

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration Decision dated December 9, 2009, which held that the Appellant is not eligible for a crown and bridgework supplement.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 63.1

Schedule of Fee Allowances – Dentists – Crowns

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, Sections 1 and 4

PART E – SUMMARY OF FACTS

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision was being made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

Information before the Ministry at Reconsideration included:

- the Appellant's request for Reconsideration stamped as received by the Ministry November 13, 2009
- a copy of a medical claim form dated May 20, 2009
- copies of x-rays of teeth
- a copy of a form letter from Blue Cross requesting additional information dated May 25, 2009
- a copy of a medical claim form dated October 5, 2009
- a copy of a patient receipt dated October 5, 2009
- a copy of a dental pre-authorization remittance statement dated May 25, 2009

At the hearing the Appellant stated that she started having physical problems in 2008, losing 50 pounds and eventually having seven fingers and three toes partially amputated due to poor circulation. She is currently taking several medications. In 2009 a tooth which had been crowned in December, 2004 broke. Her dentist sent in a request for pre-authorization to Blue Cross on May 20, 2009. It was denied on May 25 because the tooth had been crowned 54 months previously, and under the dental coverage crowns are limited to one per tooth in a five year period. On June 4, 2009 she had the dental work performed. Her father paid the dentist.

The Appellant submitted a copy of a document titled "Disability Assistance and Health Supplements" which she stated she received from her dentist. It was admitted by the panel under Section 22(4) of the Employment and Assistance Act as information in support of the information and records that were before the minister when the decision being appealed was made. The Ministry had no objection to the admission of this document by the Panel.

The Appellant stated that in her opinion the repair of a broken tooth should be paid under the basic dental coverage of \$1000.00 per two year period, especially as she has not had any dental claims during that time. She requested that the 60 month rule for crowns not be enforced, especially because the rules for dental coverage are not clear. In the past her claim for a crown was initially denied, then allowed on appeal. The option of waiting until the 60 month period had passed was not presented to her; she thought the denial was final. She stated that she understands the regulation as it has been communicated to her.

The Ministry responded that basic coverage means things like dental checkups, cleaning and routine dental care. Specialized services costing over the \$1000.00 per 24 month limit require pre-approval. The Ministry noted that the timeline shows that the dentist applied for pre-approval, it was denied, and then the work was performed without approval. In response to a question from the panel, the Ministry stated that the refusal of the Appellant's request was more a matter of timing than whether it could be approved. There is no discretion available to vary legislative requirements.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this appeal is the reasonableness of the Ministry's denial of the Appellant's request for a crown and bridgework supplement.

EAPWDR

Crown and bridgework supplement

63.1 (1) The minister may provide a crown and bridgework supplement under section 4.1 of Schedule C to any of the following persons:

- (a) a recipient of disability assistance;
- (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for disability assistance because of
 - (i) employment income earned by the person or the person's spouse, or
 - (ii) a pension or other payment under the *Canada Pension Plan* (Canada);
- (c) a person with disabilities who was a recipient of disability assistance on the day he or she became 65 years of age;
- (d) a person referred to in section 62 (1) (f).

(2) A person referred to in subsection (1) (b) or (c) ceases to be eligible for the supplement if the person's family unit takes up residence outside of British Columbia.

EAPWDR, Schedule C

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 January 1, 2007 and is on file with the office of the deputy minister, and
 - (ii) is provided at the rate set out for the service in that Schedule, and
- (b) if provided by a denturist,
 - (i) is set out in the Schedule of Fee Allowances – Denturist that is effective January 1, 2007 and is on file with the office of the deputy minister, and
 - (ii) is provided at the rate set out for the service in that Schedule;

Dental supplements

4 (1) In this section, "period" means 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) \$700 each calendar year, if provided to a dependent child, 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 dependent 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 January 1, 2007 and is on file with the office of the deputy 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 him or her 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 him or her 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.

The Appellant's position is that she now understands the fee schedule, but did not at the time she required treatment. She is asking that the 60 month rule regarding replacement of an existing crown not be enforced in this case.

The Ministry's position is that the time limits, fee limits and dental coverage are contained in legislation, and there is no authority to vary them.

The panel finds that the Appellant's dentist was advised by Blue Cross that the requested procedure was not approved on May 25, 2009; however the procedure was performed on June 4. Section 4.1 of Schedule C, EAPWDR states that pre-authorization is required for crown and bridgework. The panel finds that the Ministry's Schedule of Fee Allowances – Crown and Bridgework states that crowns are limited to one per tooth in a five-year period, and therefore finds that that there is no discretion in varying this requirement.

The panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the decision.