

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated November 26, 2013 wherein the ministry denied the appellant's request for coverage of services that are not set out in the Schedules of Fee Allowances pursuant to the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and for fees that are excess of the rates set out in the Schedules. The ministry also determined that a dental supplement under section 69 of the EAPWDR was in part not covered because the appellant was not facing a direct and imminent life threatening health need for the requested services.

The ministry found that the appellant was eligible for coverage for a root canal for tooth number 46 and white fillings for tooth numbers 18, 47 and 37 at ministry rates.

Specifically, the ministry found that the appellant was not eligible for:

- coverage of services to include IV injections and lab fees that are not set out in the Schedule of Fee Allowances-Dentist and Emergency Dental-Dentist;
- coverage for fees in excess of the rates set out in the Schedule of Fee Allowances-Dentist and Emergency Dental-Dentist;
- crowns for tooth numbers 46 and 36; and
- dental services that are not set out in the Schedule of Fee Allowances – Crown and Bridgework.

The appellant is a Person With Disabilities receiving disability assistance from the ministry pursuant to section 62 of the EAPWDR.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62, 63, 64 and 69.

EAPWDR, Schedule C. Sections 1, 4 and 5.

Schedule of Fee Allowances - Dentist - April 1, 2010.

Schedule of Fee Allowances - Emergency Dental - Dentist - April 1, 2010.

Schedule of Fee Allowances - Crown and Bridgework - April 1, 2010.

## PART E – Summary of Facts

The appellant and the ministry did not attend the hearing. After confirming that both parties were notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

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

- a copy of the Schedule of Fee Allowances- Dentist - April 1, 2010,
- a copy of the Schedule of Fee Allowances- Emergency-Dentist - April 1, 2010,
- a copy of the Schedule of Fee Allowances- Crown and Bridgework - April 1, 2010,
- a Standard Dental Claim Form dated July 11, 2013 submitted by the appellant's dentist for \$2294,
- a letter from Pacific Blue Cross (PBC) to the practitioner dated July 16, 2013,
- a Dental Pre-Authorization Remittance Statement dated July 17, 2013,
- a Dental Estimate dated July 22, 2013 for the appellant for \$4331.90,
- 8 copies of photographs of the appellant's teeth dated between October 7- November 3, 2013,
- a letter from the dentist's treatment coordinator dated November 7, 2013,
- a copy of procedure descriptions from the appellant's dentist to PBC dated November 7, 2013, matching the Dental Claim Form dated July 11, 2013 for a the total fee of \$2294,
- a Dental Estimate dated November 13, 2013 for the appellant for \$4001.40,
- a Request for Reconsideration dated November 13, 2013,
- a letter to the appellant from PBC dated November 20, 2013 and
- a copy of the appellant's Dental Benefit Eligibility statement dated November 22, 2013 indicating that \$739.90 is remaining until the next eligible for full benefit date of January 1, 2015.

A letter from PBC to the practitioner dated July 16, 2013 requests supporting documentation about the appellant to include; a list of all teeth missing, date and condition of any existing prosthesis and teeth involved, if no existing prosthesis, length of time teeth have been missing, explanation as to necessity for crown/bridge requests: Why treatment needs cannot be met through the Basic Dental Program (i.e.: conventional restorations, stainless steel crowns, extractions..etc) and relevant information regarding the client's medical condition(s) that would support the need for a crown or bridge. Noted also is a request for the practitioner to review the current ministry fee schedule and that item # 27221 is not a ministry fee.

In the Dental Pre-Authorization Remittance Statement dated July 17, 2013 from the appellant's PBC to his dentist; it indicates that the appellant is approved as follows: fee item 33141, for tooth number 46, for an amount of \$521.77; fee item 23321, for tooth number 18, for an amount of 94.21, fee item 23321, for tooth number 47, for an amount of \$94.21 and fee item 23321, for tooth number 3, for an amount of \$94.21. The total amount approved is \$804.40.

The Dental Estimate dated July 22, 2013 describes the treatment for the appellant and indicates a total estimated fee of \$4331.90, with PBC coverage of \$804.40 leaving an estimated amount of \$3527.50 to be paid by the appellant.

Notes found on some of the 8 copies of photographs of the appellant's teeth are as follows: tooth number 46 is broken, patient is in pain, he is missing teeth numbers; 14, 15, 24, 25, 35, 38 and 45. Additionally, it was noted that: tooth 46 has recurring decay, requiring a root canal which once complete, a composite restoration will not be adequate for longevity of this tooth; tooth 36 has recurrent decay and once it is removed there will not be enough healthy tooth structure remaining to support a composite restoration and regarding the bridge and crown supplement, "this dental condition precludes the use of a removable prosthetic as we are not replacing missing teeth".

A letter from the appellant's dentist's treatment coordinator dated November 7, 2013 states that the appellant's existing fillings are failing and have recurrent decay and that tooth 46 is at the point where the decay may be into the nerve of the tooth requiring root canal therapy prior to final restoration. With tooth numbers 46 and 36, removing the existing, failing amalgam filling to access and remove the recurrent decay will not leave adequate tooth structure to support a composite restoration, and therefore; the dentist's treatment plan for final restoration includes full coverage crowns. It is further stated that should the appellant not proceed with this necessary treatment soon, the decay will continue to progress until such time that the tooth or both teeth will not be restorable and require extraction. The appellant's "current dental condition precludes the use of a removable prosthetic as he does not have any spaces in the existing arch and he is not replacing any missing teeth but is working to prevent the loss of teeth".

The Dental Estimate dated November 13, 2013 describes the treatment for the appellant and indicates a total estimated fee of \$4001.40, with PBC coverage of \$804.40 leaving an estimated amount of \$3197 to be paid by the appellant.

In the Request for Reconsideration dated November 13, 2013 the appellant states that the dental repair is not one of choice but of necessity and that he is in a great amount of pain every day. The appellant states that avoiding this work will result in a hospital emergency. He adds that he has undergone major jaw surgery and orthodontic work and not completing this dental work could be devastating.

The letter to the appellant from PBC dated November 20, 2013 advises that the legislative criteria has not been satisfied and that the requested treatment has been rejected for the following reasons:

1. the information provided does not indicate that the dental condition precludes the provision of restorative services set out under the Restorative Services section of the Schedule of Fee Allowances - Dentist,
2. the clinical explanation submitted does not confirm that the appellant's needs cannot be met through the basic dental program and
3. that the information provided does not confirm that 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 and (iv) the person has a mental condition that makes it impossible for him or her to assume responsibility for a removable prosthetic.

PBC also advised the appellant that he has a balance of \$739.90 left of his \$1000 limit for basic dental services which may be applied to the cost of a root canal on tooth number 46 and that the ministry rate for this service is \$521.77. The appellant is further advised that the remaining amount of \$281.13 may be applied to the cost of white fillings for tooth numbers 18, 47 and 37 at a ministry rate for these services at \$94.21 for a total of \$282.63. The overage can be placed on the Dental Emergency Plan as the dentist advises that the appellant is in pain.

In his Notice of Appeal dated November 28, 2013, the appellant states that the reconsideration decision contradicts provisions allowing him crown and bridgework under section 63.1 and Schedule C, section 4.1. Also the appellant indicates that the work is mandatory to avoid a worst case scenario- hospitalization.

### **Findings of Fact**

The appellant is designated as a Person With Disabilities and is eligible to receive basic dental services under section 63 and Schedule C, section 4, and emergency dental services under section 64 and Schedule C, section 5 of the EAPWDR.

The appellant is also eligible for Crown and Bridgework under section 63 and Schedule C, section 4.

The procedure requested is for full cast metal crowns for tooth numbers 36 and 46.

The appellant's Dental Benefit Eligibility statement dated November 22, 2013 indicates that \$739.90 is remaining until the next eligible for full benefit date of January 1, 2015.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision which denied the appellant's request for coverage of services that are not set out in the Schedules of Fee Allowances pursuant to the EAPWDR and for fees that are excess of the rates set out in the Schedules. The ministry also determined that a dental supplement under section 69 of the EAPWDR was not covered in part because the appellant was not facing a direct and imminent life threatening health need for the requested services.

The ministry found that the appellant was eligible for coverage for a root canal for tooth number 46 and white fillings for tooth numbers 18, 47 and 37 at ministry rates.

Specifically, the ministry found that the appellant was not eligible for:

- coverage of services to include IV injections and lab fees that are not set out in the Schedule of Fee Allowances-Dentist and Emergency Dental-Dentist;
- coverage for fees in excess of the rates set out in the Schedule of Fee Allowances-Dentist and Emergency Dental-Dentist;
- crowns for tooth numbers 46 and 36; and
- dental services that are not set out in the Schedule of Fee Allowances – Crown and Bridgework.

### Relevant Legislation- EAPWDR

#### 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 section 62.

#### Emergency dental and denture supplement

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], (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).

#### Health supplement for persons facing direct and imminent life threatening health need

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 3.12, other than paragraph (a) of section 3 (1).

#### SCHEDULE C Health 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 (ii) is provided at the rate set out for the service in that Schedule.

#### 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.C. Reg. 94/2005)

(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 deputy minister, (B.C. Reg. 315/2006) (B.C. Reg. 65/2010)

- (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.C. Reg. 94/2005)
- (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. (B.C. Reg. 430/2003)

### **Emergency dental supplements**

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, Emergency Dental-Dentist and Crown and Bridgework**

The ministry's position is that the information provided does not confirm that the appellant's dental condition cannot be corrected through the provision of basic dental services specifically, restorative services (i.e., a stainless steel crown). Furthermore, the ministry finds that the appellant's dentist intends to charge for services that are not set out in the Schedules of Fee Allowances and for fees that are excess of the rates set out in the Schedules. The ministry also determined that the appellant was not facing a direct and imminent life-threatening health need for the services requested and the remedy provided under section 69 applies to medical supplies, medical transportation and medical equipment and devices, however, does not include dental and denture supplements.

The appellant's position is that his dental repair is not one of choice but of necessity and that he is in a great amount of pain every day. The appellant states that avoiding this work will result in a hospital emergency. He adds that he has undergone major jaw surgery and orthodontic work and not completing this dental work could be devastating.

### **Panel's Findings**

In regards to Crowns for tooth numbers 36 and 46, the panel notes that the appellant's dental practitioner did not provide a clinical explanation to the following question: "Why treatment needs cannot be met through the Basic Dental Program (i.e.: conventional restorations, stainless steel crowns", etc.). The dentist however, did respond to why a removable prosthetic could not be used by explaining that the appellant's "current dental condition precludes the use of a removable prosthetic as he does not have any spaces in the existing arch and he is not replacing any missing teeth". Although the panel relies on the dentist's opinion that a removable prosthetic could not be used by the appellant; without further evidence as to why conventional restorations such as stainless steel crowns could not be used for the appellant's dental treatment, the panel finds that the ministry reasonably determined that the information provided does not confirm that the appellant's dental needs precludes the provision of restorative services (i.e., a stainless steel crown) as set out under the Restorative Services section of Schedule of Fee Allowance-Dentist and that the eligibility criterion as per Schedule C, section 4.1(2)(a) of the EAPWDR was not established.

The panel also finds that the ministry is not authorized to provide coverage for fees over and above the rates set out in the Schedule of Fee Allowances; Dentist, Emergency Dental-Dentist and Crown and Bridgework or for services that are not set out in the aforementioned Schedules. As the evidence indicates that that the appellant's dentist intends to charge for services that are not set out in the Schedules of Fee Allowances; the panel finds that the ministry reasonably determined in accordance with the definition of basic and emergency dental services that it can only pay for dental services set out in the legislation and provided for at the ministry rate set out for the service in the Schedule of Fee Allowances- Crown and Bridgework as per Schedule C, section 4.1 of EAPWDR and that the eligibility criteria was not met.

In regards to coverage for eligibility as a Life-Threatening Health need pursuant to section 69 of the EAPWDR, the panel finds that the noted remedy applies to medical supplies, medical transportation and medical equipment and devices, however, does not include dental and denture supplements as set out in sections 4, 4.1 and 5 of Schedule C. Thus, the panel finds that the ministry reasonably determined that the appellant did not meet the legislated criteria.

The panel finds that the ministry decision was a reasonable application of the legislation in the circumstances of the appellant and confirms the reconsideration decision.