

APPEAL #

### PART C – Decision under Appeal

On March 28, 2012 the Ministry's decision on Reconsideration was to deny the Appellant coverage for the balance between the amount to be charged by his dentist for lower dentures and the ministry rate for this service pursuant to section 63 and Schedule C of the Employment and Assistance for Persons with Disabilities Regulation and the Schedule of Fee Allowances – Dentist.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 69 and Schedule C.

Schedule of Fee Allowances – Dentist

## PART E – Summary of Facts

The evidence before the Ministry on Reconsideration included the following:

- Estimate for tooth extractions from Dental Surgeon dated February 28, 2012
- Estimate for lower dentures from Dental Surgeon dated February 28, 2012
- Handwritten note from Physician on Request for Reconsideration Form dated March 14, 2012
- Dental Benefit Eligibility Form for Appellant dated March 28, 2012, 1 page
- Dental Claim Details for Appellant dated March 28, 2012, 3 pages

The Estimate for tooth extractions states that 6 lower teeth are to be removed at a cost of \$300.00. The Estimate for lower dentures states that a complete lower denture will cost \$1500.00 and that the Ministry's benefits provider will pay \$816.00 leaving a balance of \$684.00 to be paid by the Appellant.

The handwritten note which the Appellant advises was written by his Physician states as follows:

"Extremely poor dentition

- Pain
- Limiting nutrition
  - Weight loss
  - Generalized failure to maintain nutritional requirements in present state

Requires extractions and dentures

- This is a life threatening need"

The Dental Benefit Eligibility form dated March 28, 2012 states that for each person there is a combined limit of \$1000 per person per 2 years effective January 1, 2005 for basic and major services; that the Appellant's current benefit period started January 1, 2011; that he has already used \$203.08; that he has \$796.92 remaining; and that his next eligible date for full benefits is January 1, 2013.

The three pages of Dental Claim Details set out the services which make up the \$203.08 that the Appellant has already received in dental services.

**PART F – Reasons for Panel Decision**

The issue on appeal is the reasonableness of the Ministry's decision to deny the Appellant's application for excess funding to cover the difference between the amount charged by the Dental Surgeon for lower dentures and the ministry rate for this service as set out in the Schedule of Fee Allowances - Dentist. The Dental Surgeon estimated \$1,500.00 for this service and the Ministry approved \$816.00 leaving a difference of \$684.00.

The relevant definitions from section 1 of Schedule C to the EAPWDR are as follows:

**"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 April 1, 2010 and is on file with the office of the deputy minister,
  - (ii) is provided at the rate set out for the service in that Schedule,
- (b) if provided by a denturist,
  - (i) is set out in the Schedule of Fee Allowances – Denturist that is effective April 1, 2010 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
- (c) if provided by a dental hygienist,
  - (i) is set out in the Schedule of Fee Allowances – Dental Hygienist that is effective April 1, 2010, 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;

**"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 April 1, 2010 and is on file with the office of the deputy minister, and
  - (ii) is provided at the rate set out in that Schedule, and
- (b) if provided by a denturist,
  - (i) is set out in the Schedule of Fee Allowances – Emergency Dental – Denturist, that is effective April 1, 2010 and is on file with the office of the deputy minister, and
  - (ii) is provided at the rate set out in that Schedule;

Section 4 of Schedule C to the EAPWDR states as follows:

(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) \$1400 each period, 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 dependant of that person requires replacement dentures.

The Ministry does not dispute that the Appellant needs a lower denture or that he qualifies for Ministry funding for a lower denture. The only issue is whether the Appellant qualifies for funding in excess of the \$816.00 set out in The Schedule of Fee Allowances - Dentist Fee No 51302 Immediate Complete Mandibular Denture.

The Appellant relies on the wording of a paragraph in The Schedule of Fee Allowances - Dentist entitled Denture Policy which states as follows:

"All Ministry clients, including those with Emergency Supplement coverage only, are eligible for a single complete denture (upper or lower), or complete dentures if the dentures are required as a result of extractions for the relief of pain resulting in the full clearance of the arch/arches. This clearance must have taken place in the preceding six months."

The Appellant argues that this means he is entitled to sufficient funds obtain the lower denture he requires.

The Ministry agrees that the Appellant is eligible but argues that the maximum amount of funding available is \$816.00. The Ministry argues that the Appellant must either find a dentist who will charge the Ministry rates or obtain the excess funds himself elsewhere.

The panel notes that the Denture Policy goes on to state "The denture fee items are restricted to 51101, 51102, 51301 and 51302." The Appellant requires an immediate lower (mandibular) denture which is Fee No. 51301 and the amount is \$816.00. The Ministry has already agreed to pay the maximum amount allowed for a lower denture. The Ministry argues that they are not authorized to pay fees in excess of the rates set out in the Schedule of Fee Allowances - Dentist. Dentures are described in EAPWDR Schedule C, section 4(2) as a basic dental service which is a health supplement that the Ministry may provide if the dental service is provided by a dentist and is one that is set out in the Schedule of Fee Allowances - Dentist and is provided at the rate set out in that Schedule. It is that last requirement that limits the amount for a lower denture to \$816.00. The wording limiting the amount for a lower denture to the Schedule of Fee Allowances - Dentist is also found in the definitions of "basic dental service" and "emergency dental service". In section 4(3) the limits that may be exceeded for dentures are the limits in section 1.1 which for the Appellant is \$1000 every two years and the Ministry has approved the full allowance of \$816 which exceeds the balance of \$796.92 remaining to the Appellant. The panel finds that the Ministry's decision not to approve funds in excess of \$816.00 for a basic dental service was reasonable.

The Appellant argues that he is entitled to funding for the lower denture as a health supplement required for a life threatening need. The handwritten note from his Physician states that the Appellant's extremely poor dentition causes pain and limits nutrition resulting in weight loss and a generalized failure to maintain nutritional requirements. The Physician states that the Appellant requires extractions and dentures and that this is a life threatening need. The Appellant argues that funds for life threatening needs are provided under section 69 of the EAPWDR which provides health supplements for persons facing a direct and imminent life threatening need. The Ministry argues that section 69 is restricted to health supplements set out in Schedule C section 2 which does not include dental and denture supplements.

Section 69 of the EAPWDR states:

**Health supplement for persons facing direct and imminent life threatening health need**

69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) the person's family unit is receiving premium assistance under the *Medicare Protection Act*, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
  - (i) paragraph (a) or (f) of section (2) (1);
  - (ii) sections 3 to 3.11, other than paragraph (a) of section 3 (1).

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The only health supplements which can be provided under this section are those set out in sections 2(1)(a) and (f) and section 3 of schedule C. Those sections refer only to medical or surgical supplies, medical transportation and medical equipment and devices. Dental supplements are covered under section 4 and are not supplements that can be provided for life threatening needs. The Ministry's decision not to provide excess funding for a lower denture as a life threatening need was reasonable in view of the wording of the legislation.

The panel finds that the Ministry's decision to deny the Appellant funds in excess of the amounts provided in the Schedule of Fee Allowances – Dentist was a reasonable application of the applicable enactments in the circumstances of the Appellant. Therefore the Ministry's decision is confirmed.