

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the Ministry") reconsideration decision dated April 15, 2015 in which the Ministry denied the Appellant's request for funding for in-office IV sedation for her dental work. The Ministry determined it was not authorized to provide funding for services that are not set out in the Schedules of Fee Allowances - Dentist; Emergency Dental - Dentist; or Crown and Bridgework as specified under sections 63, 63.1, 64, 69, or Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation sections 63, 63.1, 64, 69 and Schedule C sections 1 and 4, 4.1 and 5.
Schedules of Fee Allowances: Dentist, Emergency Dental - Dentist, Denturist, and Crown & Bridgework

PART E – Summary of Facts

The evidence before the Ministry at the reconsideration consisted of:

1) A Request for Reconsideration signed by the Appellant on April 1, 2015 with attached submission dated March 31, 2015. In the submission, the Appellant stated that she is disabled and was on Persons with Disability (PWD) assistance until she turned seventy and the Ministry continued her medical benefits. She requires oral surgery, and in order to have the surgery she needs an anesthetic that is not covered by her benefits. The anesthetic costs \$400 and the Appellant has no family or other sources of funding.

The Appellant stated that the minister may provide health supplements under sections 63.1 and 64 of the EAPWDR, and that people with disabilities can receive an additional \$500 to pay for general anesthesia in connection with dental treatment in a hospital or private facility. The Appellant gave the Ministry her dentist's treatment plan proposal, and she provided the denial of coverage from the Ministry's insurer, Pacific Blue Cross ("PBC"). The Appellant stated that the Ministry covers emergency dental services for the immediate relief of pain, and she is in pain and suffers on a daily basis. The Appellant further stated that she requires a Monthly Nutritional Supplement to alleviate one or more symptoms and her dental surgery will enable her to have caloric supplementation to a regular dietary intake and prevent imminent danger to her life.

2) A Predetermination from PBC. The date, amount, fee codes, and notes are illegible; however, the Ministry summary of this document in the reconsideration decision stated that the Appellant's request for coverage for extractions was approved at Ministry rates (fee code 7221 at \$209.96) but the request for IV sedation (fee code 92446) was denied as it is not covered under her benefit plan.

3) A Treatment Plan Proposal for the Appellant's dental work dated December 17, 2014. Estimated costs include patient charges of \$430 for fee code 92446 "Anesthesia, Parenteral Conscious Sedation", and \$370 for fee code 72221 "Bone Removal & Sectioning of Tooth". The total cost to the patient is \$800 with \$0 insurance charges.

4) An undated letter "To Whom it May Concern" from the Appellant's dental clinic. It stated that the Appellant is "in need of a surgical extraction under IV sedation" for an active infection in her lower left wisdom tooth. The procedure requires removal of the bone and sectioning of the tooth. The Appellant is covered for the extraction but not the IV sedation. The dentist "strongly recommends IV sedation for this procedure." The panel notes that on May 25, 2015, the Ministry provided an identical copy of this letter to the tribunal stating that the letter in the appeal record was not legible.

Additional submissions

In her oral testimony, the Appellant explained that she was originally referred to a hospital dental centre and was supposed to have IV sedation there which would have been covered by medical services (MSP). However, on the day that she was to have a "pano x-ray", she ended up in the hospital emergency room due to her medical conditions. She was kicked off the list for the dental centre when she could not make it to her appointment. When her doctor inquired about getting her

back on the hospital program, the dental centre told them that the criteria had changed and the Appellant is no longer eligible to have her dental work performed at the hospital.

Both her doctor and the dental surgeon from the hospital wrote letters (which the Ministry should have on file) indicating that the Appellant cannot have general anesthesia due to her medical conditions (her sleep apnea in particular). Two dental surgeons (her regular dentist and the surgeon at the hospital) were concerned about her medical conditions which include advanced diabetes, extreme fatty liver disease, kidney problems, and sleep apnea. She has to take Ibuprofen for her tooth pain even though it is damaging for her other conditions. The dental surgeon at the hospital told her she cannot go to a regular dentist or have normal freezing and needs to be hospitalized for the procedure and closely monitored.

In response to questions, the Appellant stated that the only way she can have the procedure done is with IV sedation. General anesthesia makes her sleep apnea worse and she cannot have freezing because she requires a major procedure where they have to cut into the bone. Both of her dental surgeons strongly recommend IV sedation because it is a difficult surgery and freezing is not sufficient.

At the hearing, the Ministry summarized its reconsideration decision and indicated that if the Appellant needs bone surgery, she requires MSP approval as it is outside the realm of the Ministry dental supplements. The Ministry is completely separate from the hospital dental centre and any decisions made there are outside the Ministry's jurisdiction. The Ministry checked the Appellant's file back to April 2011 but could not find any letters from her doctor or the dental surgeon at the hospital; however, these could have been filed under a "health case" to distinguish the Ministry's authority from MSP costs. The Ministry stated that it cannot cover IV sedation except in a few limited circumstances and people often think the Ministry has more authority to fund things than it actually has; and therefore the Appellant could try contacting MSP.

Admissibility of additional information

The panel admits the oral testimony as evidence that is in support of the information and records that were before the Ministry at the time the decision being appealed was made, in accordance with section 22(4)(b) of the *Employment and Assistance Act*. In particular, the additional testimony corroborates the Appellant's evidence that she requires IV sedation for her particular dental procedure, and it substantiates information regarding the Ministry's authority to fund treatments.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of April 15, 2015 denying the Appellant's request to fund in-office IV sedation for her dental work was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. The Ministry determined it was not authorized to provide funding for services that are not set out in the Schedules of Fee Allowances - Dentist; Emergency Dental - Dentist; or Crown and Bridgework as specified under sections 63, 63.1, 64, 69, or Schedule C of the EAPWDR.

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

(a) section 62 (1) (a), (b) (iii), (d) or (e) [*general health supplements*],

(b) section 62 (1) (b) (i) or (iv), (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).

(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.

(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.

(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.

Crown and bridgework supplement

63.1 (1) Subject to subsections (1.1) and (1.2), the minister may provide a crown and bridgework supplement under section 4.1 of Schedule C to any of the following persons:

- (a) a recipient of disability assistance;
 - (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for disability assistance because of
 - (i) employment income earned by the person or the person's spouse, if either the person or the person's spouse
 - (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
 - (ii) a pension or other payment under the Canada Pension Plan (Canada); or
 - (iii) money or value received by the person or the person's spouse that is maintenance under a maintenance order, maintenance agreement or other agreement, if either the person or the person's spouse
 - (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (B) 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) a person with disabilities who was a recipient of disability assistance on the day he or she became 65 years of age;
 - (d) a person referred to in section 62 (1) (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, or
 - (e) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, during the term of the agreement.
- (1.1) A person eligible to receive a crown and bridgework supplement under subsection (1) (b) (ii) 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.
- (1.2) A person eligible to receive a crown and bridgework supplement under subsection (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.
- (1.3) A person who was eligible to receive a crown and bridgework supplement under subsection (1)

(b) (i) or (iii) or (d) 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.

(2) Repealed

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) or (iv) or (d), (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).

(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.

(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.

(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.

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

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.

(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) \$1 400 each period, if provided to a dependent child,
(b) \$1 000 each period, if provided to a person not referred to in paragraph (a),
(c) Repealed

(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.

(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) 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.

(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) 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.

(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.

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) 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,

(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) 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.

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.

The Ministry's Dental Supplement information booklets outline the policy and fee schedules for partial dentures:

Ministry of Social Development Dental Supplement – Dentist

Schedule of Fee Allowances – Dentist

Part A - Preamble - Dental Supplements - Dentist

General Anaesthetic (GA) and IV sedation in Dental Office Limited coverage for GA/IV sedation in office is available under fee code 92215 (previous code used was 92444). Refer to the detailed information and restrictions noted under fee code 92215 in the Schedule of Fee Allowances – Dentist. Eligibility for this service must be confirmed prior to treatment. See the Eligibility Information section on page (v).

MISCELLANEOUS

92215 General Anaesthetic and Intravenous sedation (in office) per hour or portion thereof \$50.57

Note: Treatment start and finish times must accompany your claim. Pre and postoperative observation periods are not included. GA or IV sedation (in office) will only be considered for coverage for children under 19 years of age where necessary for the safe performance of dental treatment; and children and adults with severe mental or physical disabilities that prevents a dentist from providing necessary dental treatment without the administration of an anaesthetic or sedation.

Schedule of Fee Allowances – Crown and Bridgework

Schedule of Fee Allowances – Emergency Dental - Dentist

The Ministry noted that the Appellant is a person with PWD designation who was transitioned to Medical Services Only. She is therefore eligible to receive basic dental services, emergency dental services, and crown and bridgework at the rates listed in the Schedules of Fee Allowances. However, the Ministry found that pursuant to the Schedules of Fee Allowances and the following sections of the EAPWDR, it was not authorized to fund in-office IV sedation.

EAPWDR sections 63, 63.1 and 64, and Schedule C - sections 1, 4, 4.1 and 5

Appellant's position

In her Request for Reconsideration, the Appellant submitted that persons with disabilities can get an extra \$500 to pay for general anesthesia in connection with dental treatment in a hospital or private facility; and that the Ministry covers dental services for the immediate relief of pain and she is in pain and suffers on a daily basis. The Appellant further submitted that she suffers from the symptoms indicated for a Monthly Nutritional Supplement, and dental surgery will provide her with the ability to obtain caloric supplementation to a regular dietary intake and prevent imminent danger to life.

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In her Notice of Appeal dated May 7, 2015, the Appellant argued that despite not being “authorized”, the Ministry should provide funding for IV sedation for her necessary (wisdom tooth) extraction for “humane reasons”. She is not able to pay for the procedure from her old age pension, and without the extraction “undue pain and suffering will ensue.”

Ministry’s position

The Ministry noted that limited coverage for general anesthesia/ IV sedation is available under fee code 92215 in the Schedule of Fee Allowances – Dentist. The preamble to this Schedule requires eligibility for this service to be confirmed prior to treatment. Further, IV Sedation - in office will only be considered for coverage where the client is under nineteen years of age or is an adult with severe mental or physical disabilities that prevent the treatment from going ahead without anesthesia or sedation. The Ministry argued that the letter from the Appellant’s dentist which “strongly recommended IV sedation” does not confirm that either of the situations described above exist in the Appellant’s circumstances.

The Ministry also submitted that it is not authorized to provide in-office IV sedation under two other Schedules of Fee Allowances: Emergency Dental, and Crown and Bridgework. (EAPWDR sections 63.1 and 64). The Ministry noted that the service requested by the Appellant (fee code 92446, in-office IV sedation) is not set out in these Schedules and argued that the Ministry is not authorized to provide coverage for services not listed therein. The Ministry noted that there are no exceptions in policy and the Ministry has no discretion in this matter.

The Ministry did not know where the Appellant obtained information regarding \$500 in additional funds but explained that an additional \$1,000 for basic dental services may be accessed when treatment is completed in an approved private facility or a hospital as set out in the Schedule of Fee Allowances - Dentist. The Ministry argued that this applies to general anesthesia; whereas the Appellant’s request was for in-office IV sedation (fee code 92446) and there is no evidence that her dentist will provide treatment in a location other than his office.

With regard to the Appellant’s argument that she requires a Monthly Nutritional Supplement (“MNS”), the Ministry noted that the eligibility requirements for obtaining MNS have no bearing on the Appellant’s eligibility for dental supplements and there is no information from her dentist to indicate that she requires in-office IV sedation to prevent imminent danger to her life.

Panel decision

The EAPWDR provisions cited by the Ministry set out the following criteria:

- The health supplements that may be paid under section 63 are “basic dental services” authorized as dental supplements in section 4(1.1) of Schedule C and defined in section 1 of Schedule C as services that are set out in the Schedule of Fee Allowances - Dentist.
- Section 63.1 refers to crown and bridgework, authorized under section 4.1(1) of Schedule C as the services set out in the Schedule of Fee Allowances - Crown and Bridgework.

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- Section 64 authorizes emergency dental services for the immediate relief of pain, authorized under section 5 of Schedule C as those services set out in the Schedule of Fee Allowances – Emergency Dental - Dentist.

These provisions authorize the Ministry to provide dental services pursuant to EAPWDR sections 63, 63.1, and 64 only where the requested dental service is set out in the Schedules of Fee Allowances as outlined above. The panel finds that the Ministry reasonably determined that although the Schedule of Fee Allowances - Dentist authorizes funding for in-office IV sedation under fee code 92215, the procedure, for adults, can only be funded when the person's disability is so severe that they cannot undergo dental work without the sedation. In oral testimony, the Ministry provided examples of conditions that would meet the criteria such as seizure or anxiety disorders.

Although she testified that IV sedation is the only option for extracting her tooth because it is major surgery that involves cutting into the bone and her dental surgeons were concerned about her health conditions, her dentist's letter indicated that IV sedation is "strongly recommended", not absolutely necessary. While the letter also indicated that it is necessary to remove bone, there is no confirmation that the Appellant's health conditions are so severe that this cannot be done with regular freezing or another type of anesthesia.

The panel further finds that the Ministry reasonably determined that the service requested by the Appellant (fee code 92446) is not set out in the other Schedules of Fee Allowances (Emergency Dental and Crown and Bridgework). As noted by the Ministry, services under these Schedules are for the immediate relief of pain, and for crown and bridgework (not wisdom tooth extraction). Further, sections 5 and 4.1(1) of Schedule C which, respectively, reference these fee Schedules, authorize the Ministry to provide health supplements only for the services listed therein.

In addition, as the Ministry noted, these Schedules authorize additional funding for general anesthesia in a hospital or private facility. The Appellant's IV sedation was to take place in-office, and her testimony at the hearing was that she could not have a general anesthetic because it would make her sleep apnea worse.

Regarding a Monthly Nutritional Supplement, the panel does not have the authority to consider the Appellant's request for in-office IV sedation under the MNS criteria as there is no evidence that the Appellant was appealing an MNS decision. The panel finds that the Ministry was therefore reasonable in concluding that MNS criteria have no bearing on the Appellant's eligibility for dental supplements.

Regarding the Appellant's argument that an exception should be made for "humane reasons", both the Ministry and the panel are bound by the legislation. As there is no "compassion exemption" in the dental supplement provisions of the EAPWDR, the panel finds that the Ministry reasonably determined that it was not authorized to fund the requested IV sedation under EAPWDR sections 63, 63.1, 64, or Schedule C.

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Eligibility for coverage as a life-threatening health need - Section 69

Appellant's position

At the hearing, the Appellant acknowledged that her dentist "strongly recommended" the IV procedure and didn't say that it is a matter of life and death. However, since in-office IV sedation can be provided (under the Schedule of Fee Allowances - Dentist), she doesn't understand why the Ministry won't fund it for compassionate reasons. While she realizes that the legislation is not based on compassion, she argued that she needs the IV sedation due to her health conditions and "no one could have the procedure without sedation - not the Ministry or the panel members" and the legislation is therefore unfair.

Ministry's position

The Ministry argued that the Appellant has not provided information from a medical or dental practitioner to demonstrate that she requires in-office IV sedation to prevent imminent danger to life. Further, even if a direct and imminent life-threatening need was established, the remedy under section 69 only applies to medical supplies, medical transportation, and medical equipment and devices. Dental supplements are not covered under these headings and dental services are not health supplements in sections 2 or 3 of EAPWDR Schedule C as required under section 69(d).

Panel decision

EAPWDR section 69 states that the minister may provide a health supplement set out in Schedule C under medical equipment, medical transportation, or medical equipment and devices if the person is otherwise not eligible for the health supplement under the EAPWDR, and if the minister is satisfied that the person faces a direct and imminent life-threatening need for the supplement; there are no resources available to meet the need; and the health supplement is necessary to meet the need.

As in-office IV sedation is not set out in the sections of Schedule C that are applicable to section 69 (medical supplies, transportation and equipment), the panel finds that the Ministry reasonably determined that dental supplements are not eligible under EAPWDR section 69 even if a direct and imminent life-threatening need for the supplement was established. The Appellant stated that her dental surgeons were very concerned about her medical conditions and that IV sedation is the only option for her tooth extraction; however, her dentist indicated only that the sedation was "strongly recommended" and did not address a direct and imminent life-threatening need for in-office IV sedation.

Regarding the Appellant's position that an exception should be made for "compassionate reasons", both the Ministry and the panel are bound by the legislation and the panel is not authorized to re-write legislation that the Appellant argued is unfair. As there is no "compassion exemption" in the EAPWDR, and section 69 does not cover dental supplements, the panel finds that the Ministry reasonably determined that the Appellant was not eligible to have IV sedation funded under EAPWDR section 69.

Conclusion

The panel finds that the Ministry's denial of the Appellant's request for funding for in-office IV sedation because the request did not meet the legislative requirements in EAPWDR sections 63, 63.1, 64, 69, and Schedule C is reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the Appellant. The panel confirms the Ministry's reconsideration decision.