

[REDACTED]

**PART C – DECISION UNDER APPEAL**

This is an appeal of a reconsideration decision ('the decision') issued by the Ministry of Social Development ('the Ministry') on February 15, 2012.

In the decision, the Ministry denied the Appellant a Full Cast Metal Crown and Non-Bonded Composite Core for the Appellant's tooth number 46. The Ministry relied on section 63.1 and Schedule C, section 4.1(2)(a) and (b) of the Employment and Assistance for Persons with Disabilities Regulation stating that only a prefabricated stainless steel crown would be approved.

**PART D – RELEVANT LEGISLATION**

Employment and Assistant for Persons with Disabilities Regulation EAPWDR, section 63.1 and Schedule C 4.1(2)(a) and (b)

## PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration was as follows:

- Correspondence between Dr W, the Appellant's dentist, and Pacific Blue Cross (PBC) requesting approval for fee items 27301 (Full Cast Metal Crown - \$539.90) and 23501 (Non Bonded Comp. Core - \$90.56)
  - The first request was sent January 27, 2011; the second on July 27, 2011, each with accompanying forms and x-rays. The requests were denied by PBC.
- A letter dated July 21, 2011 from Dr W opining that tooth 46 needs a crown as the Appellant grinds his teeth during sleep and the filling is at risk of being broken and the tooth fractured further.
- A copy of the Ministry's Dental fee schedule.

After the reconsideration but prior to the Hearing, Dr W submitted a letter which stated:

"I am writing this letter to explain my treatment plan for tooth #46. As mention before tooth #46 has a large MODL restoration that keeps breaking due to lack of tooth support. Your proposal of placing a prefabricated stainless steel crown has a very poor margin fit and it would be difficult for the patient to keep the area clean.

I strongly believe with his clenching and grinding habit, porcelain fused to metal crown is superior and a long lasting solution for [the Appellant]."

At the Hearing, the Appellant submitted the following:

- A document dated May 16, 2012, from Dr S, a Medical Specialist in Psychiatry, stating that the Appellant has suffered from obsessive-compulsive disorder (OCD) for several years. Dr S recommended that the Ministry assist the Appellant in working as a volunteer to mitigate depressive thoughts.
- The Appellant quoted his dentist as opining that a stainless steel prefabricated crown would not be a good solution for his problem.

Under section 22(4)(b) of the Act, the Panel admitted the new evidence as it is in support of information and records which were before the Ministry at the time of its decision. The Ministry did not submit a challenge to the Appellant's introduction nor the content of this evidence. With respect to the hearsay evidence from the Appellant's dentist, the Panel admits it but gives it less weight than direct evidence subject to cross-examination.

## PART F – REASONS FOR PANEL DECISION

The issue to be decided is whether the Ministry's reconsideration decision, which denied the Appellant a Full Cast Metal Crown and Non-Bonded Composite Core, is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The Appellant argues that a prefabricated stainless steel crown is only meant to be temporary and is difficult to keep clean. As well it has a high risk of becoming infected.

The Ministry argues that basic restorative services are available to Appellant for tooth 46, and that the information provided does not show that the provision of restorative services (a prefabricated stainless steel crown in this case) is precluded.

The following provisions of the EAPWDR apply:

### **Crown and bridgework supplement**

- 63.1** (1) Subject to subsections (1.1) and (1.2), 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, if either the person or the person's spouse
      - (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
      - (B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
    - (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), if
    - (i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
    - (ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, or
  - (e) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, during the term of the agreement.
- (1.1) A person eligible to receive a crown and bridgework supplement under subsection (1) (b) (ii) may receive the supplement
- (a) while any person in the family unit is
    - (i) under age 65 and receiving a pension or other payment under the *Canada Pension Plan*, or
    - (ii) aged 65 or more and receiving the federal spouse's allowance or the federal guaranteed income supplement, and
  - (b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.
- (1.2) A person eligible to receive a crown and bridgework supplement under subsection (1) (c) may receive the supplement
- (a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, and
  - (b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.
- (1.3) A person who was eligible to receive a crown and bridgework supplement under subsection (1) (b) (i) or (d) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum

of one year from the date on which the family unit ceased to be eligible for medical services only.

### **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 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.

With respect to restorative services referenced in section 4.1, the Restorative Services section of the Schedule of Fee Allowances – Dentist provides for Stainless Steel Crowns at a rate of \$119.10. These crowns are limited to replacement once every two years.

Section 63.1 sets out the eligibility for crown and bridgework. Neither party disputes that the Appellant is eligible based on his standing as a recipient of disability assistance, or his age. This section references section 4.1 of Schedule C for the mechanism to determine eligibility for crowns or bridgework.

Section 4.1 subsection (2) requires that "the dental condition precludes the provision of the restorative services set out under the Restorative Services section of the Schedule of Fee Allowances – Dentist." In this case, the available restorative service approved by the Ministry is a prefabricated stainless steel crown, as referenced in the Restorative Services Section of the Schedule of Fee Allowances.

Failing that, a removable prosthetic must be considered pursuant to subsection (b).

The Appellant and his dentist argue that a prefabricated stainless steel crown is not suitable because it "has a very poor margin fit and it would be difficult for the patient to keep the area clean."

Dr W goes on to state that "I strongly believe with his clenching and grinding habit, porcelain fused to metal crown is superior and a long lasting solution for [the Appellant]."

The Panel acknowledges the concerns with a stainless steel crown expressed by Dr. W, but one of the tests in paragraph (b) must also be met, namely:

- (i) the dental condition precludes the use of a removable prosthetic;

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- (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.

The Ministry's decision referenced the tests in section 4.1(2)(b) with respect to a removable prosthetic and concluded that the legislative criteria were not met. The Panel sees no discussion in any of the evidence regarding the viability, or lack thereof, of the use of a removable prosthetic. Therefore, the Ministry was reasonable in denying the Appellant a Full Cast Metal Crown and Non-Bonded Composite Core as the avenue of repair with respect to a removable prosthetic had not been canvassed.

The Panel finds this conclusion is reasonably supported by the evidence and confirms the reconsideration decision.