

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated June 17, 2024, in which the ministry found the Appellant ineligible for the request for reimbursement of prescription costs and dental service costs.

The Ministry recognized that the Appellant should have been receiving 'no deductible' PharmaCare coverage during the time while the Medical Services Only ("MSO") file was closed in error; however, the Ministry found the *Employment and Persons with Disabilities Act* and *Employment and Persons with Disabilities Regulation* do not allow the Ministry to reimburse a person with an MSO file for prescription costs incurred.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the "Act") sections 1, 5.

Employment and Assistance for Persons with Disabilities Regulation (the "Regulation") section 1, 61.01, 61.1, 62, 63 and Schedule C sections 2, 3, 4 and 5.

Pharmaceutical Services Act, sections 2, 18.

Drug Plans Regulation, Division 2, section 36 (1), (2)(d),

Medicare Protection Act, sections 3, 5, 10.

Medical and Health Care Services Regulation, section 10,

The relevant legislation is provided in Appendix A.

Part E – Summary of Facts

The hearing was held on July 15, 2024 as an in-person hearing. The ministry attended the hearing by telephone.

The Appellant is a Person with Disabilities in receipt of MSO benefits as a 'continued person'.

The evidence before the minister at reconsideration included the following:

- In January 2023, the case was switched from MSO to closed.
- In March 2024, the Ministry reviewed the case and determined the Appellant is eligible for MSO and that the case had been closed in error. She was in receipt of federal benefits at the time the file closed. Her case was re-opened as MSO and Medical Services Plan ("MSP") were added to the case.
- In April 2024, the Appellant submitted receipts requesting reimbursement of the cost of prescriptions for the time that she was not covered by MSP. She was informed that the Ministry does not reimburse for prescription costs and that she is covered through PharmaCare.
- The receipts submitted were 3 Pharmasave receipts for prescriptions filled between 2022 and 2024, for a total of \$303.43. \$105.58 for Jan-Apr 2024, \$161.25 for Sept-Dec 2023, and \$36.60 for May-Dec 2022.
- On May 7, 2024, the Ministry informed the Appellant that the Ministry had no authority to reimburse her for prescription costs incurred while her MSO file was closed. The Ministry had no authority to meet the costs of medical services not covered by MSP, unless clearly specified in the Employment and Assistance for Persons with Disabilities Act or Regulation.
- At reconsideration the Appellant included another copy of the prescription costs that were already submitted plus a statement for dental services for \$185.43 in dental costs incurred July 5, 2023.

On May 14, 2024, the Ministry's Health Assistance Branch reached out to Pacific Blue Cross (PBC) about the July 5, 2023, dental service and PBC reported back to the Ministry that the July 5, 2023, claim to the dental office had been adjusted to \$78.53 and reported that the Appellant can reach out to the dental office to get a refund for the amount that PBC will pay the dentist.

The evidence before the Ministry at reconsideration also included the following statements by the Appellant:

- In January 2023 the appellant's MSO related coverage was cancelled without notification and she hasn't been given any paperwork for the cancellation of ongoing coverage and when she requested the reason was told they couldn't find it.
- She found out when she attempted to get her three-month supply of prescriptions.
- The Appellant made several calls and was not given any reason why and due to lack of money, she went without proper medications, had a stroke on December 25, 2023, and was hospitalized.
- She was treated for high blood pressure and was told that she had to take medication or risk more strokes.
- She has medical conditions, and her life was put in jeopardy.
- When the Appellant had her MSO reinstated, she was told the medical and dental costs would be reimbursed.

Evidence received after Reconsideration.

In the Notice of Appeal, the Appellant writes that she has not received any of the decisions from the Ministry and has only been told over the phone.

Appellant

At the hearing the Appellant stated that the cessation of services began in January 2022 and not 2023 as the Ministry stated in the Reconsideration Decision. In January of 2022 she had a \$300 prescription payment she could not afford.

She has gone to PharmaCare a number of times and they simply refer her back to the Ministry, advising that any plan she signs up for will have deductible consequences. The Appellant states she cannot afford to pay a deductible.

The Appellant stated that as the Ministry admitted they erred they should have to pay her back for the payments she has made.

Not being able to afford the medications caused the Appellant to stop purchasing them and she ended up having a stroke in December of 2023. Her Blood Pressure rate was over 200 and her doctor advised her if she would not take the medications she will have more strokes. The Appellant is now purchasing the medications and cannot afford her utilities.

The Appellant is concerned that the Ministry has stated that her costs are not covered when not on MSO. The Appellant feels she should have been on MSO and should have had her costs reimbursed. The appellant referred the panel to section 62 of the Regulation, which she says clearly states that she is eligible for dental services.

The Appellant states that since her stroke she has had increased health problems. These include problems with balance, loss of focus when shopping, hand trembling and speech that comes out incorrectly.

Since Grade Six, she has sewed and is now also a quilter. She struggles now as she cannot remember how to do things and needs to relearn online what she is to do. She used to be able to make men's clothing and now cannot.

The Appellant stated that her total income is \$1950.65 per month and her expenses are \$1596.91 per month. She has only \$300 left for food and incidentals.

At the hearing the Appellant confirmed that these restrictions have arisen from the stroke. She used to take her dog for a walk, visit the senior centre in town, do yoga and partake in quilter groups, as well as do a lot of sewing. These activities have all been limited since the stroke. As well, she must exercise to loosen her body and practice speech as she blacks out on some words.

In response to questions the Appellant stated that her doctor said it was lucky she had the stroke at home and that her son prompted her to call 911 as he was on the phone with her and recognised the symptoms. Otherwise, the stroke could have been potentially much worse.

The Appellant confirmed she is taking five prescription medications, including those for Blood Pressure, Cholesterol and had stopped taking these when she was cut-off from prescription coverage. After the stroke and following the instruction from her doctor that she must take the medications, she went to a service advocate who helped her deal with the Ministry and supposedly get back on the Ministry system.

The Appellant stated that prior to being cut-off prescription drug services she had been receiving her drugs for over ten years and believes they were being paid for by the Ministry.

The bill for drugs in May and December 2022 was paid for completely by the Appellant. Her cholesterol was high, and she needs the anti-depressants. The doctor told her she must take these.

The Appellant clarified that she could apply for PharmaCare after being cut-off however did not as she could not afford the deductible amounts. She understands after reading the Ministry report that 'no-deductible' means she should not have to pay for medications. She has been cut-off since 2022 and has had no communication from the Ministry at any point since then.

The Appellant recognises that the Ministry, in its decision, stated it had spoken to PBC and the amount for a July 2023 dental charge had been changed and lowered, and that she can reach out to them for reimbursement. She advises she has not done that yet, waiting to see the outcome of this hearing. The Appellant stated that she had just had her teeth cleaned in May or April of 2024 and cannot understand why the cost was not covered.

In summary the Appellant explained that due to a car accident, she went on disability in 1997. When she reached the age of 65 years she went on to a federal pension and senior supplement. She has never been notified of any change to her status by the Ministry and is still in disbelief that she is not covered for her prescription drugs.

She has spent two years on the phone trying to solve the situation. Every time she went to PharmaCare, they told her it was a Ministry responsibility and to go back to them. She still feels the Ministry should have covered the whole period and does not know why she has not been covered. She states there has never been a triggering event to the periods of non-coverage.

She understands the requirement to pay some of her medical services, that of dental and optical. Before January 2022, she always had prescription drug coverage and paid a partial amount for one of her prescriptions. She now cannot get dental, or prescription services paid for.

The Appellant closed by saying she has empathy for front line workers but wants this fixed.

Ministry

The Ministry relied upon the Reconsideration Decision and tried to explain the possible causes of the Ministry errors and reasons why the Appellant may still not be receiving some services.

The Ministry summarised some of the details of the case;

- The Appellant was in receipt of disability assistance and then transitioned to MSO status. That means that there is a continuing core medical services plan which includes PharmaCare.
- PharmaCare set their own rules on the payment of drugs and coverage. The point is that MSO includes dental and optical however the Ministry does not cover the costs above the legislated maximums and any extra billing is between the supplier and the Appellant.
- Then COVID happened and many seniors applied for CERB benefits. This caused seniors to lose their senior benefits due to income changes when taxes were done. For example, some seniors were cut-off from federal benefits such as losing their GIS benefit. The file would then come back to the Ministry and if the federal benefits were less than the Ministry benefits, the Ministry provided a top-up payment.
- These changes were monthly, and files were then handled manually. The Ministry has looked at the Appellant's files and does not know what happened insofar as CERB benefits or non-payment of PharmaCare invoices. The Ministry stated that it appears the

Appellant's MSP benefits were in effect for all of 2022 and after a break in service due to a Ministry error, again from February 2023 until February 2024.

- Some extended health benefits of dental and optical, had been cancelled in January 2023. In answer to questions the Ministry clarified that there are two periods showing on the Appellant's file where supplemental coverage was not in effect due to her file being incorrectly closed. These gap periods were;
 - 13 January 2023 until 1 February 2023 and again from;
 - 2 February 2024 until 1 March 2024.

- The Ministry also restated that the Appellant can now go back to PBC and seek reimbursement for the July 2023 supplemental dental charges. MSP coverage can also be backdated some time amount when an error is corrected, potentially until the original file opening or to the date when the file was reopened. They could not explain which period was allowed when they fixed the errors in 2023 and 2024.

- The Ministry explained that MSP and PharmaCare is provided to certain clients of the Ministry under its constating legislation. The Ministry representative had looked at the drugs the Appellant is taking to see if they are covered. The representative could see that one of the drugs may need special authorisation but cannot understand why the remainder of costs were not covered by PharmaCare.

The Ministry admitted it did commit errors and the representative does not have enough information to see why anything should have been declined, although the differing agencies do have different rules.

The basis of the Reconsideration Decision is that the Ministry does not pay for prescription drugs. As far as the Ministry is concerned the regulations do not allow for the Ministry to pay for prescriptions for anyone.

At questioning the Ministry did not know if the Appellant was cut-off PharmaCare because of the Ministry error or because the Appellant did not qualify.

As the Ministry had in fact committed an error in closing the file the representative stated that the Appellant may be able to receive backdated coverage for several months but does not know the rules. She is aware that PharmaCare can only run the receipt for about one month or so. The Appellant would need the original receipt to go any further back and it would be PharmaCare who would do the rerun and pay anything back.

The Ministry stated that the fix to the error is reopening the file. PharmaCare coverage can be backdated for a certain period of time but does not know the rules or the time period. The prescriptions should have been covered by PharmaCare but does not know why they were not.

For the dental receipts paid by the Appellant, and as PBC will pay the dentist, the dentist will pay her back. The dental and optical bills are covered under their own maximum fee guide amounts.

When asked for its definition of MSO, the Ministry explained that it is covered under the legislation. It is a category for those who were in receipt of disability assistance but now have other income, such as federal pensions. It allows the retention of medical coverage and also includes dental, optical, MSP and supplies and equipment. The definitions are in the document.

When asked why the Reconsideration Decision states that MSP and 'no deductible pharma' have been added to the Appellant's case and was it in place before the cancellation in error, the Ministry explained that all clients do not pay for PharmaCare coverage and so it is a bit of a red

herring. The Ministry representative stated qualification must be in the legislation somewhere but did not know where.

The link to the Ministry of Health provide in the Reconsideration Decision was for further information on MSP and PharmaCare.

A continued person, such as the Appellant, has their prescription drugs and payment covered by PharmaCare and the Ministry of Health, not the Ministry of Social Development and Poverty Reduction (the Ministry). The charges are paid direct to the pharmacist or to the individual.

The Ministry authorizes a continued person for MSP and PharmaCare coverage for persons over 65 years of age when they transition to MSO. The Ministry Policy and Procedure Manual details how to turn this on.

The Ministry does not know if PharmaCare will reimburse the Appellant's costs due to the extended length of time.

The representative does not know where the statement from the decision that the Ministry had no authority to meet the costs of medical services not covered by MSP, unless clearly specified in the *Act* or Regulation, comes from.

The Ministry representative believes that the statement in the Reconsideration Decision that MSO normally includes access to MSP and no deductible PharmaCare originates in the Ministry Policy and Procedure Manual.

The Ministry representative was asked about the process the Ministry follows to enrol an individual for MSO coverage and whether it was followed in this case when the Appellant had

been removed from coverage. The representative stated that the MSP should have been backdated from the effective date of 1 March 2024 to May of 2023, but was not sure.

The effective date shown in the file of backdating the opening was 1 March 2024, and that was done sometime in late March 2024. The Ministry could not explain why the later PharmaCare charges from 23 March and 12 April 2024 were then not covered by the Pharmacist or PharmaCare. The Ministry suggests perhaps the Appellant could go back to the Pharmacist and ask them to reopen the receipts and resubmit.

The Ministry was not sure if the system should have picked up on the re-enrolment or if the file was closed by them so it may be a system issue.

In response to a question as to whether the Ministry enrolled the Appellant for PharmaCare, the Ministry stated that if they enrol a client for MSP, then PharmaCare is automatically notified. It is not a separate process, that the data exchange protocol will automatically notify the other agencies or ministries.

Admissibility of new information

Section 22(4) of the *Employment and Assistance Act* (EAA) says that a Panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a Panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a Panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In this case both the Appellant and the Ministry offered direct oral testimony, sometimes in conflict. Both parties provided detailed statements and answers to questions.

The Panel admits all such new information under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision that denied the Appellant's request for the reimbursement of prescription and dental service costs.

In particular, was the Ministry's decision that as the Appellant has an MSO file;

- the ministry is limited to providing general health supplements listed Schedule C section 2 and 3 of the Regulation only, and
- that the Regulation does not include assistance or supplements for prescription costs,

supported by the evidence, or a reasonable interpretation of the legislation in the circumstances of the Appellant?

The relevant legislation is provided in Appendix A.

Appellant Position

The Appellant argues that she has not been able obtain prescription or dental services without payment since January 2022. She has not been able to access the 'no-deductible' PharmaCare option as late as March and April of this year.

Her inability to purchase her prescription drugs may have caused a stroke in December 2023 and her doctor has instructed that she must take the prescribed medication. She has been left with increased debilitating medical conditions.

She believes that the legislation provides for her to receive additional services to those stated by the Ministry in their decision, including optical and dental services.

She should at least be receiving partial cost recovery under a 'no-deductible' policy for PharmaCare. The Appellant argues it is the Ministry's responsibility to provide the coverage and that they should be responsible for the backdating of services or repayment of her costs for prescription and dental costs as they cancelled her MSO status in error

Ministry Position

The Ministry states that it has already been established that the Appellant met the criteria for a MSO file as a continued person when her case was closed in error, and that she is currently eligible for MSO as a continued person.

MSO normally includes access to MSP coverage and no deductible PharmaCare coverage.

However, as per section 62 of the Regulation, with an MSO file the Ministry is limited to providing general health supplements listed in Schedule C section 2 and 3 only. The Regulation does not include assistance or supplements for prescription costs.

While the Ministry recognizes that the Appellant should have been receiving no deductible PharmaCare coverage during the time while the MSO file was closed in error; neither the *Act* nor regulation provides the ability for the Ministry to reimburse recipients of disability assistance or a person with an MSO file for prescription costs incurred.

In respect to the request for reimbursement of dental services incurred July 5, 2023 – the Ministry states this was not part of the original request and decision therefore it cannot be included as part of this review.

Panel Decision

The Panel notes no definitions within the legislation of the term 'Medical Services Only' other than as a title to section 61.1 of the Regulation. The discussion is contained within the Health Supplements, Part 5 of Division 4 of the Regulation, sections 61.01 and specifically in section 61.1, 'Access to Medical Services Only'. The section provides detailed definitions of a continued person only and provides no specifics on medical coverages.

Subsequent sections 62, 62.1, 62.2, 63, 63.1, 64, and 65 of the Regulation describe services that may be provided to continued persons under sections 2, 3, 4, and 5 of Schedule C of the Regulation and include;

- General Health supplements,
- Optical supplements,
- Eye examination supplements,
- Dental supplements,
- Crown and Bridgework supplements,
- Emergency dental and denture supplement, and
- Orthodontic supplement.

The Panel finds the Appellant, as a continued person, to be eligible for each of the above listed supplements contained within section 2 thru 5 of Schedule C of the Regulation if the eligibility criteria for the specific supplement are met.

Therefore, the Panel finds the Ministry was not reasonable in its determination that with an MSO file the Ministry is limited to providing general health supplements listed in section 2 *[general health supplements]* or 3 *[medical equipment and devices]* of Schedule C of the Regulation.

Within Schedule C of the Regulation, Health Supplements, the Panel notes that section 2 covers general health supplements only. Section 2(1)(a) covers medical or surgical supplies that are either disposable or reusable. An example includes:

(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;

Section 2(1.1) of Schedule C of the Regulation states in part, that "for the purposes of subsection (1) (a), medical and surgical supplies do not include ... prescription medications."

The Ministry has argued that this exclusion to the receipt of prescriptions specifically relates to the request for reimbursement of the Appellant's prescription drug costs.

The Panel finds the prescription drugs provided to, or purchased by the Appellant are not medical or surgical supplies as defined in the legislation and therefore accepts the Ministry was reasonable in its determination that it cannot provide reimbursement of prescription costs under this section of the legislation.

The Panel referred to the incorporated internet link provided by the Ministry in the Reconsideration Decision about MSP and PharmaCare for BC residents. This government site allowed review of the Ministry Policy and Procedure Manual, and from the links therein to other legislation and policies including the *Pharmaceutical Services Act*, PharmaCare Policy Manual, and the Drug Plans Regulation.

It is clear that MSP and PharmaCare are covered under separate legislation.

The panel finds it is without jurisdiction to determine appropriate PharmaCare coverage. The tribunal's jurisdiction is grounded in the *Employment and Assistance Act*. In particular, section 17(3) provides that person who is dissatisfied with the outcome of a request for a reconsideration under section 17(1)(a) to (d) may appeal that decision to the Tribunal. As a statutory create, the Tribunal only has the authority granted to it under the Act. Section 17(1)(a) to (d) of the Act sets out various decisions of the Ministry that can be reconsidered (and thus appealed). These are decisions regarding income assistance, hardship assistance, or provision of a supplement. Income assistance, hardship assistance and supplements are defined in the *Act*. It is clear that PharmaCare is not income assistance or hardship assistance. Further, a review of the Act shows that PharmaCare is not listed as a supplement that can be provided and it does not appear to be funded by the *Act*. As explained above, PharmaCare is provided under separate legislation, namely the *Pharmaceutical Services Act*. If there was any doubt about the Tribunal's jurisdiction over PharmaCare, the panel notes that that piece of legislation has its own reconsideration process outlined in it regarding provision of PharmaCare.

It is unfortunate that the Tribunal lacks jurisdiction as it does appear from the evidence that there is interplay between the closing of the Appellant's MSO file in error and the loss of PharmaCare coverage.

The Panel expresses deep concern that the PharmaCare policy Manual states that occasionally, the system interface with the Ministry of Social Development and Poverty Reduction fails to

transmit patient information to PharmaNet and the PharmaNet transaction will not provide the expected adjudication results.

However, as PharmaCare is not covered in the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act* or their associated regulations, the panel is unable to make a determination or provide a remedy for the loss of coverage.

The Appellant may wish to consider further discussion with the Ministry and her Pharmacist with regards to clarifying her present eligibility and filing a claim with PharmaCare and/or an approach to the provincial Ombudsman's office who may be better able to address the prescription drug reimbursement issue. That said, as PharmaCare is outside the Tribunal's jurisdiction it cannot guarantee the potential success of either of these approaches.

The Panel notes that there may be outstanding issues regarding dental care that would have been available to the Appellant had her MSO file not been closed. However, the Reconsideration Decision, while it refers to a denial of dental costs does not provide adequate information for the panel to make a finding one way or the other with respect to specific eligibility for dental care.

Accordingly, in light of the finding above that dental care can be provided, subject to the legislated limits, to MSO clients of the Ministry, and that the Ministry was unreasonable to state otherwise, the Panel rescinds the Ministry's decision and refers this issue back to the Ministry for consideration.

Conclusion

Based on all available evidence the Panel finds that the Ministry's Reconsideration Decision is not supported by the evidence and is not a reasonable interpretation of the legislation in the circumstances of the appellant.

The ministry's Reconsideration Decision is rescinded. The appellant is successful on appeal.

Employment and Assistance for Persons with Disabilities Act

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Division 4 — Health Supplements

Definitions

61.01 In this Division:

"continuation date",

(a) in relation to a person who is a main continued person under section 61.1 (1) *[access to medical services only]* as a result of having been part of a family unit on the date the family unit ceased to be eligible for disability assistance, means that date, and

(b) in relation to a dependent continued person under section 61.1 (2) of a main continued person, means the continuation date of the main continued person;

"continued person" means

(a) a main continued person under section 61.1 (1), or

(b) a dependent continued person under section 61.1 (2);

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

(a) the person was

(i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and

(ii) a person with disabilities on that date,

(b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and

(c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection

(3) (g) is in force.

(2) Subject to subsection (6), a person is a dependent continued person if

(a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date and is currently a dependant of the main continued person, or

(b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

(a) on a date the family unit includes a person aged 65 or older,

(b) as a result of a person in the family unit receiving an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act*,

(c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,

(d) as a result of a person in the family unit receiving employment income,

(e) as a result of a person in the family unit receiving a pension or other payment under the *Canada Pension Plan* (Canada),

(f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or

(g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*.

(4) Subject to subsection (5), a person's status as a main continued person under subsection (1) is suspended for a calendar month if

(a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and

(b) the person's continuation date is before those immediately preceding 12 calendar months.

(5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit described in subsection (3) (c) or (g).

(6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).

(7) For the purposes of subsection (4),

(a) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (a), (b), (d) or (f) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the adjusted net income of the main continued person does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, and

(b) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (e) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit receives a pension or other payment under the [Canada Pension Plan](#) (Canada).

(7.1) For the purposes of subsection (7) (a) (ii),

(a) "**adjusted net income**" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and

(b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to the main continued person.

(8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(9) Despite this Division, a person is not eligible, as a dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for a calendar month in which the main continued person's continuation date occurs.

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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

Optical supplements

62.1 The minister may provide any health supplement set out in section 2.1 [*optical 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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

Eye examination supplements

62.2 (1) Subject to subsections (2) and (3), the minister may provide a health supplement under section 2.2 [*eye examination 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.

(2)A health supplement under subsection (1) may only be provided to or for a person once in any 24 calendar month period.

(3)A health supplement under subsection (1) may only be provided if payment for the service is not available under the *Medicare Protection Act*.

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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

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.

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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

Orthodontic supplement

65 (1) Subject to subsection (2), the minister may provide orthodontic supplements to or for

(a) a family unit in receipt of disability assistance, if the orthodontic supplements are provided to or for a person in the family unit who is

(i) under 19 years of age, or

(ii) a person with disabilities, or

(b) a family unit, if the orthodontic supplements are provided to or for a person in the family unit who

(i) is a continued person, and

(ii) meets any of the following criteria:

(A) the person is under 19 years of age;

(B) the person was, on the person's continuation date, a person with disabilities.

(2) For a person referred to in subsection (1) to be eligible for orthodontic supplements, the person's family unit must have no resources available to cover the cost of the orthodontic supplements and the person must

(a) have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations, and

(b) obtain prior authorization from the minister for the orthodontic supplements.

Schedule C

Health Supplements

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;

(a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:

- (i) lancets;
- (ii) needles and syringes;
- (iii) ventilator supplies required for the essential operation or sterilization of a ventilator;

(iv)tracheostomy supplies;

(a.2)consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

(i)the supplies are required to thicken food;

(ii)all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;

(b)Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

(c)subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,

(i)for which a medical practitioner or nurse practitioner has confirmed an acute need,

(ii)if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and

(iii)for which there are no resources available to the family unit to cover the cost:

Item	Service	Provided by	Registered with
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the <i>Health Professions Act</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the <i>Health Professions Act</i>
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the <i>Health Professions Act</i>
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the <i>Health Professions Act</i>
5	non-surgical podiatry	podiatrist	College of Physicians and Surgeons of British Columbia under the <i>Health Professions Act</i>

6

physical therapy

physical therapist

College of Physical Therapists of British Columbia under the *Health Professions Act*

(d) and (e) Repealed. [B.C. Reg. 75/2008, s. (a).]

(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.

(g) Repealed. [B.C. Reg. 75/2008, s. (a).]

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

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.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
- (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
- (b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

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.

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.

PHARMACEUTICAL SERVICES ACT

[SBC 2012] CHAPTER 22

Part 2 — Provincial Drug Program

Division 1 — Provincial Drug Program

Provincial drug program established

2 (1)The provincial drug program known as BC PharmaCare is established, consisting of the benefits

(a)provided through the drug plans established under this Act, and

(b)provided, under this Act, outside of a drug plan.

Reassessments

18 (1)The minister may reassess a claim if the minister is of the opinion that any of the following has occurred:

(a)an error or an accidental or inadvertent omission has been made in respect of making or paying the claim;

(b)within the calendar year in which the benefit to which the claim relates was provided, the beneficiary's

(i)eligibility for enrolment in a drug plan changed, or

(ii)entitlement to benefits changed.

(2)On reassessment of a claim, the minister may adjust the determination of the amount to which a person is entitled as payment of the claim and, after adjustment,

(a)make a further payment under section 17 *[payments]*,

Pharmaceutical Services Act

DRUG PLANS REGULATION

Division 2 — Plans C, D, F, P, S, W, X and Z

Plan C (Income Assistance)

36 (1)The drug plan known as "Plan C" is established for the purposes of the Act.

(2)A person is eligible to enrol in Plan C if the person is one of the following:

(d)a person who is described as being eligible for health supplements under Division 4 of Part 5 of the Employment and Assistance for Persons with Disabilities Regulation, unless the person is eligible for benefits under only section 69 of that Division;

(3)An eligible person's enrolment in Plan C begins on the date the minister receives notice of the person's eligibility from the applicable ministry of the minister responsible for the administration of an enactment referred to in subsection (2).

MEDICARE PROTECTION ACT

[RSBC 1996] CHAPTER 286

Preamble

WHEREAS the people and government of British Columbia believe that medicare is one of the defining features of Canadian nationhood and are committed to its preservation for future generations;

WHEREAS the people and government of British Columbia wish to confirm and entrench universality, comprehensiveness, accessibility, portability, public administration and sustainability as the guiding principles of the health care system of British Columbia and are committed to the preservation of these principles in perpetuity;

WHEREAS the people and government of British Columbia are committed to building a public health care system that is founded on the values of individual choice, personal responsibility, innovation, transparency and accountability;

WHEREAS the people and government of British Columbia are committed to developing an efficient, effective and integrated health care system aimed at promoting and improving the health of all citizens and providing high quality patient care that is medically appropriate and that ensures reasonable access to medically necessary services consistent with the *Canada Health Act*;

WHEREAS the people and government of British Columbia wish to ensure that all publicly funded health care services are responsive to patients' needs and designed to foster improvements in individual and public health outcomes and ongoing value-for-money for all taxpayers;

WHEREAS the people and government of British Columbia recognize a responsibility for the judicious use of medical services in order to maintain a fiscally sustainable health care system for future generations;

AND WHEREAS the people and government of British Columbia believe it to be fundamental that an individual's access to necessary medical care be solely based on need and not on the individual's ability to pay.

Part 1 — Medical Services Commission

Commission and Medical Services Plan

3 (1)The Medical Services Commission is continued consisting of 9 members appointed by the Lieutenant Governor in Council as follows:

- (a)3 members appointed from among 3 or more persons nominated by the Association of Doctors of BC;
- (b)3 members appointed on the joint recommendation of the minister and the Association of Doctors of BC to represent beneficiaries;
- (c)3 members appointed to represent the government.

(2)The commission reports to the minister.

(3)The Medical Services Plan established under the former Act is continued and the function of the commission is to facilitate, in the manner provided for in this Act, reasonable access, throughout British Columbia, to quality medical care, health care and prescribed diagnostic services for residents of British Columbia under the Medical Services Plan.

Responsibilities and powers of the commission

5 (1)The commission may do one or more of the following:

(5)Without limiting subsection (1) (n), the commission may, with the prior approval of the Lieutenant Governor in Council, enter into an information-sharing agreement with

- (a)Canada, a province or another jurisdiction in or outside Canada, or
- (b)a public body as defined in the *Freedom of Information and Protection of Privacy Act*.

(6)For the purpose of subsection (5), "**information-sharing agreement**" means a data-matching or other agreement to exchange personal or other information for the purpose of administering medical or health care benefits provided under

- (a)this Act,
- (b)a prescribed enactment of British Columbia, or
- (c)a prescribed enactment of Canada, a province or another jurisdiction in Canada.

Comprehensiveness

5.3 The plan includes as benefits

- (a)all medically required services provided by enrolled medical practitioners,

(b)all required services provided by enrolled health care practitioners and prescribed as benefits under section 51,
(c)benefits that are performed in approved diagnostic facilities, and
(d)any benefits that are performed by practitioners in a health facility that has entered into an agreement with one or more regional health boards designated under the *Health Authorities Act* or with the Provincial Health Services Authority, in accordance with the agreement.

Beneficiary requesting payment

10 (1)If a beneficiary receives benefits from a practitioner who has

(a)made an election under section 14 (1), or

(b)been the subject of an order made under section 15 (2) (b),

or if a beneficiary is enrolled or reinstated retroactively after receipt of benefits, the beneficiary may submit the claim form, completed as required by section 14 (9), and any other prescribed or required information to the commission for payment of the amount that would otherwise be payable to the practitioner.

(2)After assessing the claim under section 27 (2), the commission may pay the beneficiary.

Medicare Protection Act

MEDICAL AND HEALTH CARE SERVICES REGULATION

No premiums payable by specified beneficiaries

10 (1)A beneficiary is eligible for supplemental services if the beneficiary

(b.1)is a continued person under section 61.1 of the Employment and Assistance for Persons with Disabilities Regulation,

APPEAL NUMBER 2024-0248

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

Don Stedeford

Signature of Chair

Date (Year/Month/Day)

2024/08/03

Print Name

Kenneth Smith

Signature of Member

Date (Year/Month/Day)

2024/08/03

Print Name

Charles Schellinck

Signature of Member

Date (Year/Month/Day)

2024/08/03