

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development's (the "Ministry") September 6, 2012 reconsideration decision denying the Appellant, a recipient of disability assistance, replacement dentures under the Employment and Assistance for Persons with Disabilities Regulation Schedule C section 4 because his dentures are not more than 5 years old.

**PART D – Relevant Legislation**

Employment and Assistance for Person with Disabilities Regulation (EAPWDR) sections 62 and 63, Schedule C Sections 1 and 4; and, Schedule of Fee Allowance Denturist April 1 2010.

## PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

### 1. Information in the Ministry files that

- On August 10, 2012 the Appellant reported that he had been assaulted and robbed, and his dentures were broken in two.
- In May 2010 the Appellant received upper and lower partial dentures.
- The Appellant has Persons with Disabilities (“PWD”) designation and receives disability assistance.
- The Appellant’s claims history with the insurance provider indicates that as of September 6, 2012 he has \$185.02 left for basic dental services for the period ending December 31, 2012.
- The Ministry called the dentist the Appellant contacted to inquire about the condition of the Appellant’s broken dentures and whether failure to replace the dentures would result in compromised health. The dentist reported that he had not seen the Appellant for an appointment or seen the dentures so he could not confirm whether the Appellant’s replacement request was for upper or lower dentures. The Appellant did phone about replacement dentures.

2. Appellant’s request for reconsideration in which he stated that a police file has been opened regarding the unprovoked assault and the police are seeking cameras in the area of the assault. The Appellant wrote that he believes that the assailant was stalking him, came out of an alley and punched his lower teeth into pieces. The Appellant stated that without the lower dentures he cannot eat solid food.

At the hearing the Appellant explained how he was assaulted and had his lower dentures broken. The Appellant said the assault was unprovoked and therefore the loss of his dentures was completely out of his control. There is a police report about the incident. The Appellant said he phoned a local dentist to see how much it would cost to replace his lower dentures because he thought he might be able to pay for them himself. He was told it they would cost about \$700 and since he only receives \$950 a month in assistance he could not afford the dentures. The Appellant also explained that the local dentist is not his regular dentist and not the one who provided his upper and lower dentures two years ago. The Appellant said that he works in the entertainment industry and so cosmetics and his appearance are very important to him. He has not been able to work because he cannot smile or open his mouth. The Appellant also said he is unable to eat any solid food.

The Panel finds that the Appellant’s oral testimony is related to information about the loss of his dentures and the effects on him which is in support of the evidence that the Ministry had at the time of reconsideration. Therefore, the Panel admits this testimony under section 22(4) of the Employment and Assistance Act.

At the hearing the Ministry reaffirmed its reconsideration decision and explained what information was missing from the Appellant at the time of its decision.

The Panel makes the following findings of fact:

1. The Appellant is a PWD receiving disability assistance.
2. The Appellant received upper and lower dentures in May 2010.

The Appellant submitted that the loss of his lower dentures was beyond his control. The assault on him was unprovoked and he did file a police report. The Appellant also submitted that without his dentures he has lost his livelihood in the entertainment business because he cannot open his mouth or smile. He also cannot eat any solid food, so he feels that his health is compromised. The Appellant explained that the dentist the Ministry called was not his dentist, just someone he phoned for an estimate for replacement dentures.

In its reconsideration decision the Ministry did note that the Appellant could potentially be eligible for dentures under its policy, but it did not have enough information at the time of the reconsideration decision to determine if the Appellant might be eligible.

The Panel finds that in the Appellant's circumstances the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments. The Panel confirms that decision.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant, a recipient of disability assistance, replacement dentures under the EAPWDR Schedule C section 4 because his dentures are not more than 5 years old.

The following provisions in the EAPWDR apply to this appeal:

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.

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).

### Schedule C

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,

(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.

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

(a) in respect of a dependent child, a 2 year period beginning on January 1, 2009, and on each subsequent January 1 in an odd numbered year, and

(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 (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).

(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 dependent of that person requires replacement dentures.

(4) Subsection (2) (b) does not apply with respect to a person described in subsection (3) (a) who has previously had a partial denture.

#### Schedule of Fee Allowance Denturist April 1, 2010

In its reconsideration decision the Ministry stated that it reviewed the Appellant's request for reconsideration, all supporting documents and the Appellant's history of coverage with the insurance provider. The Ministry also contacted the denturist called by the Appellant to obtain more information and to clarify the Appellant's request. The Ministry reviewed the provisions of EAPWDR section 63 and Schedule C section 4. It noted that basic dental services may be provided to a maximum of \$1000 each period and that section 4(1) defines "period" as a 2 year period beginning on January 1, 2003 and on each subsequent January 1 in an odd numbered year. The Ministry noted that the insurance provider's claims history for the Appellant indicated that as of September 6, 2012 the Appellant had \$185.02 left for basic dental services for the current period ending December 31, 2012. As for the Appellant's eligibility for replacement dentures, the Ministry referred to EAPWDR Schedule C section 4(2), which states that dentures may be provided as a basic dental service only to a person who has never worn dentures or whose dentures are more than 5 years old. Because the Appellant received his dentures in May 2010, the Ministry determined it could not authorize replacement dentures for the Appellant until May 2015 in accordance with the EAPWDR section 63 and Schedule C section 4(2).

The Appellant did not dispute the evidence that his dentures are less than 5 years old. The Panel finds that the Ministry reasonably considered the regulations applicable to the Appellant's situation. Based on the evidence that the Appellant received upper and lower partial dentures in May 2010, the Panel further finds that the Ministry reasonably determined that the Appellant was not eligible for replacement dentures as provided for in EAPWDR section 63 and Schedule C section 4(2).

The Ministry also cited its policy which authorizes the Ministry to provide replacement dentures if the following conditions are met:

- The Appellant is otherwise eligible for replacement dentures.
- The dentures being replaced were lost or damaged beyond repair, and the loss or damage was beyond the control of the Appellant; and,
- Failure to provide replacement dentures would result in compromised health.

The Ministry noted that it contacted the denturist about the condition of the broken dentures and to determine if compromised health would be a concern if the Appellant did not have his dentures. The denturist reported that he had not seen the Appellant or the dentures and therefore could not confirm if the replacement request was for upper or lower dentures. The denturist was unable to provide information about the Appellant's health conditions or the condition of his dentures.