

IN THE MATTER OF AN ARBITRATION
APPEAL BOARD
PSAC DENTAL CARE PLAN BOARD OF MANAGEMENT

BETWEEN

HIS MAJESTY IN RIGHT OF CANADA
AS REPRESENTED BY THE TREASURY BOARD
("the Crown" / "Treasury Board" / "the Employer")

- AND -

THE PUBLIC SERVICE ALLIANCE OF CANADA
("the Union" / "PSAC")

CONCERNING AN ARBITRATION REGARDING THE PSAC COMPONENT
OF THE PUBLIC SERVICE DENTAL CARE PLAN

APPEAL BOARD

Christopher Albertyn – Chair
Patti Bordeleau – Employer Nominee
Gary Cwitco – Union Nominee

APPEARANCES

For the Union:

Seth Sazant, Negotiator
Pierre-Samuel Proulx, Senior Research Officer
Christopher Schwartz, Research Officer

For the Employer:

Ashique Biswas, Senior Director
Sharon Bowles, Senior Policy Advisor
Adam Seddon, Policy Advisor

Hearing and Executive Session held in OTTAWA on June 14 and 15, 2024.

Award issued on July 2, 2024.

AWARD

The Dispute

1. This is an Award of the Appeal Board of the Public Service Dental Care Plan – PSAC Component. It addresses a dispute of interest between His Majesty in Right of Canada, as represented by the Treasury Board (“the Crown” / “Treasury Board” / “the Employer”) and the Public Service Alliance (“PSAC” / “the Union”) over proposed changes to the PSAC Component of the Public Service Dental Care Plan (“the PSDCP”).
2. This decision applies to the PSAC Component of the Plan (“the Plan”).

The Plan and Membership

3. The PSDCP is the largest private dental plan in Canada. It is a mandatory plan covering federal public service workers and eligible dependents, the Royal Canadian Mounted Police (RCMP) officers and Canadian Armed Forces (CAF) members, as well as Reserve members of the CAF. It also covers many participating employers who opt into the Plan and pay premiums accordingly. This includes agencies of the Federal Government, such as the Canada Revenue Agency, and many other employers with bargaining units represented by PSAC. There are approximately 440,000 members in the PSDCP. The Union represents over 200,000 members in the PSAC Component of the Plan.
4. The Dental Plan was added to the collective agreement between PSAC and the Employer for the first time following a binding conciliation award issued for the Master Agreement on October 28, 1986. In March 1987, Treasury Board approved the recommendation of the National Joint Council (NJC) to implement

the PSDCP with an initial membership made up of employees in excluded positions and employees represented by certain bargaining agents. The CAF and RCMP components were added subsequently.

5. The bargaining history is more fully described in *Public Service Alliance of Canada v. Treasury Board*, 2023 FPSLRB 31¹.

6. Today the PSDCP has five plan Components which offer the same dental benefits to all participants, irrespective of occupation, union membership or executive rank. This universal approach is taken by the employer because, unlike wages, leave, and other provisions negotiated for specific occupational groups, dental benefits have service-wide and uniform application across public service occupations. The five plan Components specifically cover the following groups of employees:

- National Joint Council (Plan 55555, effective 1987): provides coverage for employees represented by 15 bargaining agents participating in the NJC, as well as executives, excluded and unrepresented employees, and other groups such as Members of Parliament, Judges, and former Deputy Heads. Coverage for eligible dependents of NJC Members is also available.
- Public Service Alliance of Canada (Plan 55666, effective 1987): provides coverage for employees represented by the PSAC, and coverage for their eligible dependents (“the Plan”).
- The Canadian Armed Forces Dependents (Plan 55777, effective 1987): provides coverage for dependents of Regular Force Members of the CAF.
- The Royal Canadian Mounted Police (Plan 55888, effective 1987): provides

¹ <https://decisions.fpslreb-crtespf.gc.ca/fpslreb-crtespf/d/en/item/521065/index.do>.

coverage for dependents of RCMP members and for Civilian Members and their eligible dependents.

- The Canadian Armed Forces Reserves (Plan 55999, effective 1991): provides coverage for eligible members of the Canadian Armed Forces Reserve Force and their dependents.

7. The PSDCP is administered by Canada Life, managed ASO (administrative services only).

8. The five PSDCP components are governed by four separate Dental Care Plan Boards of Management. Each such Board of Management is composed of employee and employer representatives, along with an independent Chairperson. The President of the Treasury Board appoints the members of the NJC Board of Management and the Employer's representatives on the PSAC Board of Management. PSAC appoints the employee representatives on the Plan's Board of Management.

9. The roles and responsibilities of the Boards are found in their terms of reference.

Bargaining History

10. The Employer negotiates changes to the PSDCP through the two main Boards of Management, those of the PSAC and of the NJC. Treasury Board informs the RCMP and CAF Boards of Management of developments and of plan design changes that are negotiated with PSAC and the NJC.

11. Updates to the Plan, with improved benefits, were negotiated on March 10, 1988, December 12, 1991, November 26, 1993, April 2, 1996, January 15, 1997, March 11, 1998, February 11, 2000, January 30, 2003, December 11, 2003, and

January 1, 2006, January 1, 2007, and January 1, 2008.

12. The next round of PSDCP negotiations began in 2018 and ended in arbitration. The appointed Appeal Board rendered a decision in October 2018, effective from January 2019, amending the Plan. Pursuant to the Appeal Board's decision, the Plan was closed to any further negotiations until January 2022, at the earliest.

13. The Union gave the Employer notice to bargain on January 10, 2022. The NJC bargaining agents also gave notice to bargain its component of the PSDCP. PSAC asked the Employer to set negotiation dates. The Employer requested the NJC bargaining agents to jointly conduct a benchmarking study of trends within comparable dental plans.

14. The Employer was not ready to engage in negotiation with PSAC because of its decision first to undertake a benchmark study. When no negotiation took place for several months, the Union filed an unfair labour practice complaint in June 2022, which was heard in January 2023.

15. A decision was issued by the Federal Public Sector Labour Relations and Employment Board in *Public Service Alliance of Canada v. Treasury Board*, above, on March 29, 2023, declaring that the Employer had committed an unfair labour practice by refusing to commence bargaining in good faith on the Plan.

16. Upon that finding, the Employer entered into bargaining with the Union to conclude an agreement on proposed changes to the Plan. Bargaining took place on June 23 and 27, on September 14 and 28 and on October 6, 2023, when the parties reached impasse, necessitating referral of the dispute to arbitration before the current Appeal Board.

17. The Union explains that its bargaining proposals to amend the Plan were

developed by consulting its large membership and receiving over 10,000 proposals. The Union reviewed these proposals and distilled the most pressing concerns of its members into the proposals that it pursued in bargaining, and in the arbitration.

The Appeal Board's Mandate

18. The current Appeal Board was constituted in January 2024 for the purpose of determining the issues in dispute between the parties.

19. The duties and powers of the Appeal Board are described in a Memorandum of Agreement between the parties concluded on September 15, 2023 (Annex II of the Employer's book of Documents).

20. The mandate of the Appeal Board is as follows:

In the conduct of its proceedings and in making a decision, the Appeal Board must take into account the following factors, in addition to any other factors that it considers relevant:

- a. The interest in ensuring the health and well-being of PSAC members in offering PSDCP benefits to PSAC members and their dependents that are comparable to those provided by large employers in the private and public sectors;
- b. The necessity of maintaining a group insurance and benefit program regime that is fair and reasonable; and,
- c. The state of the Canadian economy and the Government of Canada's fiscal circumstances.

Relevant Considerations

21. The three principal criteria in the Appeal Board's mandate are: to ensure

comparability between the Plan and those dental plans provided by large employers in the private and public sectors; to ensure the Plan is fair and reasonable; and to have regard to the state of the Canadian economy and the Government of Canada's fiscal circumstances.

22. In addition, we have regard to the core principle of interest arbitration, viz. the need to try to replicate the agreement the parties would themselves have come to resolve the issues in dispute between them. That task involves considering their respective interests, their priorities in bargaining, and the total compensation costs of their proposals, looked upon in the context of the three principal criteria above.

23. The PSAC suggests that the most relevant comparators are the provincial government dental plans. The Employer takes a wider view and includes both public and private sector comparators. We have considered all the comparative information provided by the parties. The Union has provided all the provincial health care plans. The Employer has provided the Korn Ferry Dental Care Plan Benchmarking Survey Report ("the benchmarking study") it commissioned.

24. The Union submits that the Plan is below the comparative standard of the provincial dental plans in several respects, for example: employees pay a deductible before they receive any reimbursement of dental payments, unlike virtually all the provincial plans; the Plan uses the previous year's dental fee guide unlike 60% of the provincial plans which use the current year fee guide; and coverage of major services is at 50% reimbursement compared to the provincial average of 67%. It is equivalent to or below the provincial average on other indices too.

25. The increase in cost to the Plan over the period 2019 to 2023 was 11.7% in comparison to inflation of 15.5% over the same period. The number of members covered by the Plan has increased significantly, almost by a third over the equivalent period, but the per capita cost has remained below inflation.

26. Regarding the state of the Canadian economy and the Government of Canada's fiscal circumstances, the Union gives an optimistic picture of strong recovery since the pandemic. Employment levels have risen above pre-pandemic levels, GDP growth is moderate, with projected improvements. Although, as the Employer points out the national debt is significant, at \$1.2 trillion, the Union points out that the debt-to-GDP and deficit-to-GDP ratios are the lower than those of other G7 nations, and that its credit ratings remain strong.

27. The Union has proposed several improvements in benefits in the Plan. The Employer has proposed several cost saving measures that would result from the elimination of certain current benefits.

28. We have carefully reviewed all the proposals, considering the above criteria and the demonstrated need for any changes. All Union and Employer proposals not specifically addressed below are dismissed.

Term of this Award

29. The Union has proposed that the term of this Award be three years before either party may seek any changes to the Rules. The Employer has proposed a 5-year term.

30. The previous award of the Appeal Board, as then constituted, was for a period of three years, from 2018 to 2021. It was open for re-negotiation only in January 2022. More than two years have passed since then. In our view the appropriate period for the term resulting from this Award will be three years, running from January 1, 2025 to December 31, 2027. Proposals for amendments to the Rules can be made, and negotiations commence, after July 31, 2027.

Agreed upon items

31. This Award will consist of the items agreed by the parties themselves, which are incorporated into this Award, and the items described below on which the parties made submissions. The agreed items can be found at Exhibit G of the Union's bundle of documents and in Annex IV. The definition of "employee" will be taken from Annex IV. The agreed items also include an amendment to Rule 6(10)(d) contained in Annex IV.

32. At the hearing certain other issues were resolved between the parties and these are included in the Award below.

Issues in Dispute

Maximum annual reimbursement for all dental services (other than orthodontic) and lifetime coverage for orthodontic services

33. The Union has sought relief from the delay occasioned by the Employer's delay in commencing bargaining, resulting in the finding of an unfair labour practice. We address that delay by slightly accelerating the implementation of an improvement to the maximum annual reimbursement for all non-orthodontic services, and for the lifetime orthodontic maximum reimbursement.

34. We are persuaded of the need for an increase to both maximums (annual non-orthodontic and lifetime orthodontic) for the following reasons. Several provincial plans have no cap for these services.

35. For the lifetime orthodontic reimbursement, the cap of \$2,500 has not changed since 1991. With inflation that figure would currently be \$4,850. Orthodontic fees have increased considerably since then.

36. As regards the annual maximum reimbursement for dental services (other than orthodontic), dental fee increases since 2021 have risen by nearly 22% until now. The \$2,500 cap would become \$3,090. Also, inflation over the period has been 17.7%, making the cap of \$2,500 amount to \$2,940.

37. We conclude that there ought to be two adjustments to both maximums. Both will increase from \$2,500 to \$3,000, effective from January 1, 2025, and then from \$3,000 to \$3,250 on January 1, 2027.

Coverage for congenitally missing teeth

38. The Union seeks the elimination of the age limit, which is currently 21 years (having been amended from 18 years in the award of the previous Appeal Board in 2018), for reimbursement of services resulting from congenital or developmental malformation.

39. The Union provides evidence of an unsuccessful appeal of an individual who was 21 years old at the date of treatment and who was denied reimbursement on account of their age. The delay had been occasioned because the diagnosis required that the patient's treatment occur only after full dentation.

40. We award an amendment to the age limit, from 21 years to 22 years.

Proactive treatment

41. Both parties made submissions on the need for proactive treatment in circumstances where more intrusive dental work would very likely be required relatively soon. We have considered their submissions. We award a provision that will allow for major coverage when the existing damage to a tooth is likely to worsen relatively soon.

Elimination Proposals

42. The Employer has made proposals to eliminate services it argues are no longer industry standards.

43. We are persuaded that the following services are no longer standard and ought to be eliminated from coverage:

- Changes for the analysis of mixed dentition (if a complete oral examination was performed in the same year).
- Charges for preparing for a root canal: tooth isolation, unless a substantiated medical condition justifies such treatment.
- Charges for adjustments to space maintainers in the first 31 days.

Award

44. Certain items were agreed by the parties at the hearing. These are awarded as follows.

45. The co-insurance rate will be increased from 50% to 65% for all major restorative services and major prosthodontic services. The orthodontic co-insurance will remain at 50% and at 90% for other services.

46. The following coverage will be added as an eligible dental service under Rule 6(2)(i):

anaesthesia in connection with oral surgery and drug injections or for any eligible services where a covered person has a documented mental illness or developmental disorder where the administration of such drugs is necessary for the safety of the patient and/or dental professional(s)

47. The age restriction for “pit and fissure sealants” under Rule 6(2)(b)(i) will be deleted.

48. Rule 7(10(b)(v) will be amended to remove the 52-week limitation, as follows:

(v) parental leave for which the member is approved

49. Tomography will be covered as a benefit, by adding the following to Rule 6(2)(a)(ii), as follows:

tomography including but not limited to, cone beam computed tomography

50. The following will be added to Rule 6.(3), as a new (C):

A claim for major coverage shall not be denied where it is determined at a given point in time that there is insufficient structural damage to a tooth to be eligible for major services, but it is further determined that such damage is likely to worsen within a reasonable time period, resulting in eligibility for major coverage.

51. The following statement will appear after Rule 6(3)(B):

Notwithstanding the above, the 60-month period may be waived in cases where it is deemed necessary by the current treating dental practitioner. Such an exception shall normally be understood not to include failure of the appliance as a result of error in installation by a dental practitioner.

52. There will be coverage related to temporomandibular joints (TMJ), including injections, appliances and assessments.

53. Pursuant to our consideration of the issues in dispute, we make the following awards.

54. Rule 6(5)(c)(i) will be amended to increase the \$2,500 to \$3,000 effective January 1, 2025; and to \$3,250 effective January 1, 2027.

55. Rule 6(5)(c)(ii) will be amended to increase the \$2,500 to \$3,000 effective January 1, 2025; and to \$3,250 effective January 1, 2027.

56. Rule 6(12)(m) is amended to change the age from 21 years to 22 years.

57. The following will be added to the Rules, at a point in the Rules that the parties determine, to read:

A claim for major coverage shall not be denied where it is determined at a given point in time that there is insufficient structural damage to a tooth to be eligible for major services, but it is further determined that such damage is likely to worsen within a reasonable time period, resulting in eligibility for major coverage.

58. There will be a new Rule 6(12)(u), to read:

Charges for the analysis of mixed dentition (if a complete oral examination was performed in the same year).

59. There will be a new Rule 6(12)(v), to read:

Charges for tooth isolation as part of a dental treatment. However, coverage shall not be denied if a substantiated medical condition justifies treatment.

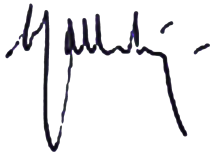
60. Rule 6(2)(h)(iii) will be amended to read:

space maintainers (not involving movement of teeth). However, adjustments within the first 31 days of application shall not be covered.

Seized

61. We remain seized of this Award to address any inadvertent error or to clarify any order that is unclear to the parties when implementing this Award.

DATED at TORONTO on July 2, 2024.



Christopher J. Albertyn
Chair: Appeal Board

I concur.

“Patti Bordeleau”

Patti Bordeleau
Employer Nominee

I concur.

“Gary Cwitco”

Gary Cwitco
Union Nominee