

PART C – Decision under Appeal

The decision under appeal is the April 5, 2012 reconsideration decision of the Ministry of Social Development (ministry) wherein the ministry declined to provide coverage for certain of the appellant's dental costs. In particular, the ministry decided:

- That the majority of dental services provided to the appellant on July 29 and September 9, 2011 were not "emergency dental services" as defined in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR);
- That the appellant had exhausted his coverage for basic dental services for the period January 1, 2011 to December 31, 2012 as provided under EAPWDR section 63 and Schedule C section 4;
- That the appellant had exhausted his coverage for additional basic dental services performed under GA/IV for the calendar year 2011, as provided on page iv of the Schedule of Fee Allowances – Dental.
- That the appellant was not eligible for coverage of the costs of dental services in the amount of \$106.08 provided on February 20, 2012, since the appellant had already exhausted his basic coverage for the relevant period.
- Not to provide advance approval for funding additional basic dental services as requested by the appellant's dentist.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 63 and 64. EAPWDR, Schedule C, sections 1, 4 and 5.
Schedules of Fee Allowances-Dentist and Emergency Dental-Dentist

PART E – Summary of Facts

The appellant is a recipient of disability assistance as a single person. The appellant's committee (the Committee) advised the panel that the appellant cannot speak, has hearing difficulties, and cannot manage himself or his affairs. Accordingly, the Committee and the appellant's mother attended the appeal hearing on behalf of the appellant. The panel proceeded with the hearing in accordance with s. 86(b) of the Employment and Assistance Regulation.

The information before the minister at the time of reconsideration included the following:

- A copy of a letter (the August 31/11 Letter) from the appellant's dentist, addressed "To Whom It May Concern", requesting additional funding for the appellant in respect of regular hygiene visits. The letter noted that the appellant is unable to care for himself and is suffering from rampant decay and gingival disease. He requires regular hygiene visits to maintain oral health and prevent the loss of all his teeth. The words "Mailed Aug. 31,11" are hand-written at the top of the letter.
- A letter from the Committee to the ministry dated February 21, 2012 wherein the Committee requested that the ministry pay for two invoices from the appellant's dentist dated February 20, 2012, together totaling \$106.08 in respect of fees for a checkup and a partial dental cleaning provided for the appellant. Included with the letter were the two invoices and a note from the dentist's clinic stating that the appellant could not be seen until his account was paid. The invoices described the services received as Examination – Limited-Previous Patient Recall (Code 01202), Scaling – Two Units (Code 11112) and Peridontal Root Planing – Two Units (Code 43422). The Committee also asked the ministry to allow the appellant to resume the hygiene visits referenced in the August 31/11 Letter.
- A 2 page printout, produced by the ministry, detailing payments made by the ministry through Blue Cross for dental services for the appellant in the period July 29, 2011 to August 29, 2011 inclusive (the Ministry's Blue Cross Printout).
- A 1 page printout of the appellant's treatment history at the dental clinic for the period May 3, 2011 to February 20, 2012.
- A consent form from a hospital signed by the Committee on behalf of the appellant on June 27, 2011. The consent was for the following treatments or procedures: extraction of upper left molar, upper left wisdom tooth, upper left [illegible], lower left wisdom tooth, intra[illegible] and extra[illegible] incision and drainage, left mandible/[illegible].

After the reconsideration decision, and prior to the appeal hearing, the appellant submitted to the Employment and Assistance Appeal Tribunal a letter from the appellant's dentist dated April 18, 2012 wherein the dentist requested the appellant be granted additional funds for regular oral hygiene visits. She explained that in 2011 the appellant suffered a potential life threatening dental infection that led to a hospitalization and emergency operating room visit, and that the appellant is at high risk of further dental infections which can become life threatening. The appellant also submitted a letter from a physician specializing in neurology and epilepsy, explaining that the appellant has intractable epilepsy and confirming that chronic infections can lower the seizure threshold of patients with epilepsy, which increases the risk of SUDEP (sudden unexplained death in people with epilepsy).

At the appeal hearing the Committee submitted additional documentation including:

- A cover letter including written argument.
- A copy of a written submission made for the reconsideration decision.
- A Discharge Instructions form for an emergency hospital visit dated June 27, 2011.
- A consent form from the appellant's dental clinic signed by the Committee on behalf of the appellant on May 29, 2011. The consent was for the following treatments or procedures: dental exam X-rays, cleaning restorations, possible RCT extractions and any other treatment deemed necessary under [general anaesthetic].
- A consent form from the appellant's dental clinic signed by the Committee on behalf of the appellant on August 16, 2011 for the same treatments or procedures identified in the May 29, 2011 consent form, also specifying general anaesthetic.
- A consent form from the appellant's dental clinic signed by the Committee on behalf of the appellant on August 24, 2011. The consent was for extraction of 48, 28.
- A copy of a Blue Cross printout showing dental costs incurred by the appellant for the period July 29, 2011 to August 29, 2011 (the Appellant's Blue Cross Printout).

At the appeal hearing, the Committee explained that in April of 2011 the appellant was diagnosed with a dental infection. Subsequently a dental hygiene treatment regime was developed for the appellant as evidenced by the May 29, 2011 consent form. The Committee said that because of the appellant's mental and physical conditions, most dental work performed on the appellant must be done under general anaesthesia. Prior to implementation of the treatment regime, the appellant suffered from a severe life threatening dental-origin infection and was admitted to hospital on June 27, 2011 for emergency surgery. That surgery and the two resultant follow-up visits were covered by the provincial Medical Services Plan (MSP) and accordingly were not billed to the ministry – the ministry covers the appellant's MSP premiums.

In July, August and September 2011 the appellant underwent more dental treatments. The July 29 procedure was 4 hours in a hospital operating room under general anaesthetic. The September 9 procedure was 6 hours in the operating room under general anaesthetic, and involved a wisdom tooth extraction and other work. In total, the Committee reported, the appellant received 28 fillings on July 29 and September 9. Those treatments were paid for by the ministry through Blue Cross, though the Committee said that the hospital provided the operating room under the MSP.

The Committee stated that the appellant's dentist wrote the August 31, 2011 Letter to the ministry requesting more funds for ongoing oral hygiene treatments. The Committee said that he was unaware until February 20, 2012 that the August 31, 2011 Letter had been written or sent. He said that the ministry had told the dentist that a reply would be provided directly to the Committee, but the ministry never did provide the Committee with a response. On February 20, 2012 the appellant had some dental treatment done at the dental clinic at which time the Committee was advised that the

ministry would not cover further treatment and the Committee was presented with two invoices totaling \$106.08 in respect of the work done that day. The dental clinic provided the Committee with a note saying it would provide no further service for the appellant until his account was paid.

The Committee submitted the Appellant's Blue Cross Printout because it shows the total amount (\$1,087.07) paid by the ministry for the appellant's dental treatments for the period July 29, 2011 to August 29, 2011, whereas no total figure was shown on the Ministry's Blue Cross Printout. The Committee also pointed out that neither the Appellant's Blue Cross Printout nor the Ministry's Blue Cross Printout show the dental treatments paid for by the ministry in April, May and September, 2011.

The additional information provided by the appellant through his Committee provided more detail about the claim that was before the ministry at the time of reconsideration. The ministry did not object to its admission. Accordingly, the panel admitted this information as oral and written testimony in support of the information and records that were before the ministry at the time of reconsideration as provided in section 22(4) of the *Employment and Assistance Act*. The argument portion of the additional documentation was accepted as argument.

The ministry relied on its reconsideration decision.

In an appendix to its reconsideration decision the ministry prepared Tables A to F showing in detail its analysis of the charges incurred by the appellant from April 6, 2011 to February 20, 2012. For the services performed July 29, 2011 the ministry paid \$1065.32 on the appellant's behalf, allocating \$1,000 to the "additional basic dental services performed under GA/IV" category and \$65.32 to the "basic dental services" category. The services performed on September 9, 2011 were done in hospital under GA/IV, but because the appellant had already gone over his limit of funding for that category the ministry originally paid for all the work as basic dental services, but at reconsideration decided to pay for some of the work as emergency dental services.

In total, the ministry said it paid \$1,689.75 on the appellant's behalf for basic dental services in 2011. It paid another \$1000 under the "additional basic dental services performed under GA/IV" category, and \$310.25 for emergency dental services.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's April 5, 2012 reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is as follows:

EAPWDR

General health supplements

62 (1) Subject to subsections (1.1) and (1.2), 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 family unit if the health supplement is provided to or for a person in the family unit who is

(a) a recipient of disability assistance...

Dental supplement

63 (1) Subject to subsections (2) and (3), the minister may provide any health supplement set out in section 4 [*dental supplements*] of Schedule C that is provided to or for a family unit if the health supplement is provided to or for a person in the family unit who is eligible for health supplements under

(a) section 62 (1) (a)...

Emergency dental and denture supplement

64 (1) Subject to subsections (2) and (3), the minister may provide any health supplements set out in section 5 of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is eligible for health supplements under

(a) section 62 (1) (a)...

Schedule C

Definitions

1 In this Schedule:

...

"basic dental service" means a dental service that

(a) if provided by a dentist,

(i) is set out in the Schedule of Fee Allowances – Dentist that is effective 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...

"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...

Dental supplements

4 (1) In this section, "**period**" means

...

(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

...

(b) \$1 000 each period, if provided to a person not referred to in paragraph (a)...

Emergency dental supplements

5 The health supplements that may be paid for under section 64 [*emergency dental and denture supplements*] of this regulation are emergency dental services.

Schedule of Fee Allowance – Dentist (April 1, 2010)

Part A – Preamble – Dental Supplements – Dentist

Access to Additional \$1000 of Basic Dental Services When Treatment is Completed in an Approved Private Facility or Hospital

If your client is found eligible and dental treatment is performed under GA/IV sedation in hospital through the Medical Services Plan (MSP) or in an approved facility through the above noted agency, access to an additional \$1000 of basic dental treatment is available...The additional \$1000 over the client's limit is a once yearly supplement but can be utilized over multiple GA/IV sedation appointments should more than one appointment be necessary...Note: The eligible dental services will be paid a rates in accordance with the *Schedule of Fee Allowances-Dentist*. All rules, frequency and financial limits associated with each service still apply. There is no provision to exceed time and financial limited services (i.e. 2 year filling limits). The additional \$1000 of basic dental services is not available when treatment is done in office.

Part C – Preamble – Emergency Dental and Denture Supplements – Dentist

...Emergency Dental allows for treatment of an eligible person who needs immediate attention to relieve pain, or to control infection or bleeding or if a person's health or welfare is otherwise immediately jeopardized...Each emergency visit is restricted to the procedures and limitations outlined in this schedule (i.e., two restorations for pain relief per visit). Services outside this schedule (dentures, root canal treatment, restorations in excess of the 2 year maximum) will not be covered and any work beyond the immediate relief of pain will not be considered.

* * *

The appellant's position, as expressed through his Committee, is that the ministry has confused basic dental service with emergency dental service. He says that the appellant is susceptible to infection

and the current state of the appellant's oral health is putting his life at risk. The Committee argues that the dental services that the appellant receives under general anaesthetic, such as those he received on June 27 to June 30, 2011 as well as July 29 and September 9, 2011 should be considered emergency dental services. On the Committee's interpretation of the legislation, he believes there would still be \$700 to \$800 of basic dental services funding room remaining in the current two year period, which would be sufficient to cover the February 20, 2012 invoices and allow further oral hygiene treatments in 2012 as requested by the appellant's dentist in the August 31/11 Letter.

The ministry's position is that it has allocated the expenses incurred by the appellant in the way most favourable to the appellant to the extent permitted by the legislation.

There are three levels of funding available to the appellant under the EAPWDR:

1. Basic dental services up to a maximum \$1,000 during the prescribed two year period;
2. Additional basic dental services up to a maximum of \$1,000 in each year of the prescribed two year period if the work is done under general anaesthetic in a hospital or other venue approved by MSP, as provided in the Schedule of Fee Allowance - Dentist.
3. Emergency dental services as defined in Schedule C and the Schedule of Fee Allowances - Dentist.

The EAPWDR also provides for additional supplements for orthodontics and crown and bridgework but those services are not at issue in the appellant's case.

The ministry analyzed the expenses incurred by the appellant and categorized them in accordance with the legislation. It concluded as follows:

1. The appellant has exceeded the \$1,000 limit for basic dental services for the 2 year period ending December 31, 2012.
2. In 2012 the appellant is eligible for an additional \$1000 for basic dental services performed under GA/IV in hospital through MSP.
3. The appellant is eligible for one recall exam for 2012 if performed under GA/IV in hospital through MSP.
4. The appellant is eligible for additional scaling and root planning in 2012 if it is performed under GA/IV in hospital through MSP.
5. The appellant is eligible for emergency dental services in 2012 as prescribed.
6. The services performed on February 20, 2012 were not emergency dental services as they are not set out in the Schedule of Fee Allowance-Emergency Dental-Dentist. Nor are they "additional basic dental services performed under GA/IV" since they were performed in the dental clinic rather than a hospital through MSP.

Allocation of costs among basic dental services, "additional basic dental services performed under GA/IV", and emergency dental services

The ministry appears to have accepted the Schedule of Fee Allowance – Dentist as having the force of regulation. The Preamble to Part A of the Schedule of Fee Allowances – Dental establishes a

category of supplement for "additional basic dental services performed under GA/IV sedation in hospital through the [MSP] or in an approved facility through the above noted agency...". The ministry relied on this Preamble when it determined that most of the services provided on July 29 and September 9, 2011 fit the "additional basic dental services performed under GA/IV" category and allocated costs up to the maximum of \$1,000 for 2011. There is no evidence that pain, infection, bleeding or immediate jeopardy to the appellant's health or welfare were present after June 27. Notwithstanding the lack of evidence that the September 9, 2011 services were performed "for the immediate relief of pain", the ministry decided to pay for 3 restorations performed that day which happened to be included in the Schedule of Fee Allowances – Emergency Dental – Dentist. All other work was allocated to basic dental services. On the evidence, the panel concludes that the ministry was reasonable in deciding that the allowance for basic dental services for the period January 1, 2011 to December 31, 2012 and the allowance for "additional basic dental services performed under GA/IV" for 2011 were exhausted.

Services of July 29 and September 9, 2011

To be classified as "emergency dental services", there must be evidence that the services provided on July 29 and September 9, 2011 were performed "for the immediate relief of pain" or for one of the expanded list of circumstances identified in Part C – Preamble – Emergency Dental and Denture Supplements - Dentist, for example "to control infection or bleeding or if a person's health or welfare is otherwise immediately jeopardized." The procedures of June 27 and subsequent follow-up visits on July 6 and July 11 were in regard to a life threatening situation, and the related costs were covered by MSP and were not charged to the ministry or to the appellant. The services performed on July 29 and September 9, 2011 were in regard to the schedule of treatments first developed on May 29, 2011 and subsequently updated on August 16 and August 24, 2011 as evidenced by the consent forms for those dates. The circumstances - where infection was apparently first discovered in April 2011, the treatment schedule wasn't developed until May 29, and no work had been performed under the treatment schedule prior to the severe infection of June 27, 2011 - indicate to the panel that the work contemplated by the treatment plan was not "for the immediate relief of pain" or for "immediate" jeopardy to the appellant's health or welfare. There does not appear to have been any urgency about getting the work done prior to the June 27 crisis. There is no evidence that pain, infection or bleeding were present after June 27, 2011. The doctors' letters of April 18 and April 26, 2012 speak of the risk of an emergent situation arising, rather than identifying an "immediate" jeopardy. Instead the work on July 29 and September 9 was part of an ongoing program of dental care. Accordingly, the panel concludes that the ministry's decision not to classify the July 29 and September 9 treatments as "emergency dental services" was a reasonable application of the legislation in the circumstances of the appellant.

Services of February 20, 2012

With respect to the February 20, 2012 invoices, there is no evidence that the services provided that day were "for the immediate relief of pain", and the service codes are not listed in the Schedule of Fee Allowances – Emergency Dental – Dentist. The services were performed at the dental clinic, not at a hospital through MSP. The panel concludes that the ministry's decision not to cover the February 20, 2012 invoices in respect of basic dental services was reasonable.

Additional funding requested by the appellant's dentist

The ministry identified 3 of the procedures specified by the dentist in the August 31/11 Letter which it said are eligible for funding under the appellant's 2012 allowance for "basic dental services performed under GI/IV" if performed at a hospital through MSP. Given that the appellant has exhausted his coverage for basic dental services for the current two year period, the panel finds that the ministry's decision not to provide advance approval for coverage of more basic dental services for the remainder of 2012 was reasonable.

Accordingly, the panel finds that the ministry's reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the appellant, and confirms the ministry's decision.