

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated July 12, 2012 which denied the appellant's request for a supplement:

- 1) to cover the cost of prescription medications as not being a health supplement set out in Section 52 through 59 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), and not a medical or surgical supply pursuant to Section 2(1)(a) of Schedule C of the EAPWDR; and,
- 2) for dental services in an amount in excess of the fee schedule rates set out in the Schedule of Fee Allowances- Dentist .

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 52 through 59 and 61.1, 63 and Schedule C, Sections 1, 2 and 4

Schedule of Fee Allowances- Dentist

PART E – Summary of Facts

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

- 1) Outline of interaction between the appellant and the ministry for the period March 2, 2011 through June 22, 2012;
- 2) Prescription receipts for November 30, 2011 (\$29.75 + \$10.30), December 5, 2011 (\$68.63), December 7, 2011 (\$59.99), January 12, 2012 (\$114.14), January 17, 2012 (\$27.46), January 19, 2012 (\$17.11 + \$25.17), January 25, 2012 (\$43.58 + \$24.88), February 9, 2012 (\$17.81), February 10, 2012 (\$26.66), March 21, 2012 (\$36.61);
- 3) Statement dated January 19, 2012 from a dentist to the appellant for services including Exam, Standard Oral for \$36.80, 2 Films for \$21.30 and payment received from the appellant for \$58.10;
- 4) Statement dated January 23, 2012 from a dentist to the appellant for services including odontectomy, surgical flap for \$211, exo, single tooth, uncomplicated for \$106, and permanent molar bonded 1S for \$139;
- 5) Letter dated January 30, 2012 from a trust company 'To Whom It May Concern' stating in part that it is the sole trustee of two non-discretionary trusts under which the appellant is life beneficiary of monthly income only, that her revenue remittances total \$350.00 per month and will remain as such for the foreseeable future;
- 6) Dental Claims History for the appellant for January 19, 2012 through May 18, 2012; and,
- 7) Request for Reconsideration- Reasons.

Prior to the hearing, the appellant provided a written submission; the ministry advised that it relies on its reconsideration summary and did not raise an objection to the admissibility of the appellant's submission. The panel reviewed the appellant's written submission which included further detail of her interactions with the ministry and admitted it as being in support of the information before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act (EAA).

In her Request for Reconsideration, the appellant states that she was diagnosed with breast cancer on November 12, 2011 and on December 15, 2011 her temporary job was terminated. The appellant states that she did not contact the ministry to reinstate her income assistance until January 16, 2012 as she still had savings and was unaware that her medical coverage file was closed. The appellant stated that she understands that her income assistance file closed as she had a small income but that her Persons With Disabilities (PWD)/ Medical status should have been unaffected and should have remained active. On January 16, 2012, the appellant learned her medical files was also closed and the ministry told her she had to re-apply and that the ministry would back-date her application to January 1, 2012 so her medical costs would be covered. The appellant states that she was told many times by the ministry that her prescription costs would be reimbursed. The appellant states that she finally got medical coverage on March 28, 2012. The appellant states that she is still undergoing chemotherapy and will be unable to join the work force for approximately one year and she therefore has very little income and very much needs the promised funds to survive. The appellant states that she is out-of-pocket for \$501.69 for pharmaceutical meds and still owes \$256 of the \$514.10 dental bill and the dentist is threatening to send her account to collections. The appellant states that she has been promised reimbursement for these funds since January 2012 and it is through no fault of her own that these bills were not submitted/approved in a timely manner for coverage. In the Notice of Appeal, the appellant states that she was promised repeatedly that the ministry could back-date her coverage to January 1, 2012 and that it is not her fault that she had to wait for the ministry to return her calls.

In her written submission on the appeal, the appellant states that on January 8, 2012 she learned in a phone call with the ministry that her entire case file had been closed without any notice to her and in error, according to the ministry verbal and written statements, and as set out in the ministry's reconsideration decision. The appellant states that she re-applied for assistance on January 16, 2012 and was re-assured that they would back-date her medical coverage to January 1st so her meds would be covered. The appellant states that she submitted the requested documentation on February 1, 2012 and, on February 29, 2012, was told that her file closed again on January 30th and that she would have to re-apply. On March 24, 2012, the appellant re-applied for income assistance and was given mixed messages that either her file would be back-dated to

December 16, 2011 or that the ministry does not reimburse for medical expenses. The appellant states that she finally got medical coverage on March 28, 2012 and was told that it would be back-dated to December 16, 2011, the date her original case file had been closed and the appellant states that her file should not have been closed in the first place. The appellant states that she did not receive income assistance until April 20, 2012. The appellant states that she borrowed money from her friends and family to pay for the prescriptions, telling them that she had been promised to be reimbursed by the ministry and, therefore, would be able to repay them "shortly". The appellant states that she has very little income and very much needs the promised funds to repay everyone and just to survive. The appellant states that she is having great difficulty staying current with her utilities, let alone putting food on her table.

The ministry relied on the facts as set out in the reconsideration decision that the appellant is a PWD and is eligible to receive health supplements set out in Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR). The appellant requested reimbursement of \$501.69 which she paid for medical prescription costs from November 2011 through to March 2012. PharmaCare coverage (Plan C) is available immediately to all recipients of income assistance, hardship assistance, and disability assistance. PharmaCare coverage cannot be back-dated and coverage ends immediately when a recipient's file is closed. The appellant's assistance/PWD case closed on December 16, 2011 due to no funds being issued in a two-month period. The appellant's PharmaCare coverage was immediately terminated. The appellant was advised on July 11, 2012 in a conference call with the ministry and a representative of PharmaCare that the prescription costs would not be reimbursed.

The appellant also requested reimbursement for \$58.10 which she paid for basic dental services performed by her dentist on January 19, 2012 and \$456.00 for services performed on January 23, 2012. At the time that the dental services were provided, the appellant did not have coverage from the ministry as her file had closed in error. The appellant is eligible for reimbursement in the amount of \$331.44 from the dentist's office upon receipt of payment from Pacific Blue Cross (PBC). The ministry is not authorized to pay for fees in excess of the rates set out in the Schedule of Fee Allowances- Dentist. The rates payable for the services provided, according to the Schedule of Fee Allowances-Dentist are as follows: January 19, 2012 for services including Exam, Standard Oral (Fee Code #01201) for \$24.35, 2 Films (Fee Code 02112) for \$13.59 and January 23, 2012 for services including odontectomy, surgical flap (Fee Code #71201) for \$130.27, exo, single tooth, uncomplicated (Fee Code #71101) for \$69.02, and permanent molar bonded 1S (Fee Code #23321) for \$94.21.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of prescription medications and for dental services in an amount in excess of the fee schedule rates, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The applicable legislation is as follows:

Part 5- Supplements; Division 1 — Supplements — Family Unit Eligible for Disability Assistance

Section 52 of the EAPWDR provides that a reconsideration or appeal supplement may be paid to or for a family unit that is eligible for disability assistance in respect of an appeal or reconsideration of a decision that resulted in a discontinuation or reduction of disability assistance or a supplement, under defined circumstances, if the recipient agrees in writing to repay the amount of the supplement.

Part 5- Division 2 — Supplements — Family Unit Eligible for Hardship Assistance

Section 53 of the EAPWDR provides that a supplement may be paid to or for a family unit that is eligible for hardship assistance to obtain proof of identity when required for the family unit to be eligible for disability assistance.

Part 5- Division 3 — Supplements — Family Unit Eligible for Disability Assistance or Hardship Assistance

Section 54 of the EAPWDR provides that a supplement may be paid to or for a family unit that is eligible for disability assistance or hardship assistance for items related to an employment plan.

Section 54.1 of the EAPWDR provides that a supplement may be paid to or for a family unit that is eligible for disability assistance or hardship assistance for items when there is a confirmed job.

Section 55 of the EAPWDR provides that a supplement may be paid to or for a family unit that is eligible for disability assistance or hardship assistance for moving, transportation and living costs.

Section 56 of the EAPWDR provides that a supplement may be paid to or for a family unit that is eligible for disability assistance or hardship assistance for a security deposit.

Section 56.1 of the EAPWDR provides that a supplement may be paid to or for a family unit that is eligible for disability assistance or hardship assistance for an utility security deposit.

Section 57 of the EAPWDR provides a crisis supplement may be paid to or for a family unit that is eligible for disability assistance or hardship assistance to meet an unexpected expense if failure to meet the expense will result in imminent danger to the physical health of any person in the family unit, and other requirements, and may not be provided for the purpose of obtaining any other health care goods or services.

Section 58 of the EAPWDR provides that supplement may be paid to or for a family unit that is eligible for disability assistance or hardship assistance as an advance for a lost or stolen family bonus cheque.

Section 59 of the EAPWDR provides that supplement may be paid to or for a family unit that is eligible for disability assistance or hardship assistance as an advance for a delayed or suspended family bonus cheque.

Part 5- Division 4 — Health Supplements

Eligibility for medical services only

61.1 For the purposes of this Division, a person may be eligible for medical services only if

- (a) the person is a person with disabilities who is under age 65 and the person's family unit ceased to be

eligible for disability assistance as a result of

- (i) employment income earned by the person or the person's spouse,
- (ii) money received by the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or
- (iii) any person in the family unit receiving a pension or other payment under the Canada Pension Plan ...

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,
 - (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for a 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), or
 - (iii) money received by the person or the person's spouse under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry ...

Section 2 of Schedule C of the EAPWDR provides for **medical or surgical supplies** as follows:

- 2** (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation:
- (a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:
 - (i) the supplies are required for one of the following purposes:
 - (A) wound care;
 - (B) ongoing bowel care required due to loss of muscle function;
 - (C) catheterization;
 - (D) incontinence;
 - (E) skin parasite care;
 - (F) limb circulation care;
 - (ii) the supplies are
 - (A) prescribed by a medical practitioner or nurse practitioner,
 - (B) the least expensive supplies appropriate for the purpose, and
 - (C) necessary to avoid an imminent and substantial danger to health;

(iii) there are no resources available to the family unit to pay the cost of or obtain the supplies. ...

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Section 63 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) stipulates the eligibility requirements for dental supplements as set out in Schedule C, Section 4.

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), (b) (iii), (d) or (e) [*general health supplements*],
 - (b) section 62 (1) (b) (i), (d.1), (d.3) or (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,
 - (c) section 62 (1) (b) (ii) or (d.2),
 - (c.1) section 62 (1) (c), or
 - (d) section 62 (1) (g).
- (2) A person eligible to receive a health supplement under section 62 (1) (b) (ii) or (d.2) 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.
- (3) A person eligible to receive a health supplement under section 62 (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.
- (4) A person who was eligible to receive a health supplement under subsection (1) (b) 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.

Section 4 of Schedule C of the EAPWDR specifies that the health supplements to be paid for under Section 63 are "basic dental services."

Section 1 of Schedule C further defines "basic dental service" 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 ...

The ministry has determined that the appellant is a PWD and is, therefore, eligible to receive health supplements set out in Schedule C of the EAPWDR. The appellant requested reimbursement of \$501.69 which she paid for medical prescription costs from November 2011 through to March 2012 and the ministry argues that PharmaCare coverage (Plan C) is available to all recipients of disability assistance but coverage ends immediately when a recipient's file is closed. The ministry points out that PharmaCare coverage cannot be back-dated and the appellant's assistance/PWD case closed on December 16, 2011 due to no funds being issued in a two-month period. The appellant's PharmaCare coverage was immediately terminated and the appellant was advised on July 11, 2012 that the prescription costs would not be reimbursed. The ministry argues that it is not able to reimburse the appellant for the cost of prescription medications because they are not a health supplement as set out in Section 52 through 59 of the EAPWDR and not a medical or surgical supply under Section 2 of Schedule C of the EAPWDR.

The appellant acknowledges that her assistance file closed in December 2011 as she was in receipt of employment income, but she argues that her PWD/ Medical status should have been unaffected and should have remained active. The appellant argues that she did not contact the ministry to reinstate her assistance file until January 16, 2012 as she still had savings and was unaware that her medical coverage had also been closed. The appellant argues that on January 16, 2012 the appellant learned her medical files was also closed and the ministry told her she had to re-apply and that the ministry would back-date her application to January 1, 2012 so her medical costs would be covered. The appellant argues that she was told many times by the ministry that her prescription costs would be reimbursed. The appellant argues she has very little income and very much needs the promised funds to survive, that she is out-of-pocket for \$501.69 for pharmaceutical meds. The appellant argues that she borrowed money from her friends and family to pay for the prescriptions, telling them that she had been promised to be reimbursed by the ministry and, therefore, would be able to repay them "shortly". The appellant argues that she has very little income and very much needs the promised funds to repay everyone and just to survive, that she is having great difficulty staying current with her utilities, let alone putting food on her table.

The ministry has determined that the appellant is a PWD and that the appellant is, therefore, eligible to receive health supplements set out in Schedule C, pursuant to Section 62 of the EAPWDR ("general health supplements"). The ministry has considered whether Section 2(1)(a) of Schedule C of the EAPWDR applies to the cost of prescription medications and the panel finds that the ministry reasonably concluded that Section 2(1.1) specifically excludes prescription medications from the health supplement available for medical or surgical supplies, as set out in Section 2(1)(a) of Schedule C. The ministry then goes on to refer to various sections of the legislation, namely Sections 52 through 59 of the EAPWDR, which sections fall within Part 5, Division 1 (Section 52), Division 2 (Section 53) and Division 3 (Sections 54 through 59) of the EAPWDR and apply to a family unit that is eligible for disability assistance and/or hardship assistance. While the panel finds that the ministry reasonably determined that the cost of prescription medications is not included as a supplement in these sections which relate to reconsideration or appeal benefits, obtaining proof of identity, for items related to an employment plan or for a confirmed job, for moving/transportation/living costs, for security deposits, or an advance for lost/stolen/delayed/suspended family bonus cheques, the panel also finds that the ministry has not considered the other sections of the legislation in Part 5, Division 4 of the EAPWDR which specifically relate to health supplements.

In particular, Section 61.1(a)(i) of the EAPWDR provides for Medical Services Only coverage and may have applied to the appellant's circumstances during the relevant time as she is a PWD, if she is under age 65, and her family unit ceased to be eligible for disability assistance as a result of employment income earned by her. In addition, the appellant has argued that she expected that the cost of her prescriptions would be covered by the ministry or through PharmaCare and, if the ministry of health will not reimburse for these costs, then these may be considered unexpected expenses for the appellant, for which a crisis supplement under Section 57

may be applicable, and has not been fully considered by the ministry. The panel finds that these sections are part of the applicable enactment which has not been specifically considered by the ministry to determine whether or not they apply in the appellant's circumstances, particularly where the appellant argues that her medical coverage was discontinued in error.

The appellant argues in her Request for Reconsideration that she still owes \$256 of the \$514.10 dental bill and the dentist is threatening to send her account to collections. The appellant argues that the ministry has promised reimbursement for these funds since January 2012.

The ministry has determined that the appellant is eligible to receive dental services as a health supplement under Section 63 and Schedule C, Section 4 of the EAPWDR. The ministry points out that at the time the dental services were provided, on January 19 and 23, 2012, the appellant did not have coverage from the ministry as her file had been "...closed in error." The ministry's position is that the health supplements that may be paid under Section 63 of the EAPWDR are those set out in Schedule C, Section 4, namely "basic dental service" which are defined in Section 1 of Schedule C to mean a dental service that, if provided by a dentist, 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, and is provided at the rate set out for the service in that Schedule. The ministry points out that although the services provided to the appellant by the dentist are included in the Schedule of Fee Allowances-Dentist, the ministry is not authorized to provide coverage for fees in excess of the rates set out in the Schedule. The ministry argues, therefore, that it is unable to pay the difference between the dentist's fees and the rates set out in the Schedule of Fee Allowances-Dentist for basic dental services and the reimbursement is limited to the amount of \$331.44.

The ministry has determined that the appellant is eligible for dental supplements under Section 63 of the EAPWDR and for "basic dental service," which is defined, in Section 4 of Schedule C, to mean a dental service if provided by a dentist, 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, and is provided at the rate set out for the service in that Schedule. The panel finds that the appellant has requested dental services, as set out in the Statements of Account as follows: January 19, 2012 for services including Exam, Standard Oral (Fee Code #01201), 2 Films (Fee Code 02112) and January 23, 2012 for services including odontectomy, surgical flap (Fee Code #71201) exo, single tooth, uncomplicated (Fee Code #71101), and permanent molar bonded 1S (Fee Code #23321). Although the ministry states that the appellant did not have coverage from the ministry at the time the services were performed, the ministry admits that the appellant's file "closed in error" and that she is eligible for health supplements under Section 62 of the EAPWDR. The panel finds that it is not clear to which occasion the ministry is referring since the appellant's file closed both in December 2011 and again in January 2012. The panel finds that the ministry's determination that the services set out in the appellant's request are eligible to be paid at the rates set out in the Schedule, specifically Code # 01201 at \$24.35, #02112 at \$13.59, #71201 at \$130.27, #71101 at \$69.02 and #23321 at \$94.21, for a total amount of \$331.44, was reasonable. The panel finds Section 1 of Schedule C states that "basic dental service" must be set out in the Schedule of Fee Allowances- Dentist and paid at the rate set out in that Schedule, and that the ministry does not have the discretion to pay fees in excess of the rates set out for the services which are included in the Schedule.

The panel finds that the ministry's decision, which denied the appellant's request for coverage for the cost of prescription medications as they are not a health supplement that is set out in Sections 52 through 59 and Schedule C of the EAPWDR was not a reasonable application of the applicable enactment in the circumstances of the appellant and rescinds the decision on this issue.

The panel finds that the ministry's decision, which denied the appellant's request for the full cost of dental services provided to her as the dentist's fees included an amount in excess of the fee schedule rates, was a reasonable application of the applicable enactment in the circumstance of the appellant and, therefore, the panel confirms the decision on this issue.