

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision dated May 9, 2012 which denied the appellant's request for coverage for endodontic treatment as the services were not set out in the Schedule of Fee Allowances-Emergency Dental-Dentist or included an amount in excess of the fee schedule rates and did not meet the eligibility criteria for a life threatening health need, pursuant to Section 69 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

**PART D – Relevant Legislation**

Employment and Assistance Regulation (EAR), Section 70 and  
Schedule C, Sections 1 and 6

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 69

Schedule of Fee Allowances- Emergency Dental- Dentist

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Treatment Plan Estimate dated February 28, 2012 which lists a number of services and costs, namely #34111 Apicoectomy/Curettage- Maxillary Anterior- One Root for \$490, #34211 Retrofilling-Maxillary Anterior- One Canal for \$100, #74631 Excision of Cyst- 0-1 cm. for \$390, Root Canal Therapy- Permanent/Retained- One Canal for \$790.00 and #23111 Restoration- Composite- Etch & Bond for \$113, for a total treatment estimate of \$1,883.00;
- 2) Dental Pre-Authorization Remittance Statement dated February 29, 2012 which lists a number of services, namely fee items #34111, 34211, 74631, 33115, and 23111 and states in part that no pre-authorization can be provided, please refer to the ministry fee guide for information about emergency services;
- 3) Letter from a certified specialist in endodontics dated March 26, 2012 which states in part that the appellant has been seen for consultation, has chosen to wait for endodontic treatment, and "...apical surgery and cyst removal was recommended; ideally retreatment should be performed prior to surgery";
- 4) Letter from a physician dated April 10, 2012 'To Whom It May Concern' stating in part that the appellant has a cystic lesion at her upper gum and she has received a couple of antibiotics courses. She complains of severe pain; according to her dentist she needs surgery for cyst removal and endodontic treatment;
- 5) Dental Claims History for the appellant January 1, 2011 through May 8, 2012; and,
- 6) Request for Reconsideration- Reasons.

In the Request for Reconsideration, the appellant states that she has had the pain in her teeth for a long time, has seen her doctor and has taken antibiotics several times but it does not help. The appellant states that with the pain she cannot sleep well which causes problems in her family life. The appellant states she has a young son and with her pain she cannot look after him properly, that sometimes she cannot react properly, that her husband tries to help her but her son needs his mother's help.

In the Notice of Appeal, the appellant states that she is still in pain and she does not have money, that she is scared that the infection will affect her body as her doctor said.

At the hearing, the appellant stated that she has no money and she is still in pain and she cannot take another course of antibiotics because she is feeling weak and dizzy. The appellant stated that if she does not have the surgery, they must treat the infection. The appellant stated that she cannot eat very well and has lost a lot of weight, she cannot brush her teeth and she cannot talk too close to people because of her bad breath. The appellant stated that it has been more than a year and the pain is killing her, that she takes pain killers 3 to 4 times per day. The appellant stated that the problem with her teeth is affecting her life and she needs the money to get the work done as soon as possible. The appellant explained that all of the work needs to be done because if they only remove the cyst, the infection will come back. The appellant stated that her husband will be applying for PWD status but they have not yet found a physician to fill out the forms.

The ministry relied on the facts as set out in the reconsideration decision that the appellant is a recipient of income assistance. On February 29, 2012 the appellant's dentist submitted a request for coverage for the dental services as set out in the Dental Pre-Authorization Remittance Statement, which was denied. Fee codes #34111, 34211 and 33115 were determined to not be in the Schedule of Fee Allowances- Emergency Dental- Dentist. Although Fee codes #74631 and 23111 are found in the Schedule of Fee Allowances- Emergency Dental-Dentist, the fees charged on the Treatment Plan Estimate are in excess of the associated rates set out in the Schedule.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for coverage for endodontic treatment as the services were not set out in the Schedule of Fee Allowances-Emergency Dental-Dentist or included an amount in excess of the fee schedule rates and did not meet the eligibility criteria for a life threatening health need, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 70 of the Employment and Assistance Regulation (EAR) stipulates the eligibility requirements for emergency dental supplements as set out in Schedule C, Section 6. If those requirements are met, Section 6 of Schedule C of the EAR specifies that the health supplements to be paid for under Section 70 are "emergency dental services." Section 1 of Schedule C further defines "emergency dental service" as follows:

**"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 69 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) provides as follows:

### **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).

The appellant argues that she is still in pain, that she does not have money to pay for these endodontic services and she is afraid the infection will affect her body as her doctor said. The appellant points out that she has had the pain in her teeth for a long time, has seen her doctor and has taken antibiotics several times but it is not helping. The appellant argues that she is losing weight because she cannot eat properly and due to the antibiotics and that she is weak and feels dizzy. The appellant argues that she must take pain killers 3 or 4 times each day. The appellant argues that with the pain she cannot sleep well which causes problems in her family life and that she cannot look after her young son properly.

The ministry has determined that the appellant, as a recipient of income assistance, is eligible to receive emergency dental services under Section 70 and Schedule C, Section 6 of the EAR. The ministry's position is that the health supplements that may be paid under Section 70 of the EAR are those set out in Schedule C, Section 6, namely "emergency dental service" which are defined in Section 1 of Schedule C to mean a dental service that is necessary for the immediate relief of pain that (a) if provided by a dentist, 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 is provided at the rate set out for the service in that Schedule. The ministry points out that the Schedule of Fee Allowances-Emergency Dental-Dentist does not include some of the services requested, namely: apicoectomy (fee code #34111), retro-filling performed in conjunction with apical surgery (fee code #34211) and root canal therapy (fee code #33115). The ministry argues that although other services requested are included in the Schedule of Fee Allowances-Emergency Dental-Dentist, namely excision of the cyst (fee code #74631) and restoration of the tooth (fee code #23111), the ministry is not authorized to provide coverage for fees in excess of the rates set out. Further, the ministry argues that Section 69 of the EAPWDR stipulates that the remedy for a life threatening health need only applies to medical supplies, medical transportation and medical equipment and that dental and denture supplements are not set out in the section and, therefore, are not eligible items.

The ministry has determined that the appellant is eligible for dental supplements under Section 70 of the EAR and for "emergency dental service," which is defined, in Section 6 of Schedule C, to mean a dental service that is necessary for the immediate relief of pain and that is set out in the Schedule of Fee Allowances-Emergency Dental- Dentist. The panel finds that the appellant has requested dental services, as set out in the Treatment Plan Estimate dated February 28, 2012, namely:

- 1) #34111 Apicoectomy/Curettage- Maxillary Anterior- One Root for \$490,
- 2) #34211 Retrofilling-Maxillary Anterior- One Canal for \$100,
- 3) #74631 Excision of Cyst- 0-1 cm. for \$390,
- 4) #33115 Root Canal Therapy- Permanent/Retained- One Canal for \$790.00, and,
- 5) #23111 Restoration- Composite- Etch & Bond for \$113.

The panel finds that the appellant requires surgery for cyst removal and endodontic treatment for immediate relieve of pain, as set out in the letter from her doctor dated April 10, 2012, and according to the appellant's testimony. However, the panel finds that the ministry's determination that some of the services set out in the appellant's request, namely for #34111 Apicoectomy/ Curettage- Maxillary Anterior- One Root for \$490, #34211 Retrofilling-Maxillary Anterior- One Canal for \$100, and #33115 Root Canal Therapy- Permanent/Retained- One Canal for \$790.00, are not included in the Schedule of Fee Allowances-Emergency Dental-Dentist, was reasonable.

The panel also finds that the ministry's determination that some of the services set out in the appellant's request are eligible to be paid at the rates set out in the Schedule, specifically \$200.66 for #74631 Excision of Cyst- 0-1 cm. and \$83.02 for #23111 Restoration- Composite- Etch & Bond, which includes a specialist surcharge of 10%, was reasonable. Although the appellant argues that her situation is exceptional in that the problems with her teeth are beginning to impact her physical health and may soon require emergency medical services through a hospital, the panel finds Section 1 of Schedule C states that "emergency dental service" must be set out in the Schedule of Fee Allowances- Emergency Dental-Dentist and paid at the rate set out in that Schedule, and that the ministry does not have the discretion to pay fees for items not included in the Schedule or in excess of the rates set out for the services which are included in the Schedule.

The ministry acknowledges that the appellant may have a life threatening need for the services requested. The panel finds that the ministry reasonably concluded, however, that the remedy set out in Section 69 of the EAPWDR for a life threatening health need only applies to medical supplies, medical transportation and medical equipment, as set out in Sections 2 and 3 of Schedule C, and dental supplements are not set out in the section and are, therefore, not eligible items. The panel finds that the ministry's conclusion that the request for coverage of endodontic services does not meet the eligibility criteria for a life threatening health need under Section 69 of the EAPWDR was reasonable.

APPEAL #

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for coverage for endodontic treatment as the services were not set out in the Schedule of Fee Allowances-Emergency Dental-Dentist or included an amount in excess of the fee schedule rates and did not meet the eligibility criteria for a life threatening health need, was a reasonable application of the applicable enactment in the circumstance of the appellant and, therefore, the panel confirms the decision.