

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") September 28, 2012 reconsideration decision in which the Ministry determined that the Appellant, a Person with Disabilities ("PWD") designation, was not eligible for dental health supplement coverage for a root canal because:

1. By April 24, 2012, the Appellant had used up the \$1000 limit for two years of basic dental services provided for in Schedule C section 4 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") ;
2. Root canal procedures are not listed among the emergency dental procedures provided for in section 64 of the EAPWDR and the Schedule of Fee Allowances – Dentist - Emergency Dental; and,
3. Dental services and denture supplements are not one of the health supplements provided for under section 69 of the EAPWDR and Schedule C section 5 for a life threatening health need.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation Section 62, 63, 64 and 69, Schedule C Sections 1, 4 and 5 and Schedule of Fee Allowances – Dentist – Effective April 1, 2010 including Emergency Dental and Denture Supplements – Dentist.

PART E – Summary of Facts

With the Appellant's consent, a Ministry representative attended but did not participate in the hearing.

For its reconsideration decision, the Ministry had the following evidence:

1. Request from the Appellant on August 31, 2012 for coverage for a root canal supported by a letter from the Appellant's dental office indicating that:
 - She was at the office on August 20, 2012 in lots of pain and with swelling in the upper left.
 - An x-ray showed a tooth abscessing so the tooth was drained.
 - She already had two courses of antibiotics.
 - A root canal must be done because this tooth is critical for her occlusion and she has already lost weight from not being able to masticate her food due to the pain.
 - She is at her financial limit for dental services so she needs extra funding to complete the root canal as soon as possible.
2. Treatment estimate from the Appellant's dentist indicating that the root canal procedure would cost \$425.82.
3. Copies of the Appellant's dental claim details and a summary of her dental claims history from January 4, 2011 through August 24, 2012 indicating that the Appellant claimed a total of \$3,093.45 and the Ministry paid \$1,000 for basic dental services up to April 24, 2012 and an additional \$1,339.60 after that.
4. Appellant's September 17, 2012 request for reconsideration with a statement from the Appellant.

In that statement, the Appellant provided the following information about her situation:

- On August 9, 2012 her tooth became abscessed, her face was very swollen, she was in extreme pain and unable to eat any solid food, so her dentist prescribed penicillin to decrease the swelling and infection.
- On August 13, 2012, the dentist said she needed a root canal and he drained the tooth; he could not perform the procedure until the infection was under control. She had to take a different antibiotic because she became sick.
- On September 4, 2012, she had an appointment for the root canal but the dentist could not perform the procedure because she did not have the funds and she had used her up her dental coverage allowance. The dentist drained the tooth and the Appellant put down \$50 for the root canal from her own funds.
- The dentist said she would have to get the root canal done as soon as possible to avoid having the infection get out of control again. The procedures he performed are only temporary and could last a week or 3 months. The Appellant stated that she was not willing to take that chance and wanted to take her dentist's advice.
- As a disabled person her level of health is compromised and will only continue to get worse if she doesn't get a root canal immediately, referring to the letter from her dentist's office. She has been on 3 rounds of antibiotics, lost 8 lbs., is already underweight, is in pain and feels terrible each day the situation is not resolved.
- The medicine makes her extremely nauseous and dizzy, and causes diarrhea and dehydration. Her infection could cause unforeseen complications (i.e., pneumonia, septicemia) which could land her in the hospital, costing the government far more than a simple root canal. The more antibiotics she takes the more it weakens her immune system, which is already compromised.
- The emotional stress and turmoil is already having a negative effect on her health and well-being, so that she is having trouble attending to her volunteer positions.

- She went to the local emergency department on September 3, 2012 because she was concerned that the infection had gone septic; her body displayed all the symptoms. The doctor assured her that she seemed fine but recommended taking her dentist's advice to get the root canal done as soon as possible.
- She is asking for funds and for help to prevent further degradation of her health, which would cause even greater expense at the risk of her health. Winding up in the hospital seems like cruel and unusual punishment for someone who already has health issues. She asked why the Ministry was not willing to take her dentist's advice and how bad did her infection have to get.
- On September 4, 2012, she was supposed to have the root canal to relieve the pain, the swelling and to stop the infection. Having the tooth drained twice would just about have paid for the root canal so it does not make sense. She wonders if she can have the tooth drained again. The system is not paying attention to her problems financially.
- She is not able to use her CPAP machine throughout the night because the mask covers her face and presses on her tooth, hurting her. She has severe sleep apnea, which is also a health risk for her. She grinds her teeth when sleeping, causing pain and aggravating the tooth needing the root canal. If she doesn't use the CPAP machine, she is at risk of stroke and heart attack, and causes drowsiness throughout the day.
- Her eyes are still swollen from the infection spreading throughout her sinus cavities, and her left ear is plugged up and hurts as well.
- She is already indigent and having to pay or even repay this money would have a deleterious effect on her basic day to day necessities. She cannot afford this and the future of her health is in the Ministry's hands.
- She had two suggestions: pay for the root canal from her 2013 dental plan; or, have the root canal done in the hospital and paid for under her medical coverage.

At the hearing, the Appellant said she was disappointed with the Ministry's decision. She referred to the Ministry's statement in the reconsideration decision that it had paid \$1,339.60 for emergency dental coverage but it did not pay towards the root canal, which will cost \$425.82. The Appellant said her tooth is acting up now and she has to go on antibiotics again. She also stated that the dentist will not drain the tooth again. The Appellant said that the dentist told her the tooth is healthy, but the root canal has to be done, so she is worried about it. The Appellant stated that she has no funds, she cannot borrow the money and her credit card is maxed out. She was able to give the dentist \$50 towards the procedure; however, he does not accept payments only the total sum. The Appellant also said that if the tooth needs to be pulled, the Ministry will not pay for a replacement tooth.

The Appellant stated that with the infection and the antibiotics she was laid up for a month and a half this summer. The medications made her sick. She said she has multiple medical problems, her immune system is already deficient and the tooth problems exacerbate her health problems. She feels her face swelling again up to her eye and she cannot wait until her dental coverage begins again in January 2013. The Appellant said she also cannot handle another round of antibiotics.

The Panel finds that the Appellant's oral testimony is related to information the Ministry had about the Appellant's dental condition and need for a root canal at the time of reconsideration. Therefore, the Panel admits that testimony as being in support of evidence before the Ministry when it made its reconsideration decision in accordance with section 22(4) of the Employment and Assistance Act.

The Appellant's advocate submitted oral argument, which is set out in Part F of this decision.

At the hearing, the Ministry reviewed and relied on its reconsideration decision.

The Panel makes the following findings of fact which are not in dispute:

1. The Appellant is a PWD.
2. The Ministry paid \$1000 in basic dental coverage for the Appellant for the two-year period beginning on January 1, 2011 and through April 24, 2012.
3. The Ministry paid \$1,339.60 for emergency dental coverage for the Appellant after April 24, 2012.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant, as a PWD, was not eligible for coverage for a root canal because, by April 24, 2012, the Appellant had used up the \$1000 limit for two years of basic dental services provided for in Schedule C section 4 of the EAPWDR; root canal procedures are not listed among the emergency procedures in the EAPWDR Schedule of Fee Allowances – Emergency Dental; and, dental services are not one of the health supplements provided for under section 69 and Schedule C section 5 of the EAPWDR for a life threatening health need.

The following sections of the EAPWDR apply to the Appellant's circumstances in 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*].

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), (b) (iii), (d) or (e) [*general health supplements*].

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).

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.

"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.

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) \$1000 each period, if provided to a person not referred to in paragraph (a).

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 Allowances – Dentist – Effective April 1, 2010 including Emergency Dental and Denture Supplements – Dentist.

The Ministry's position is that it has to apply the applicable legislation and in the Appellant's case, it considered three different ways her root canal might be covered; that is, under her basic dental coverage; as an emergency dental procedure; and, as a life threatening health need.

Basic Dental Services

The Ministry considered all of the information it had. It noted that, as a PWD, the Appellant is eligible for dental supplements under sections 63 and 64, and Schedule C sections 4 and 5 of the EAPWDR. The Ministry reviewed the Appellant's dental claims history provided by the insurance carrier and it determined that by April 24, 2012 the Appellant had used up the \$1000 of basic dental services that she was eligible for, for the coverage period ending December 31, 2012. Therefore, the Ministry determined that there are no funds available to the Appellant for basic dental services. The Ministry noted that the Appellant is eligible for tooth restoration services as an emergency dental service. The maximum fee allowance is five surfaces or the dollar equivalent per tooth in a two-year period, and for restorations for this tooth in a two-year period the allowance is \$171.65. The Ministry determined that the Appellant had a restoration on the same tooth for which \$141.99 was paid on April 16, 2012. Therefore, the Ministry indicated that the remainder of \$29.66 for restoration was available in this two year period.

The Appellant's advocate argued that the intent of legislation must be considered as well as the provisions in the legislation. He argued that the decision made by the Ministry does not even come close to meeting the intent of the legislation. The Appellant is a disabled person with multiple medical problems exacerbated by this tooth. The advocate submitted that the Ministry should follow the intent of the legislation, not just the content, and therefore provide the coverage the Appellant needs for her root canal. The Appellant is immune deficient to begin with and her face is swelling again. The Appellant submitted that she cannot wait six weeks until January 1, 2013 when her dental coverage begins again and she suggested that the Ministry pay for her root canal from her 2013 dental plan.

The Panel finds that the EAPWDR sets out the specific dental procedures the Ministry may provide coverage for and the specific amounts the Ministry may pay for those procedures. In its reconsideration decision, the Ministry reviewed all of the information it had about the Appellant's

dental claims history from January 2011 through September 2012 as well as the information from the dentist and the Appellant. Based on that review and the evidence, the Panel finds that the Ministry reasonably determined that it is only authorized to approve a maximum of \$1000 in basic dental services within a 2 year period in accordance with EAPWDR Schedule C section 4 and that it did approve that sum through to April 24, 2012. Therefore, the Panel further finds that the Ministry reasonably determined that it could not authorize additional coverage for \$425.82 for a root canal procedure as a basic dental service after April 24, 2012.

Emergency Dental Services

The Ministry also considered EAPWDR section 64 and Schedule C section 5 for emergency dental services. The Ministry noted that it can only approve the emergency dental services listed in the Schedule of Fee Allowances – Emergency Dental. It determined that root canal therapy is not listed in this schedule and it is not authorized to pay for emergency services not set out in that Schedule. Therefore, the Ministry determined it could not provide coverage for the root canal as an emergency dental service. The Ministry noted that after April 24, 2012, it paid \$1,339.60 for other emergency dental services on the Appellant's behalf and she is still eligible for listed emergency dental services.

The Appellant submitted that she needs the root canal procedure as an emergency procedure, and even that it should perhaps be done at the hospital. Her face is swelling again and the antibiotics she takes make her sick. The Appellant stated that her immune system is deficient and further infections will adversely affect her health. Her dentist said she needs the procedure as soon as possible. The Appellant submitted that the emergency dental coverage that the Ministry provided could have been used towards the needed root canal procedure.

The Panel finds that, for the root canal procedure, the Ministry reasonably considered the Appellant's eligibility for emergency dental services under section 64 and Schedule C section 5 of the EAPWDR, as well as the Schedule of Fee Allowances – Emergency Dental. Based on these applicable regulations, the Panel further finds that the Ministry reasonably determined that a root canal procedure is not one of the eligible procedures listed in that regulation. However, after April 24, 2012, the Ministry did pay \$1,339.60 for other emergency dental services for the Appellant.

Health Supplement for a Life-Threatening Need

The Ministry reviewed section 69 of the EAPWDR, which authorizes the minister to provide coverage for the listed health supplements for a life-threatening need. The Ministry noted that the information the Appellant submitted with her request for reconsideration indicates that she may have a life-threatening need for the requested dental services. However, the Ministry determined that section 69 applies only to medical supplies, medical transportation and medical equipment, and that dental and denture supplements are not listed in the applicable legislation. Therefore, the Ministry determined that it could not provide coverage for the root canal as a life-threatening need.

The Appellant's position is that she needs the root canal procedure to address a life-threatening situation. Her tooth is acting up again and her face is swelling from infection. The Appellant submitted that she needs the root canal so that her whole health is not compromised.

The Panel finds that the Ministry reasonably determined that dental procedures and dental supplements are not among the health supplements provided for under section 69 of the EAPWDR for life-threatening needs. Therefore, the Panel further finds that the Ministry reasonably determined

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that it could not provide coverage for the Appellant's root canal procedure as a health supplement for a life-threatening need.

The Panel confirms the Ministry's reconsideration decision because it was reasonably supported by the evidence and was a reasonable application of the applicable enactments.