

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") January 18, 2013 reconsideration decision in which the Ministry made the following determinations regarding the Appellant's eligibility, as a Person with Disabilities ("PWD"), for dental health supplements under the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"):

1. The Appellant is only eligible for the dental services specifically provided for and at the rates set out in EAPWDR Schedule C and the Schedule of Fee Allowances – Dentist, which in this case are scaling, root planing, white fillings, an extraction and partial denture;
2. The Appellant is not eligible for an alveoplasty because this service is authorized only when two or more extractions are performed according to the Schedule of Fee Allowances;
3. The Appellant is not eligible for lab fees because this service is not in the Schedule of Fee Allowances;
4. The Appellant is not eligible for IV sedation because the fee code submitted by the dentist is not in the Schedule of Fee Allowances and she did not meet the criteria in that schedule; and,
5. The Appellant is not eligible for crown work because the Ministry was not satisfied that she met the eligibility requirements in EAPWDR Schedule C section 4.1(2).

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation Sections 63 and 63.1, Schedule C Sections 1 and 4.1 and Schedule of Fees and Allowances – Dentist.

## PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from its records that :

- The Appellant is a Person with Disabilities receiving disability assistance.
- The Appellant has \$1,000 available for basic dental services for the period commencing January 1, 2013 to December 31, 2014.

2. Documents from the insurance provider regarding the Appellant's dental claims history and two dental treatment plans, including a request for a crown for tooth number 22.

3. Revised treatment request on December 17, 2012 for dental services for tooth number 22 with a different fee code for the crown.

4. Dental Treatment Plan One for the Appellant for the following dental services:

- Fee Code 1114 for scaling- 4 units – Dentist's fee \$127.60 and Ministry rate \$88.68.
- Fee Code 43422 for root planning -2 units – Dentist's fee \$63.80 and Ministry rate \$44.34.
- Fee Code 27211(amended) for Tooth 22 for Crown, Porcelain/Ceramic/Polymer Glass, Fused to Metal Base – Dentist's Fee \$978 and Ministry Rate \$00.
- Fee Code 23601 for non-bonded composite core, in conjunction with crown – Dentist's fee \$141 and Ministry rate \$00.
- Fee Code 92448 for IV Inject, eight units – Dentist's fee \$496 and Ministry rate \$00.
- Fee Code 92449 for IV inject, add over 8 units – Dentist's fee \$53.10 and Ministry rate \$00.
- Fee Code 92449 for IV inject, add over 8 units – Dentist's fee \$53.10 and Ministry rate \$00.

5. Dental Treatment Plan Two for the Appellant for the following dental services:

- Fee Code 23322 for tooth 16 for white filling two surfaces – Dentist's fee \$219 and Ministry rate \$144.04.
- Fee Code 23325 for tooth 27 for white filling five surfaces – Dentist's fee \$376 and Ministry rate \$203.58.
- Fee Code 23312 for tooth 15 for white filling three surfaces – Dentist's fee \$183 and Ministry rate \$122.65.
- Fee Code 71201 for tooth 22 extraction, erupted tooth requiring surgical flap and or sectioning of tooth - Dentist's fee \$219 and Ministry rate 130.27.
- Fee Code 73111 for tooth 22 alveoplasty/extractions – Dentist's fee \$19.70 and Ministry rate \$00.
- Fee Code 52101 for tooth 22 partial dentures, acrylic base, with or without clasps, maxillary – Dentist's fee \$252 and Ministry rate \$306.
- Fee Code 9111 for tooth 22 lab, partial denture, maxillary – Dentist's fee \$173 and Ministry rate \$00.

6. Appellant's December 31, 2012 request for reconsideration in which she wrote that she had numerous dentists try new ways to freeze her teeth but for as long as she can remember nothing worked. This led to one dentist using sedation to do any work on her teeth. The Appellant also wrote that she does not recall ever having to pay for sedation because it was always covered due to her situation. She stated that she cracked a front tooth so that almost 1/3 is barely hanging on and the dentist would like to try to save it with a crown. The Appellant wrote that since she has 2 small cavities it is best to fill them at the same time so that the teeth do not continue to decay. The Appellant submitted that her teeth also need cleaning to ensure that she does not get more decay. She has no funds to pay for this.

With her request for reconsideration, the Appellant submitted an unsigned note from her dentist's

office with an x-ray and photo of the cracked tooth. The following information was in the note: "vertical fracture present in tooth, once removed will be insufficient tooth structure remaining to restore with filling material, thus crown is required. Patient is unable to achieve profound anesthesia with standard local anesthetic. IV sedation is required to provide dental treatment pain free."

In her notice of appeal, the Appellant wrote that because of an existing medical condition she is unable to have freezing for any dental work, which means she must be sedated. The Appellant stated that in the past she has always been covered for sedation. She needs the work done and has no funds to pay for it.

At the hearing, the Appellant explained that she does not have a regular dentist, so when her front tooth cracked she found a dentist because that tooth needed attention. She said that the dentist she went to told her he could not use a filling on the tooth because the crack is vertical and affects most of her tooth. The dentist also told her that he could try putting a crown on the tooth to save it, but only if the crack did not extend into the root. If the crack did extend that far, the dentist advised that she would need a partial denture and plate. The Appellant said that is why two treatment plans were provided through the insurance company, one for crown work for tooth 22 and an alternative for the partial denture for tooth 22.

The Appellant also said that she needs to have her teeth cleaned and a couple of teeth filled to save them. She thought she could have all of the dental work done at the same time while she is under IV sedation. The Appellant stated that local anesthetic does not work on her and in the past when she had dental work done it was under IV sedation in a hospital and in a dentist's office. She thought that in the past the Ministry had covered all of that dental work and the IV sedation. The Appellant also said that she had the previous dental work done about 20 years ago.

The Appellant asked for an exception or a compromise from the Ministry to pay for the dental work she needs to have done. She said she lives day to day and barely gets by financially. She cannot even afford to pay anything for dental work on a monthly payment plan.

The Panel finds that the Appellant's testimony and statements in her notice of appeal provide more details about her dental care needs. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the testimony and the appeal statements as being in support of the evidence that was before the Ministry at reconsideration.

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

The Panel makes the following findings of fact:

1. The Appellant is a PWD receiving disability assistance.
2. The Appellant is eligible for \$1,000 of basic dental health services from January 1, 2013 through December 31, 2014.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant, a PWD:

- Is only eligible for the dental services specifically provided for and for the rates set out in EAPWDR Schedule C and the Schedule of Fee Allowances – Dentist, which in this case are scaling, root planing, white fillings, an extraction and partial dentures;
- Is not eligible for an alveoplasty because this service is authorized only when two or more extractions are performed according to the Schedule of Fee Allowances;
- Is not eligible for lab fees because this service is not in the Schedule of Fee Allowances;
- Is not eligible for IV sedation because the fee code submitted by the dentist is not in the Schedule of Fee Allowances and she did not meet the criteria in that schedule; and,
- Is not eligible for crown work based on the eligibility requirements in EAPWDR Schedule C section 4.1(2).

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal:

### *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).

### *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.

### *Schedule C Health Supplements*

#### *Definitions*

1 In this Schedule: "basic dental service " means a dentist 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, and (ii) is provided at the rate set out for the service in that Schedule.

#### *Dental Supplements*

4 (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

(b) \$1,000 each period, if provided to a person not referred to in paragraph (a).

### *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.

*Schedule of Fee Allowances – Dentist – April 1, 2010*

Basic Dental Services

*The Parties' Positions*

The Ministry's position is that, for the Appellant as a PWD, it can only provide the basic dental services and crown work authorized in the EAPWDR, but only if the criteria set out in the regulations are met and only at the rates set out in the Schedule of Fee Allowances for Dentists.

The Ministry determined that in Treatment Plan One, the Appellant would be eligible for scaling (fee code 11114) and root planning (fee code 43422).

The Ministry also found that most of the services listed in Treatment Plan Two are basic dental services set out in the EAPWDR and the Schedule of Fee Allowance – Dentist. The amounts that it is authorized to pay for the fillings, extractions and partial dentures are listed in that Schedule. The Ministry submitted that it is only authorized to pay for alveoplasties when two or more extractions are performed in the same sextant (page 20 of the fee schedule). Also, it is not authorized to pay for lab fees because that service (fee code 9911) is not listed in the fee schedule.

The Ministry noted that IV sedation was listed in Treatment Plan One but not in Treatment Plan Two, although the information submitted suggests that it would be needed for the services in the latter plan. The Ministry again pointed out that it is not authorized to provide coverage for services not listed in the fee allowance schedule and the fee code 92448 submitted by the dentist is not in that schedule. However, there is limited coverage for GA/IV sedation in a dentist's office under fee code 92215 if the criteria set out there are met.

The Appellant's position is that she does not have the money to pay for any dental services. She lives day-to-day and could not even pay for such services on a monthly payment plan. The Appellant submitted that the Ministry should have exceptions or some compromise in her case so that she can save her teeth. The Appellant also argued that because of her medical conditions she needs IV sedation to have the work performed and she thought the various procedures could be done together.

#### *The Panel's Findings*

The Panel finds that the Ministry reasonably determined that based on the provisions in section 63 of the EAPWDR and the definition of basic dental services in section 1 of Schedule C, it is only authorized to approve the basic dental services listed in the schedules and only for the fee amounts listed in the Schedule of Fee Allowances – Dentist. The EAPWDR, its Schedule C and the fee allowance schedule provide no exceptions or any provisions for the Ministry to authorize any services or fees not listed in that legislation. The Panel also finds that the Ministry considered all of the information provided by the insurance company, the Appellant and the dentist. Based on this evidence, the Panel finds that the Ministry reasonably determined that it could authorize the fillings, the extraction, the partial denture, the scaling and root planing for the fees set out in the fee schedule because those services are specifically authorized. But it could not authorize the alveoplasty because according to the Schedule of Fee Allowances – Dentist, two or more extractions have to be performed in the same sextant to authorize alveoplasty. Only one was requested in Treatment Plan Two. The Panel also finds that the Ministry could not authorize and pay for lab work because lab work is not one of dental services listed in the fee schedule.

As for the IV sedation, the Panel finds that the fee code provided by the dentist is not in the Schedule of Fee Allowances – Dentist. Also, there was no medical evidence regarding the Appellant's need for such sedation, only the Appellant's statements. The dentist provided no medical explanation. There is just an unsigned note indicating that the Appellant is unable to achieve profound anesthesia with standard local anesthetic so IV sedation is required to provide dental treatment pain free. Therefore, the Panel finds that the Ministry reasonably determined that it could not authorize IV sedation because the criteria for IV sedation had not been satisfied and the fee code for sedation provided by the insurance company and dentist is not in the fee schedule.

#### *Eligibility for Crown Work for Tooth 22*

##### *The Parties' Positions*

The Ministry's position is that it may pay for crown and bridgework but only if the Appellant meets the eligibility requirements in EAPWDR Schedule C section 4.1(2)(a) and (b). The Ministry determined that the information provided did not confirm that the dental condition of tooth 22 precludes the provision of restorative services set out under the Restorative Services section of the Schedule of Fee Allowances – Dentist (page 8 – fee code 22501). The Ministry further found that the information provided did not establish that any of the circumstances in Schedule C section 4.1(2)(b)(i) to (iv) exists.

The Appellant's position is that she wants to try to save her tooth and have the dentist try to put a crown on that tooth. Because of the extent of the crack, the dentist cannot fix it with a filling. The Appellant submitted that there should be exceptions or some sort of compromise from the Ministry to help her get her tooth fixed. She does not have any money available to pay for this herself.

*The Panel's Findings*

EAPWDR Schedule C section 4.1(2) sets out the eligibility requirements for crown work and the Panel finds that the Ministry reasonably considered the application of this regulation in the Appellant's circumstances. The Ministry also reviewed all of the information provided by the insurance company, the dentist and the Appellant. The only evidence about tooth 22's condition, other than the treatment plans, was the unsigned note stating that the vertical fracture present in the tooth, once removed will be insufficient tooth structure remaining to restore with filling material. There is nothing in the note or elsewhere in the evidence, other than the Appellant's testimony, that the dentist provided this information. Additionally there was no information addressing any of the conditions in section 4.1(2)(b). Therefore, based on all of the evidence, the Panel finds that the Ministry reasonably determined that there was not enough information to establish that the Appellant's dental condition precludes the provision of restorative services and further that there was insufficient information that at least one of the circumstances in section 4.1(2)(b) exists. The Panel finds that the Ministry reasonably concluded that it could not authorize the requested crown work for tooth 22.

*Conclusion*

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