

PART C – Decision under Appeal

The decision under appeal is the January 13, 2015 reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) wherein the ministry declined to provide coverage for the appellant’s dentist’s fees for a cytology exam performed on May 15, 2014 and for reimbursement of related laboratory fees. The basis for the ministry’s decision was that these services are not covered in the Schedule of Fee Allowances – Dentist.

The ministry also decided that the requested coverage could not be provided under the “imminent life threatening need” provisions of section 69 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) since this section does not apply to dental and denture supplements.

PART D – Relevant Legislation

EAPWDR sections 62 and 63.
EAPWDR, Schedule C, sections 1 and 4
Schedule of Fee Allowances-Dentist

PART E – Summary of Facts

The appellant is a recipient of disability assistance. Through an arrangement with Pacific Blue Cross (“PBC”), the ministry provides recipients with basic dental service and emergency dental service as those terms are defined in section 1 of Schedule C of the EAPWDR.

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

- A list of claims made by the appellant and paid on behalf of the appellant by PBC for the period March 27, 2013 to December 9, 2014.
- The appellant’s Request for Reconsideration dated January 1, 2015, including her written submission.
- A claim form submitted by the appellant’s dentist, claiming \$50 for his fee and \$100 for a lab charge for a procedure performed on May 15, 2014 and identified with the code 04401. The dentist included narrative as follows: “Brush biopsy to obtain cytological smear for assessment and determination of risk of a lesion being oral cancer.”
- The appellant’s request for a crisis supplement in respect of the cytology testing, dated September 25, 2014.
- Notification from PBC (dated October 22, 2014 and stamped as being received by the ministry on January 9, 2015) advising that PBC could not provide reimbursement for a lab fee of \$100 identified with the procedure code 04603 as “It is not a covered benefit under your plan.”
- A sales invoice from the lab that performed the cytology test, showing payment of its fee of \$100.00 by Visa card on June 25, 2014.

The panel assessed the evidence as follows:

The appellant attended her dentist’s office on May 15, 2014 for some routine dental work when the dentist became concerned with a lesion in her mouth. With the appellant’s consent, he took a cell sample with a brush biopsy and sent the sample to a lab for testing for cancer. The results eventually came back indicating the lesion was not cancerous.

The physician paid the lab its \$100 lab fee. He subsequently submitted a claim to PBC – under procedure code 04401 - in the amount of \$150, consisting of \$50 for his fee for taking the brush biopsy sample, and \$100 for the lab fee. PBC determined that the appellant’s plan doesn’t provide coverage for the services that were performed.

On September 26, 2014 the appellant requested that the ministry pay the cost of the cytology testing, and followed up with the ministry again on October 7, 2014.

Ministry staff contacted the dentist’s office on October 14, 2014 to determine whether some other procedure code would be appropriate. The dentist submitted a new claim to PBC using code 04603, this time claiming only coverage of the \$100 lab fee. PBC advised the dentist on October 22, 2014 that this procedure code also was not covered by the appellant’s plan.

On November 10, 2014 the appellant contacted the ministry to advise that the dentist’s claim had again been denied, and asked for reconsideration of the ministry’s decision not to pay the \$100 lab fee. The reconsideration decision which is the subject of this appeal was the result of the appellant’s request.

In her reconsideration submission the appellant wrote that:

“...I went to my dentist for a cleaning and he recommended that I get an area of my month tested for cancer. I of course agreed and he took the test.

I was very surprised that the test was not covered. (I have enclosed the paperwork that they sent off)

So I am filing reconsideration for this as:

- 1) Why is a cancer test not covered on disability? I would think that it would be considered a **necessary test.**
- 2) The government does not give us enough money to live, never mind a test.
- 3) I was appalled that this is not cover and I am sure that if people knew of this they too would be appalled.
- 4) You say find a dentist that takes payments,.... Well in 45 years of going to a dentist, I have never had 1 that takes payments unless for braces. So that is just an stupid statement.
- 5) If I had not gotten the test **and had month cancer, well I would have been on my way to death now.** Is that what the government wants to kill of the poor? Sure sounds like it.
- 6) The **government pays you more money to review these reconsiderations that it cost to cover the request. What a waste of tax payer's money.**
- 7) Bottom line,... it should be cover for all Canadians. No if, and or butts about it”...

In her oral testimony on appeal, the appellant essentially reiterated her reconsideration submission, and also stated that:

- The appellant was at the dentist's office for a routine cleaning when he noted a lesion in her mouth. She has attended this dentist's office regularly since 2010 and this was the first time he had seen the lesion. The appellant is a smoker so the dentist said the lesion should be tested and they should keep an eye on it.
- Before doing the brush biopsy the dentist had his staff try to contact PBC to confirm that the biopsy and lab test would be covered by the appellant's plan. His staff was unable to speak to anyone at PBC.
- At the time the dentist conducted the brush biopsy and submitted the sample to the lab, both he and the appellant thought the procedure would be covered by PBC.
- The lesion hasn't gone away and her dentist will be monitoring it to see if it progresses. The appellant doesn't have the funds to pay for continuing future cytology tests if they are required.
- The ministry's policies and procedures are so complicated that even ministry staff doesn't understand them half the time.
- The appellant is currently living on \$890 per month, since the ministry is currently “clawing back” an amount each month for a course that she had taken and income that she had earned as a result of misinformation from the ministry. It is not enough to live on and she can't afford to pay the costs of the cytology test.
- She paid the dentist's fee of \$50.

- She understands that the ministry workers' hands were tied by the legislation, and she expects the ministry's decision will be confirmed by the appeal panel, but she would like to go on to challenge the decision "for everybody" as it's simply wrong not to cover tests for cancer. She stated that the decision "is just wrong."

The ministry relied on its reconsideration decision and provided no additional information.

The appellant's oral statements tended to corroborate information which had been before the ministry at reconsideration. In accordance with section 22(4) of the *Employment and Assistance Act*, the panel accepted her statements as oral testimony in support.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's January 13, 2015 reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is as follows:

EAPWDR

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 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)...

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

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,
 - (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 – 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 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 ...

* * *

The appellant's position is – while she acknowledges the limitations imposed by the legislation – that testing for potential cancer should be covered either by the medical plan or as a basic dental service for all Canadians, and for recipients of disability assistance in particular. She stated that the ministry's policies and procedures are so complicated that even the dentist thought that the testing would be covered by her plan. Finally, she argued that it is a necessary test, and that waiting to find out whether or not it was covered could have put her life at risk.

The ministry's position, as set out in its reconsideration decision, is that it does not have any discretion in this matter. It argued that the legislation limits its authority to covering only those services that are specified in the Schedule of Fee Allowances – Dentist, and that this Schedule does not include a code for either the brush biopsy performed by the dentist or the lab fee. While acknowledging that the appellant may have faced a direct and imminent life-threatening need for the services performed, the ministry stated that the remedy provided by section 69 only applies to the specified medical supplies, medical transportation and medical equipment and devices. The ministry argued that dental and denture supplements are not covered by section 69.

Panel Decision

With respect to dental services, the ministry is only authorized to provide coverage of a basic dental service or an emergency dental service as those terms are defined in section 1 of Schedule C of the EAPWDR. Basic dental services include those set out in the Schedule of Fee Allowances – Dentist. While that Schedule does cover some types of biopsy (under codes 04311, 04312, and 04322) it does not cover a brush biopsy as performed by the appellant's dentist or the resulting lab fee. Accordingly, the panel finds that the ministry reasonably concluded it does not have the authority to pay for the services requested by the appellant as basic dental services.

The ministry did not expressly address the appellant's request in terms of being an emergency dental

service but the panel notes that the Schedule of Fee Allowances – Emergency Dental – Dentist also does not include the codes for the procedures claimed by the appellant.

With respect to coverage under section 69, the legislation expressly applies to medical supplies and medical transportation as set out in sections 2(1)(a) and (f) respectively of Schedule C of the EAPWDR, and to medical equipment and devices as identified in section 3 of Schedule C. Dental services are not included in section 69. Accordingly, the panel finds the ministry reasonably concluded that it could not utilize the provisions of section 69 to approve the appellant's request.

The panel acknowledges that the appellant is frustrated with the coverage provided, however the change she is seeking will likely have to be pursued through political processes. This panel is bound to apply the legislation as it currently stands. Based on the foregoing reasons and analysis, the panel concludes that the ministry's reconsideration decision is a reasonable application of the applicable enactment in the circumstances of the appellant. Accordingly, the ministry's decision is confirmed.