dentist and eligible amounts. The Total Payable to dentist is \$97.91.

At reconsideration, the appellant wrote:

"I have had several conversations with Ministry staff all of whom have been very helpful and kind and patient with me, and all of whom have agreed with my position ...

When I developed a toothache I made an appointment with my dentist who does follow the B.C. Dental Association Fee Guidelines (many do not and charge more). I had looked at your website regarding policy (a picture is enclosed titled "screenshot of misleading claim.jpg") and the website stated that basic dentistry is covered ...

Some of the Ministry staff had the opinion that I needed to involve the MLA to address this breakdown in the implementation of the policy from the top down ...

There is somebody in your office though whose job and mandate it is to oversee the updating of Dentist and other fee schedules, and I haven't been able to ascertain what this person's name and job title is. No-one seems to know, and everyone says it's someone else's job, hence my "falling through the cracks" statement. But there is somebody who is on salary at the Ministry and whose job it is to oversee the maintenance and updating of fee schedules."

In his submission the appellant also included argument which is reflected in Part F of the decision (Reasons for Panel Decision)

In his Notice of Appeal the appellant provided more argument which is reflected in Part F of the decision.

On May 31 and June 1, 2023 the appellant provided 3 submissions.

- Submission 1: The appellant provided 267 pages of documents that include reports and recommendations from the BC Dental Association between 2018 to 2022.
- Submission 2: The appellant re-submitted the ministry website screen shot.
- Submission 3: The appellant submitted a written statement that he intended to read at the hearing.

Submission 1

- BC Dental Association Presentation to the 2018 Select Standing Committee on Finance and Government Services

- The Association recommends a review and update of the ministry dental coverage.

- The Association reports that the fees of the ministry's schedule have not increased since 2006.
 - Inadequate ministry coverage leads to patients resorting to antibiotics (even though this is discouraged in dental care) and pain killers instead of the required procedures.
 - There are 20 not-for-profit dental clinics in BC.
- BC Dental Association Submission to the Select Standing Committee on Finance, June 11, 2019
- The Association recommends the improvement of access to care for low income and disability assistance clients.
 - The Association reports that gaps in coverage are forcing people on income or disability assistance to go without dental care.
 - Ministry dental fees have not increased in 13 years while inflation has increased by 20%. Fees are at about 55% of the suggested Association's fee guide.
 - Without a fee increase the situation will worsen. "Dental disease is progressive – it does not self-resolve."
 - A fee increase would also provide a long-term solution to the not-for-profit clinics' operational sustainability.
- BC Dental Association Submission to the Select Standing Committee on Finance, June 10, 2020
- The Association recommends a review of social assistance dental coverage including fees.
 - The Association reports that the ministry's dental program has not been reviewed in over 20 years and the last fee increase was over 13 years ago for adults, with average fees around 45% of standard dental fees.
 - The ministry funded a BC Dental association pilot project which demonstrated that the current program essentially delays necessary treatment, adversely affects overall health, and ultimately results in increased cost to the public health care system.
- Supplementary BC Dental Association (BCDA) Submission to the Select Standing Committee on Finance and Government Services (September 30, 2021)
- The Association recommends that the dental needs of ministry clients must be met.
 - The Association reports that over the last 14 years ministry dental rates have not increased.
 - Currently the ministry fees are 51% of the current BCDA adult fees.

- Supplementary BCDA Submission to the Select Standing Committee on Finance and Government Services (June 16, 2022)
 - The Association reports that ministry fees are 44% of the current Suggested BCDA Fee Guide.
 - There has been no fee increase in over 15 years.
 - Delayed care increases the severity of the dental condition. This could be avoided by increased or eliminated limits.

- Select Standing Committee on Finance and Government Services. Report on the Budget 2022 Consultation (November 2021)
 - The BC Dental Association recommends investment in prevention and early intervention of medical conditions, including expanding coverage for dental care.
 - The Association reports that the rates for the disability and social assistance dental plan have not been increased in more than 14 years.
 - A fee increase would enable more low-income individuals and families to access dental care.
 - Lack in dental treatment triggers stigma and prevents people from working, contributing to their community, or caring for themselves and their family.

- Select Standing Committee on Finance and Government Services. Report on the Budget 2023 Consultation (August 2022)
 - Members of the Committee support improved dental coverage, especially for British Columbians with disabilities or diabetes.
 - Several submissions outline the need to expand dental coverage for persons with disabilities.
 - The Association recommends recognition that poor dental care leads to poor health outcomes for lower income British Columbians with specific attention focused on providing better care for people with disabilities and with diabetes.
 - The Association reports that BC has not increased dental fees under the PWD Dental Plan since the early 2000s. Plan fees are now less than half of the BC Dental Association recommended fees. As such, BC residents with disabilities have the worst dental health outcomes in the province.
 - There are significant gaps, and inadequate dental coverage can have several wider financial and health implications. Good dental coverage should be extended to low-income individuals and persons with disabilities, as “the current coverage under disability assistance is lacking and does not insure optimal health outcomes”.

Submission 3

The appellant wrote:

“Members of the Tribunal:

I am here today asking you to do everything within your power to address and correct two issues within the Ministry of Health & Social Development & Poverty Reduction (MSDPR) that are significant barriers to people with disabilities (PWD) from accessing their Dental Coverage Program benefits.

The intent of the legislation supporting the dental program is to provide people on PWD, etc. with basic dental care and coverage. The coverage is minimal, only \$500 per year or \$1,000 every two years, however the program limits that are payable to PWD recipients are based on a Dentist Fee Schedule on their website dated 2017. This 2017 schedule is based on the BCDA Dentist Fee Schedule of 2007, so now in 2023 the schedule is a full 16 years obsolete. I use the term obsolete because no dentist is following the fee schedule from 16 years ago, it simply does not exist.

I do not know any profession including Ministry workers that are working at 2007 wages. What this effectively does is disenfranchise people with disabilities from accessing the minimal amount of dental coverage that they are entitled to because they first have to come up themselves with over 60% (\$1200) of the real world cost before they can access the \$1000 every two years of the ministry funding (on an obsolete 2007 BCDA schedule).

This is asking people who are trying to survive on \$1400 per month to come up with \$1200 that simply doesn't exist for many of them, so this is effectively making the very limited dental coverage that they are entitled to unobtainable.

Should they not eat, or pay their rent so that they can get their tooth fixed because the Ministry is not exercising due diligence in the oversight of their implementation of the intent of the legislation to provide basic dentistry to people on PWD?

I have been knocking myself out trying to find out who's job it is and who is responsible for this oversight at the Ministry, and how to get the fee schedule updated. I have been told by workers at the Ministry (all of whom agree with me BTW) that they don't know who's job it is to provide this oversight to make sure that programs are functional and following the intent of the legislation that they are supposed to be implementing. They (MSDPR workers) all said that somehow it's up to me to appeal and come to this tribunal to make change, so here we are.

The BC Dental Association (BCDA) updates their fee schedule every year and the Ministry's payment schedule needs to align with those amounts. Since 2018 there have been repeated requests from the BCDA and numerous poverty support groups to Select Standing Committees and others to update the fee schedule. The schedule is 16 years obsolete and the implications to an already vulnerable population and society in general are significant.

The Ministry's website states “You don't have to pay out of pocket. Money for dental services is paid directly to the dentist, denturist or hygienist.” I believe this statement is

there on the website because that was the original intent of the legislation, and decades ago this would have been true. However, in the real world now the statement is very misleading as the ministry has failed to maintain and update their fee schedule to the current costs so everyone accessing the program does indeed need to “pay out of pocket.” The Ministry’s payment schedule needs to align with the current BCDA Dentist Fee Schedule dated 2023, and be updated each and every year. The current situation is simply unacceptable.

The website page goes on to say “Fee schedules determine the maximum amount the Ministry will pay. You may be responsible for any additional costs.” What this ends up doing is making the very limited dental coverage that people on PWD are entitled to, inaccessible because they somehow magically have to come up with over 60% of the cost themselves to access the \$1000 of dental coverage every two years.

For many if not most people on PWD they don’t have any disposable income to pay the amount that the ministry is failing to cover by not keeping its fee schedule current. This in fact denies PWD clients the benefits they are entitled to. In the long run this is not saving money for the government and costs more in the long term due to the seriously detrimental health outcomes of delayed and or denied treatment.

There is no-one I have spoken with including all Ministry personnel, who thinks that the current dysfunctional situation is in any way a reasonable implementation of the intent of the legislation to provide basic dentistry to people on PWD, and this is simply unacceptable.

In closing I ask for three remedies:

- If it is within your authority, please compel that the Ministry update its dental fee schedule to align with the BCDA Dentist Fee Schedule 2023, and update it yearly thereafter; and, if this is not within your authority, I ask that you send a VERY STRONGLY worded recommendation that they do so ASAP; and if needed amend any relevant legislation; and
- That you require the Ministry to correct the misinformation on their website that states that PWD clients, and others, do not have to pay out of pocket. It should be clear that the Ministry is not paying dental costs at 2023 rates and clients will have significant out of pocket expenses, often in excess of 60%. Members of the Tribunal, I am here asking you to do everything within your power to address and correct the dysfunction in the implementation of the Ministry’s Dental Coverage Program for people with disabilities (PWD); and
- That you require the Ministry to pay the \$130.89 still outstanding from my dental checkup in December 2022 to [my dentist] as should have been the case if the Ministry had been doing it’s due diligence with keeping it’s Dental Fee Schedule up to date and grounded in reality in a reasonable manner.”

At the hearing the appellant read this statement and added that there have been numerous requests from the BC Dental Association to update the ministry's schedule of dental fees. To questions from the ministry and the panel the appellant agreed that the ministry partially reimbursed his dentist's fees according to the limits set out in the ministry's fee schedule. When his dentist told him that there may be additional costs to pay he did not expect that he had to come up with a large amount. There are charities who run free dental clinics; however, dental care is the ministry's responsibility and they should not depend on charities. The appellant stated it is too overwhelming for him to have to try to achieve changes by himself. He was never able to obtain a list of low-cost dentists from the BC Dental Association. He would have to call each dentist separately to find out what they charge - this is unrealistic. He has found no dentist who is affordable for low-income persons, except for the free dental clinics that are overwhelmed by the amounts of low-income patient who need their services. There should be a well-defined path within the ministry to address situations like this.

The appellant's advocate stated that all ministry programs should go through an evaluation process. Individuals who try to affect change soon give up. The advocate wants the ministry representative to start the process and start talking to people in the ministry about the necessary changes.

The ministry summarized the reconsideration decision and explained that ministry employees are bound to act according to legislation "from the top to the bottom". Sometimes legislation allows for discretion, otherwise not, as in the case of set financial limits. The ministry must make their decisions within the legislated limits. Decisions about dental treatments are very "tightened down" by legislation. The ministry added that they wish that they had more to say.

To questions from the appellant and the panel the ministry answered that the requested changes must be legislative changes and there must be a push for legislated change. The ministry explained that within the ministry there is a group of employees who examine problematic issues and recommend changes through Policy Interpretation and Exception Request Reviews (PIERs). These employees are experienced in policy and legislation. The appellant could try to contact a ministry supervisor or manager. The most effective approach to reach a supervisor would be to go to the ministry office in person, or to speak to the ministry's health assistance branch over the phone and request to speak to a supervisor. Other options for the appellant would be to speak to his MLA or approach the BC Dental Association, the BC Ombudsperson, the Human Rights Commission, or the Disability Alliance of BC. People in these organizations will then work for the appellant.

To a question from the panel on how it was determined that the appellant's situation was not an emergency the ministry responded that the dentist makes the decision on what treatment to request and why. The Pacific Blue Cross examines the dentist's request and either approves or denies it. In the appellant's case the dentist did not indicate that there was an emergency.

The ministry explained that they can recommend low-cost dentists and try to find community resources for low-income clients. The BC Dental Association's website should also include these types of resources.

Admissibility of New Information

The panel finds that the information provided by the appellant in his appeal submissions and at the hearing, as well as information provided by the ministry at the hearing, 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 fully funding the appellant's dental procedures (fee codes 01202, 02142, 02114, and 04501) was 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 determined that they may only provide coverage up to the maximum rates listed in the ministry's Schedule of Fee Allowances – Dentist?

Appellant's Position

The appellant argues that there is a serious lack of due diligence regarding the updating of the Schedule of Fee Allowances – Dentist. This schedule is currently based on the BC Dental Association's fee schedule of 2007, not 2023. The ministry is not implementing its mandate to provide basic dentistry to people on disability assistance by not keeping its Dental Fee Schedule current with the BCDA Schedule. The basic dental coverage that persons with disabilities are supposed to be entitled to is unobtainable to many because of the failure of the ministry to keep their dental fee schedule current with the BCDA Schedule. In the appellant's case, as much as 60% of his dentist fees are not covered. The ministry apparently expects people who live in poverty to come up with the difference between ministry schedule fees and BCDA fees. This means that many people cannot access basic dental services because they have no extra money to spare.

Fee schedules must take inflation into account and should be updated every year. The ministry dental fee schedule is 16 years out of date. When the current fee schedule was published in 2017 it was already a decade out of date. The ministry schedule should reflect the "real world". For example, the BC Dental Association's Fee Schedule is updated every year. Ministry employees in executive positions should keep dental fee schedules current with the BCDA fee schedule. They should implement the ministry's mandate and ensure that basic dental coverage is provided to persons with disabilities.

The appellant argues that his appeal is not only about the \$130 dollars left owing to his dentist and about the ministry only covering 40% of his dentist's fees. It is about fixing the breakdown within the ministry which is not implementing the policy that is set out in the legislation. The policy in the legislation is that he is covered for basic dentistry, the

implementation is where the breakdown has occurred and is being allowed to continue. The people affected by this breakdown are the most vulnerable part of the population.

The appellant argues that he should not have to involve his MLA to address this breakdown. MLA involvement is meant for creating new legislation and requires lawyers. As a person with disabilities who suffers chronic pain this is beyond the appellant's scope or ability. It is not his job to fix the breakdown in the implementation of the legislated policy.

The appellant also argues that the ministry website is misleading. It makes people with disabilities believe they have full dental coverage under the current BC Dental Association Fee Schedule it says "You don't have to pay out of pocket. Money is paid directly to the dentist, denturist, or hygienist." Further down it says "Fee schedules determine the maximum amount the ministry will pay. You may be responsible for any additional costs." These additional costs may be interpreted as fees payable to dentists who do not follow the BC Dental Association Fee Schedule but charge higher fees. The website needs to be changed to avoid this misunderstanding.

Ministry's Position

The ministry determined that the appellant is not eligible for coverage of his dental procedures (fee codes 01202, 02142, 02114, 04501) above the rates that are set out in the Schedule of Fee Allowances - Dentist. The ministry bases its decision on the definition of "basic dental service" in section 1 of Schedule C, that

- (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"

Panel's Analysis

Section 1 of Schedule C defines "basic dental service" as a dental service that, if performed by a dentist, is set out in the Schedule of Fee Allowances - Dentist (effective September 1, 2017) and is provided at the rate that is set out in this schedule.

The services provided by the appellant's dentist on December 8, 2022 are listed and the rates set out in this schedule.

While the panel agrees that this schedule is inadequate and outdated, the panel's jurisdiction is limited to determine whether the ministry reasonably applied the applicable legislation. The panel cannot make changes to the legislation or decide that people should receive benefits they are not entitled to under the legislation. Accordingly, the panel finds the ministry reasonably applied the legislation.

Conclusion

While the panel agrees with the appellant's arguments, the panel has no choice but to find that the ministry's determination that the appellant is not eligible for dental coverage for more than the rates listed in the Schedule of Fee Allowances – Dentist is a reasonable application of the relevant legislation. The ministry's reconsideration decision is confirmed, and the appellant is not successful on appeal.

Employment and Assistance for Persons with Disabilities Regulation

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 ...

"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 ...

Schedule of Fee Allowances - Dentist
Effective September 1, 2017

FEE NO.	FEE DESCRIPTION	FEE AMOUNT (\$)	
		Adult	Child
01202	Previous Patient (recall) Oral Examination - Re-examination of a patient who is attending on a regular basis ...	17.40	20.55
02142	Four Films	21.04	27.23
02142	Two Films	13.59	17.59

Pulp vitality test

Note: Limited to 1 unit per quadrant in a six-month period.
Tooth number required on claim.

04501	One Unit	45.88	54.39
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APPEAL NUMBER 2023-0046

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

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2023/06/01

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2023/06/06

Print Name

Gordon Thompson

Signature of Member

Date (Year/Month/Day)

2023/06/01