

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) October 15, 2014 reconsideration decision in which the Ministry determined that, under section 63 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), it is only authorized to provide coverage for the Appellant’s requested dental services as follows:

- For the specific periodontal, extraction and filling services itemized in the Schedule of Fee Allowance - Dentist ;
- For the individual fee specified in that schedule for each requested dental procedure; and,
- For a total of up to \$792.02 remaining from her \$1000 limit until December 31, 2014.

The Ministry also concluded that the Appellant did not meet the requirements for coverage for emergency dental services in Section 64 of EAPWDR.

## PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (“EAPWDR”) Sections 62, 63, 64, Schedule C Sections 1, 4, and 5.

Schedule of Fee Allowances – Dental Supplement.

Schedule of Fee Allowances – Emergency Dental.

## PART E – Summary of Facts

The Ministry did not appear at the hearing. The Panel confirmed that the Ministry was provided with notice of the hearing and then proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

For its reconsideration decision the Ministry had the following evidence:

1. Information from its records that the Appellant is designated as a Person with Disabilities (“PWD”).
2. Dental Insurance claims history indicating that:
  - The Appellant’s current 2 year period of eligibility for dental supplements runs through December 31, 2014.
  - During that 2 year period the Appellant is eligible for \$1000 in coverage for basic dental services.
  - The Ministry has provided coverage for basic dental services to August 2014 totaling \$207.98, including \$155.19 for periodontal services.
3. Predetermination from the dental plan identifying requested dental procedures by fee code, the dentist’s fee for each and the fee approved by the plan for each, as follows:
  - Scaling 11115 requested fee \$161 – approved for \$0.
  - Filling 23111 requested fee \$116 – approved for \$75.47.
  - Filling 23112 requested fee \$140 – approved for \$90.56.
  - Filling 23113 requested fee \$177 – approved for \$114.46.
  - Filling 23312 requested fee \$185 – approved for \$122.65.
  - Filling 23324 requested fee \$323 – approved for \$205.25.
  - Root planing 43426 requested fee \$193.20 – approved for \$0.
  - Extraction 71101 requested fee \$69.02 – approved for \$69.02.
  - Extraction 71101 requested fee \$113 – approved for \$69.02.
  - Extraction 71109 requested fee \$45.49 – approved for \$45.59.
  - Total fees requested by the dentist - \$1,595.80; total amount approved - \$792.02.
4. Letter dated August 21, 2014 from the Appellant’s dentist to the Appellant stating that:
  - He received the insurance authorization; only basic treatment is covered and not 100% of that.
  - The dental plan had been given the list of procedures considered basic. It is not covering any more costs for cleaning; the plan will cover a portion of the extractions and fillings needed.
  - Of the \$1595.80 in fees requested, only \$792.02 is covered – this is a large discrepancy.
  - Crowns, bridges and dentures have not been addressed as the Appellant’s plan is barely paying for basic treatment; the plan will not cover anything else, especially if it goes over her allowable dollar amount for the 2 year period. The plan may contribute to a denture to replace the missing teeth next year as she is entitled to more benefits beginning in January 2015.
5. Appellant’s request for reconsideration dated September 16, 2014 asking for an extension so she could consult with her doctor and a letter dated September 12, 2014 from the Appellant’s doctor asking for an extension of time until October 18, 2014 to allow the Appellant to appeal.

In her notice of appeal, the Appellant wrote that:

- She is a person with disabilities who has severe depression; this depression makes it difficult for her to get things done within prescribed time limits without assistance; the Ministry provides none.
- She was forced to seek help in the community as she does not have the means to pay for a

lawyer. This took some time as there are very few community advocates. It also took time to get supporting documentation from doctors and the dentist.

- She asked for 2 reconsideration extensions, but she was not told that she could not have the second one. She received a phone call from the Ministry on October 14 telling her that she had until noon that day to submit any further paperwork. As the advocate was not available until October 16 it was impossible to comply.
- Her side of the issue was never taken into consideration.

For this appeal, the Appellant also submitted the following additional documents that were not in the Ministry's record at reconsideration:

1. A completed request for reconsideration form signed on October 16, 2014 in which she wrote that, under the legislation, extra funding for dental work is available for "immediate attention to relieve pain or to control infection or bleeding or if a person's health or welfare is otherwise immediately jeopardized". The Appellant referred to letters from her doctors and dentist addressing this.
2. A letter, dated September 11, 2014, from the Appellant's dentist stating that:
  - The fillings are needed to remove the decay and bacteria from her teeth and to prevent them from breaking down further; she is in pain due to the condition of her mouth; the extractions are needed due to pain; these teeth are too badly broken to be restored or saved.
  - The Appellant has moderate to severe gum disease and a great deal of bone loss associated with the gum disease; together these will contribute to her losing more teeth. This is caused by a combination of factors; smoking, medications and oral habits/care and diet.
  - After the planned extractions are done, the Appellant will have a gap of more than 3 teeth on the upper left. She is currently missing all her back teeth on the upper and lower right side; has one remaining tooth in the back of the upper left and one tooth in the back of the lower left.
  - There is risk to the Appellant's overall health if the fillings, extractions and regular dental hygiene are not done. The extent of the risk is uncertain at this time, but if the work needed is not done, it could lead to infections in the mouth which could then cause problems throughout the body. The Canadian Dental Association has published links between heart disease and periodontal disease.
3. A letter, dated September 12, 2014, from her family doctor confirming that the Appellant requires additional dental work for ongoing pain from extensive cavities. She has been advised that she also needs dental bridges to adequately address her dental issues.
4. A letter dated October 23, 2014 from a psychiatrist indicating that:
  - The Appellant has been under his care since April 2014 with significant mental health issues.
  - He understands that she needs fairly extensive dental work which is not adequately covered and she is not in a financial position to fund it.
  - Her dental concerns have a significant negative effect on her mental health.
  - Given her circumstances, he is requesting that the denial of assistance be reconsidered in the interest of her mental health and really her overall health.

At the hearing, the Appellant described her financial situation including, how unpredictable her part time work is, how she needed to replace her car and how she cannot afford to pay for the dental work the dentist listed in his initial request. The Appellant said she is afraid of dentists so she did not want discuss a payment plan or lower fee amounts with her dentist. The Appellant also stated that the dentist did not discuss the order of treatment with her, including any procedures that could be done

next year. She said that she is under a lot of stress because she really needs to have the dental work done and she really did not understand the Ministry's decisions, especially the reconsideration decision.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the Appellant's oral testimony and the documents she submitted for this appeal because that information is consistent with and therefore in support of the evidence the Ministry had at reconsideration regarding the Appellant's financial situation, her health conditions and the dental services that she has requested.

Since the Ministry did not appear at the hearing, the Panel will consider its reconsideration decision to be its position in this appeal.

The Panel makes the following findings of fact:

1. The Appellant is designated as a PWD.
2. Her current 2 year period of eligibility for dental services runs through December 31, 2014.
3. Up to August 2014, the Ministry provided coverage for basic dental services totaling \$207.89, leaving \$792.02 available through December 31, 2014.
4. Up to August 2014, the Ministry provided \$155.19 for periodontal services, leaving \$110.85 available for such services through December 31, 2014.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether 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.

### Applicable Legislation

The following sections of the EAPWDR and its schedules apply to the Appellant's circumstances in this appeal.

#### *General Health Supplements*

*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.*

#### *Dental Supplement*

*63 (1) Subject to subsection (2), 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].*

#### *Emergency Dental and Denture Supplements*

*64 (1) Subject to subsection (2), 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].*

#### *Schedule C Health Supplements*

##### *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 (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 – Denturist, 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.*

##### *Dental Supplements*

*4(1) In this section, "period" means (b)...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 (b) \$1000 each period.*

**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 - Dental Supplement April 1, 2010*

Page 14 Note: Fee item numbers 11111 to 11117, 43421 to 43429, and 42111 in total will be limited to a dollar maximum of \$266.04 per patient per calendar year.

Fee No.	Fee Description	Fee Amount \$
11115	Scaling 5 units	110.85
23111	One Surface (bonded anterior)	75.47
23112	Two Surfaces (bonded anterior)	90.56
23113	Three Surfaces (bonded anterior)	98.30
23312	Two Surfaces (non-bonded bicuspids).	60.91
23324	Four Surfaces (Bonded Molars)	209.10
43426	Root planing – six units	133.02
71101	Extraction – single tooth	69.02
71109	Each additional tooth in same quadrant	45.59

*Schedule of Fee Allowances – Emergency Dental April 1, 2010*

**The Parties' Positions**

The Appellant's position is that she needs to have the requested dental work performed because of her physical and mental health conditions. Her doctors and her dentist have supported her position in their letters. The Appellant also submitted that she cannot afford to pay the difference between her dentist's fees and what the Ministry is prepared to pay. She also argued that the Ministry could pay for the dental services as emergency dental services because her dentist confirmed that the services are necessary for the immediate relief of pain.

In its reconsideration decision, the Ministry's wrote that, under Schedule C section 4(1.1) of the EAPWDR, the Appellant is eligible for basic dental services to a maximum of \$1000 for each 2 year period. Based on the Appellant's claims history, the Ministry paid \$207.98 for basic dental services during the current claim period which ends on December 31, 2014. That leaves a balance of \$792.02 for any additional basic dental services.

The Ministry also noted that the \$1000 limit for basic dental services includes periodontal services, but there is an additional limit for periodontal services of \$266.04 per person per calendar year. In 2014, the Ministry paid \$158.19 for periodontal services, leaving \$110.85 available until December 31, 2014. The Ministry wrote that it could provide coverage for fee code 11115 (scaling – 5 units at \$110.85); however, this could only be provided instead of one of the requested restorations or extractions. In addition, the Ministry is not able to provide coverage for fee code 43426 (root planing – 6 units) because the schedule fee of \$193.20 exceeds the \$110.85 the Appellant has left for periodontal services for the calendar year 2014.

The Ministry wrote that the \$1000 limit for basic dental services may be exceeded for emergency dental services if the eligibility requirements under section 64 and Schedule C of the EAPWDR are met. The Ministry noted that the Appellant has \$792.02 left for basic services and therefore, does not

need extra coverage for emergency dental services. The Ministry also determined that the requested periodontal services are not set out in the Schedule of Fee Allowances – Emergency – Dental and that the Appellant's dental practitioner did not indicate that any of the requested services are for the immediate relief of pain.

Finally, the Ministry's position is that is not authorized to pay the difference between the Appellant's dentist's fees and the rates set out in the Schedule of Fee Allowances – Dentist.

### **The Panel's Findings and Conclusion**

The Panel acknowledges that the Appellant's financial situation limits her ability to pay extra fees for needed dental services. The Panel also recognizes that for the Appellant it is difficult to understand how the Ministry determines what services are covered and for how much, especially with the applicable regulations and various extensive schedules of fees.

First, the Panel notes that under section 63 of the EAPWDR, the Ministry may provide dental supplements to a person designated as a PWD, such as the Appellant, provided that all of the requirements are met in the applicable sections of the EAPWDR and its various schedules. Also, the definition of basic dental services in Schedule C section 1 limits the Ministry's authority to providing for only those procedures specifically identified in the fee schedules. In addition, the Ministry can only pay the fee itemized in the schedules for each procedure. The Panel notes that there is no residual discretion in the EAPWDR or in any other legislation authorizing the Ministry to provide additional services or to pay additional amounts for dental services.

The Panel finds that each of the requested dental services – the periodontal services, fillings and extractions - as identified by its fee code, is listed in the Dental Supplement – Dentist. Therefore, those services can be provided for by the Ministry, but only up to the individual fee listed for each service in that schedule and only up to the maximum amount of dental coverage allowed for each 2 year claim period.

In the Appellant's case, the Ministry can provide up to \$1000 coverage for the Appellant's basic dental services through December 31, 2014. From that \$1000, the Appellant still has \$792.02 available for basic dental services through December 31, 2014; however, her dentist's fee for each requested procedure exceeds the amount that the Ministry is authorized to pay for each individual procedure according to the EAPWDR's fee schedule for dentists. Also, the Panel notes that the available \$792.02 is not a lump sum which can be applied to pay for entirely one or more dental services. Therefore, the Panel finds that the Ministry has reasonably determined that it can pay for each requested filling and extraction, but only up to the individual fee set out in the supplement and only up to a combined maximum of \$792.02.

As for the periodontal services (scaling and planing), the Panel notes that the fee schedule for dentists stipulates that the dollar maximum for such services is \$266.04 per patient per calendar year. In 2014, the Ministry already paid \$155.19 for such coverage on the Appellant's behalf, leaving a balance of \$110.85 for periodontal services for 2014. Therefore, in the Appellant's circumstances, the Panel finds that the Ministry reasonably determined that in calendar year 2014 it could provide coverage for fee code 11115 scaling – five units at \$110.85, but not for fee code 43426 root planing – six units at \$193.20.

The Ministry may pay more than the \$1000 limit for basic dental services if there is a need for emergency dental services under EAPWDR Schedule C section 5. An emergency dental service is a dental service necessary for the immediate relief of pain that if provided by a dentist is first, one of the procedures set out in the Schedule of Fee Allowances – Emergency Dental – Denturist and second, is provided at the rate set out in that schedule. The Panel finds that the September 2014 letters from the Appellant's dentist and doctor confirm that she does need the requested procedures for immediate relief of pain. However, the Panel also finds that, for emergency dental services, the Ministry is restricted to authorizing only those procedures specifically itemized in the emergency dental schedule and further, is restricted to paying only those individual fees specifically itemized for each service in that schedule.

Therefore, the Panel finds that the Ministry reasonably determined that the emergency dental provisions of the regulation do not provide the Appellant with additional coverage to bridge the gap between what the Ministry is authorized to pay and what her dentist is charging for each individual procedure. The Panel further finds that the Appellant still has \$792.02 available for basic dental services to December 31, 2014 so the Ministry reasonably concluded that there is no need for extra coverage for emergency dental services. The Panel also notes that fee code 11115 scaling five units and fee code 43426 root planing six units are not listed in the emergency dental schedule.

Having reviewed all of the evidence and the relevant legislation, 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. Therefore the Panel confirms that decision.