APPEAL #

PART C – Decision under Appeal

The decision under appeal is the May 12, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation (the "ministry"), in which the ministry determined that the appellant was not eligible for coverage of services not set out in the Schedule of Fee Allowances-Denturist or the fees charged by her denturist that are in excess of the rates set out in the Schedule of Fee Allowances-Denturist as provided in Schedule C, Sections 1 and 4(2) and Sections 62, 63 and 64 of the Employment and Assistance for Persons with Disabilities Regulation (the "EAPWDR"). In particular, the ministry found that the denturist intended to charge for a service (commercial lab fee) which is not set out in the Schedule of Fee Allowances-Denturist and for fees in excess of the rates set out in that Schedule. The ministry also found that the appellant is also not eligible for coverage under Section 69 of the EAPWDR to meet a life-threatening need because dental services are not covered in Section 69.

PART D – Relevant Legislation

EAPWDR Schedule C, Sections 1 and 4
EAPWDR Sections 62, 63, 64 and 69
Schedule of Fee Allowances-Denturist

APPEAL #

PART E – Summary of Facts

The appellant is designated as a person with disabilities, and is a recipient of disability assistance. The appellant submitted a treatment plan from her denturist on March 27, 2014. The total cost for a rebase to the appellant's upper partial denture and a cast partial denture for her lower arch was $1782.00. It was estimated that Pacific Blue Cross would cover $949.00 ($161.50 for rebase + $787.50 for cast partial for lower arch + $0.00 for commercial lab fee) of the cost with the remaining $833.00 to be paid by the appellant.

On April 3, 2014 the appellant was advised by the ministry that she was not eligible to receive coverage from the ministry for the difference between the amount charged by her denturist and the amount paid by the ministry for the denture services because the ministry does not pay for dental coverage in excess of the Schedule of Fee Allowances.

On April 28, 2014 the appellant requested a reconsideration of that decision.

The information before the ministry at the time of reconsideration included the following:

- A treatment plan from the appellant's denturist, dated March 25, 2014, itemizing the appellant's denture needs and associated fees, separating each into the portion estimated to be covered by insurance and the portion to be paid by the appellant. A handwritten note was added to this treatment plan, indicating that only $635.03 of the estimated $949.00 insurance coverage was available to be paid, leaving $313.97 over limit and to be added to the portion to be paid by the appellant, totaling $1146.97.

- A record of the appellant's CARESnet Benefit Eligibility and an itemized report of the appellant's dental claims history since January 2013 indicating that the appellant had used $364.97 of the $1000.00 allowable benefit for the period of January 2013 to December 2014, leaving $635.03 available.

- The appellant's Request for Reconsideration (RFR), dated April 25, 2014 and signed by the appellant. In Section 3 of the RFR the appellant writes that she has worked really hard to better her circumstances and the costs involved are high and almost unattainable without the support of the whole community, which she feels includes dental care as an issue of health and health care and should be covered. She adds that "for a visual presentation in the public eye, one must look a certain way and meet the criteria of clean and presentable".

- A letter from the appellant's dentist to her medical doctor, dated April 9, 2014, outlining the results of his examination of March 11, 2014, the appellant's chief complaint of severe pain in multiple teeth and subsequent referral to another dentist for extraction of two teeth on March 15, 2014.

- A letter from the appellant's medical doctor, dated April 24, 2014, outlining her variety of dental problems, including major exposure of her dental roots, recurrent infections and abscesses and need for several tooth extractions. He adds that he is certain that the appellant's overall health is compromised and strongly recommends that the costs for the comprehensive treatment of her dental problems be covered financially as it is "unquestionably a necessary medical expense".

At the time of reconsideration, the ministry considered the information from the appellant's medical doctor, regarding how her dental health was seriously impacting her overall health, and used limited discretion in the circumstances of the appellant in order to better accommodate her requests by moving certain basic dental services to her emergency dental plan. This discretion resulted in the appellant now being eligible for rebase of her upper denture at the ministry rate of $161.50 and a cast partial denture for her lower arch at the ministry rate of $787.50. The appellant is still not eligible for coverage of a service that is not set out in the Schedule of Fee Allowances-Denturist, specifically the commercial lab fee or for the fees charged in excess of the ministry rates outlined in the Schedule.

The appellant submitted a signed Notice of Appeal on May 27, 2014, in which she states that she cannot afford the $500 bill for her bottom dentures to chew all her food. She adds that having no bottom teeth to properly chew her food is causing pain and digestive issues, including nausea from chunks of food. Attached to the Notice of Appeal was the appellant's statement of account from her denturist, dated May 22, 2014, indicating that the total charges were $1610.00, $215.80 paid by insurance, $100.00 paid by appellant, $787.50 expected from insurance and $506.70 outstanding.

The appellant did not attend the hearing. Having confirmed that the appellant was notified of the hearing, the panel proceeded with the hearing pursuant to EAA section 86(b).

The ministry relied primarily on its reconsideration decision and confirmed that the ministry offers a specific amount of coverage and will pay a maximum amount for each specific item as outlined in the Schedule of Fee Allowances-Denturist. The ministry adds that if a dentist or denturist decides to charge fees in excess of those outlined in the fee structure or for services not included in the Schedule, the amount owing is the responsibility of the appellant and that the appellant may seek assistance from service groups or family members if they do not have the resources available to pay the additional costs. The ministry also noted that they had used discretion at the time of reconsideration to better accommodate the appellant's requests by moving certain basic dental services to her emergency dental plan to increase the limit of funds available to her for dental coverage.

APPEAL #

PART F – Reasons for Panel Decision

The decision under appeal is the May 12, 2014 reconsideration decision in which the ministry determined that the appellant was not eligible for full coverage of the fees charged by her denturist for her upper partial denture and a cast partial denture for her lower arch as provided in Schedule C, Sections 1 and 4(2) and Sections 62 and 63 of the EAPWDR. In particular, the ministry found that the denturist charged fees in excess of the rates set out in the Schedule of Fee Allowances-Denturist, charged for a service (commercial lab fee) which is not set out in the Schedule of Fee Allowances-Denturist and that the appellant is also not eligible for coverage under Section 69 of the EAPWDR to meet a life-threatening need because dental services are not covered in Section 69.

The relevant legislation is 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.

Section 64 – Emergency dental and denture supplement

APPEAL #

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
(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),

(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
Employment And Assistance For Persons With Disabilities
Regulation
July 2013 3.5.65
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. 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)

Section 69 - 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).

(B.C. Reg. 61/2010) (B.C. Reg. 197/2012)

Schedule C - Dental supplements

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 (B.C. Reg. 315/2006) 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 (B.C. Reg. 315/2006) 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. 94/2005) (B.C. Reg. 65/2010)

(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)

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.

* * *

Whether the appellant is eligible for dental supplements (Section 63 and Schedule C, Section 4 of EAPWDR)

The ministry is satisfied that the information provided by the appellant has established that she is in receipt of disability assistance and is eligible for dental supplement if the criteria are met.

Whether the appellant is eligible for fees in excess of allowable ministry rates or services not set out in the Schedule of Fee Allowances-Denturist.

The ministry's position was that the appellant's denturist charged rates in excess of the rates set out in the Schedule of Fee Allowances-Denturist and there is no exception in policy for coverage of fees in excess of the rates set out in the Schedule of Fee Allowances and they are not authorized to provide coverage for fees in excess of these rates.

The panel finds that the denturist outlined a service (commercial lab fee) not included in the Schedule of Fee Allowances – Denturist and fee costs (rebase of the upper denture and the partial lower denture) which were in excess of the rates set out in that Schedule. The panel also finds that none of the requested services is set out in the Schedule of Fee Allowances – Emergency Dental – Denturist. The panel notes that, at the time of reconsideration, the ministry used its discretion and reclassified previous basic dental services provided to the appellant as emergency dental services to increase the amount of funds available to the appellant for basic dental services which resulted in sufficient funds to cover the rebase of the upper denture and partial lower denture at the rates set out in the Schedule of Fee Allowances – Denturist. The panel finds that the definition of "basic dental service" in section 1 of Schedule C of the EAPWDR includes only services set out in the Schedule of Fee Allowances- Denturist which are provided at the rate set out in that Schedule. Therefore, the panel finds that the ministry is without authority to provide coverage for services not set out in or at rates in excess of the Schedule of Fee Allowances – Denturist and that the ministry's decision to deny coverage for the commercial lab fee and for the excess fees charged by the denturist was reasonable.

Conclusion

For the reasons detailed above, the panel finds that the ministry decision was a reasonable application of the legislation in the circumstances of the appellant. Accordingly, the ministry decision is confirmed.