

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”)’s reconsideration decision dated July 22, 2013 which denied the appellant’s request for dental coverage for tooth extraction in excess of the rates set out in the Schedule of Fee Allowances – Dentist and for the requested IV sedation as that is not a procedure set out in that Schedule.

**PART D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 63,  
Schedule C sections (1)(4)  
Schedule of Fee Allowances - Dentist*

## PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- 1) Request for Reconsideration (RFR) dated July 2, 2013 in which the appellant asks the ministry to reconsider its decision denying him funding for dental work as he should qualify for dental funding under EAPWDR section 62 as he is in receipt of Persons with Disability (PWD) benefits;
- 2) Letter from the ministry to the appellant's dental surgeon dated July 22, 2013 authorizing dental treatment for dental extraction for fee codes 72221 and 71211 in the amount of \$452.65;
- 3) Letter from the ministry to the appellant dated June 17, 2013 advising him that his request for funding for dental work was denied;
- 4) Treatment proposal dated June 4, 2013 from an oral surgeon for dental extraction and IV sedation in the amount of \$1,455 less the estimated amount to be paid by the ministry's insurance company of \$452.65, leaving an outstanding amount of \$1,002.38 (the "Treatment Proposal"); and
- 5) Letter from a denturist dated May 14, 2013 stating that on examination, it was noted that the eruption of the appellant's lower wisdom teeth were "...*significantly problematic and that future success of a partial lower denture and a new complete upper denture*". The denturist states that the appellant is missing all of his other lower posterior teeth which results in the need for a partial lower denture. The denturist also states that before any denture work can be started, the appellant must have his lower wisdom teeth extracted and the eruption of one of them is now wearing a hole in his upper denture.

In his Notice of Appeal dated August 2, 2013 the appellant states that the oral surgeon provided the Treatment Proposal providing for extraction and IV sedation and that the extractions cannot be done without the IV sedation.

### *Admissibility of New Information*

Prior to the hearing the appellant provided a submission which was a letter from his physician dated August 30, 2013 regarding the appellant's health conditions. The physician also states that the appellant requires his wisdom teeth extracted surgically as they are significantly problematic and the eruption of one of them is wearing a hole in his upper denture causing damages. The physician report that although the ministry's Reconsideration Branch has approved funding of \$452.65 of the Treatment Proposal but that still leaves \$1,002.38 for the appellant to pay. The physician reports that the appellant has been recently approved for PWD designation but that he can barely make ends meet on his disability assistance. The appellant requests that the ministry fund the total Treatment Proposal cost so that the appellant can begin to eat properly and regain his health.

The panel has admitted the portion of the letter from the appellant's physician into evidence that relates to the dental work being requested and the information as to why the appellant requires the dental work as it is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. However, the panel does not admit the information regarding the appellant's various health conditions into

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evidence as that is not in issue in the appeal and is not in support of the information that was before the ministry at the time of reconsideration.

The ministry relied on the reconsideration decision and did not submit any new information.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision which denied the appellant's request for dental coverage for tooth extraction for fees in excess of the rates set out in the Schedule of Fee Allowances – Dentist and for the IV Sedation on the basis that it is not a treatment set out in that Schedule was reasonable.

The relevant sections of the legislation are as follows:

### **EAPWDR section 63 - 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 (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(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,

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(c) section 62 (1) (b) (ii), or (d.2), (B.C. Reg. 67/2010)

(B.C. Reg. 114/2010)

(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.

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(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.

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(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.

(B.C. Reg. 114/2010)

### **EAPWDR Schedule C**

#### **(A) Definitions**

##### **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, and

(B.C. Reg. 65/2010)

(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

(B.C. Reg. 65/2010)

(ii) is provided at the rate set out for the service in that Schedule, and

(B.C. Reg. 315/2006)

(c) if provided by a dental hygienist,

(i) is set out in the Schedule of Fee Allowances - Dental Hygienist 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; (B.C. Reg. 65/2010)

#### **Dental supplements**

##### **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.

(B.C. Reg. 65/2010)

(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,

(B.C. Reg. 65/2010)

(b) \$1 000 each period, if provided to a person not referred to in paragraph (a), (B.C. Reg. 163/2005)

(c) Repealed (B.C. Reg. 163/2005)

(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 dependant of that person requires replacement dentures. (B.C. Reg. 94/2005)
- (4) Subsection (2) (b) does not apply with respect to a person described in subsection (3) (a) who has previously had a partial denture.
- (5) The dental supplements that may be provided to a person described in subsection (3) (b), or to a person described in subsection (3) (c) who requires a partial denture, are limited to services under
  - (a) fee numbers 52101 to 52402 in the Schedule of Fee Allowances - Dentist referred to in paragraph (a) of the definition "basic dental service" in section 1 of this Schedule, or (B.C. Reg. 94/2005)
  - (b) fee numbers 41610, 41612, 41620 and 41622 in the Schedule of Fee Allowances - Denturist referred to in paragraph (b) of the definition "basic dental service" in section 1 of this Schedule. (B.C. Reg. 94/2005)
- (6) The dental supplements that may be provided to a person described in subsection (3) (c) who requires the replacement of a full upper, a full lower denture or both are limited to services under
  - (a) fee numbers 51101 to 51102 in the Schedule of Fee Allowances - Dentist referred to in paragraph (a) of the definition "basic dental service" in section 1 of this Schedule, or (B.C. Reg. 94/2005)
  - (b) fee numbers 31310, 31320 or 31330 in the Schedule of Fee Allowances - Denturist referred to in paragraph (b) of the definition "basic dental service" in section 1 of this Schedule. (B.C. Reg. 94/2005)
- (7) A reline or a rebase of dentures may be provided as a basic dental service only to a person who has not had a reline or rebase of dentures for at least 2 years.

**Schedule of Fee Allowances - Dentist**

**FEE NO. FEE DESCRIPTION FEE AMOUNT (\$)**

Extraction, impacted tooth involving tissue and bone coverage requiring incision of overlying soft tissue, elevation of flap, removal of bone AND sectioning of tooth for removal (Complete Bone Covered).

72221 Single tooth 209.96

**EXTRACTIONS (REMOVALS)**

Extraction, erupted tooth, requiring elevation of a flap, removal of bone AND section of tooth for removal of tooth

71211 Single Tooth 201.55

*Position of the parties*

The appellant's position is that he requires the dental extractions and that he cannot have the surgery performed without IV sedation. The appellant also states that he cannot afford to pay the additional costs set out in the Treatment Proposal over and above what the ministry has agreed to fund.

The ministry's position is that as a PWD the appellant is eligible for basic dental services to a maximum of \$1,000 and the minister approves the appellant's request for the maximum coverage set out in the Schedule of Fee Allowances – Dentist, which is \$452.65 for the treatments coded as 72221 and 71211 in the amounts of \$230.95 and \$221.70 respectively. The ministry states that the fees for these treatments are based on the fees in the Schedule of Fee Allowances – Dentist plus the allowable additional 10% for certified specialists, including oral surgeons.

The ministry's position is that the IV sedation requested under treatment code 92305 cannot be funded as it is not a treatment included in the Schedule of Fee Allowances – Dentist.

The ministry states that although the dentist intends to charge fees in excess of those set out in the Schedule of Fee Allowances – Dentist the minister is only able to approve coverage for the maximum rates set out in the Schedule of Fee Allowances – Dentist and is not authorized to provide coverage for treatments that are not set out in the Schedule.

*Panel Decision*

The panel notes that the appellant requires dental surgery with IV sedation as set out in the Treatment Proposal and that the dental work is recommended by a denturist and oral surgeon. The panel also finds that the dental work is supported by the appellant's physician who states that the appellant requires the dental surgery so that he can begin to eat properly and regain his health. The physician states that without the recommended treatment, the appellant's health will certainly deteriorate further.

However, the panel finds that the ministry has approved coverage for the maximum amounts provided in the Schedule of Fee Allowances – Dentist, of \$452.65 for the extraction treatments coded as 72221 and 71211 in the amounts of \$230.95 and \$221.70 respectively.

As the ministry has agreed to provide the maximum coverage for the extractions that is provided in the Schedule of Fee Allowances – Dentist plus the allowable additional 10% for certified specialists, including oral surgeons, in accordance with the definition of basic dental services in Section 1 of Schedule C, the panel finds that the ministry's reconsideration decision denying funding for the additional cost that the appellant's dental surgeon intends to charge, as set out in the Treatment Proposal, was reasonable.

The panel finds that the treatment for IV sedation, as recommended by the appellant's dental surgeon under treatment code 92305 is not a treatment included in the Schedule of Fee Allowances – Dentist and therefore; does not fall within Section 1 definition of basic dental services. As the ministry is unable to approve funding requests for treatments not included in the Schedule of Fee Allowances –

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Dentist the panel finds that the ministry's reconsideration decision, denying the appellant's request for funding for IV sedation treatment code 92305 was reasonably supported by the evidence and a reasonable application of the legislation.

In conclusion, the panel finds that the ministry's reconsideration decision to deny the appellant's request for dental coverage above the \$452.65 stipulated in the Schedule of Fee Allowances – Dentist, pursuant to EAPWDR section 63 was reasonable.