

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of June 5, 2015 in which the ministry denied coverage for fees that exceeded ministry rates for dental extractions and dentures set out in Employment and Assistance Act for Persons with Disabilities Regulation (EAPWDR) Sections 62, 63, 63.1 and 64 and Schedule C, Sections 4 and 5.

The ministry also determined that the requested coverage could not be provided under the “direct and imminent life-threatening health need” provisions in EAPWDR Section 69 because the requested health supplement for dental extractions and dentures did not fall under the health supplements listed in this section, namely medical supplies, medical transportation or medical equipment and devices.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulations (EAPWDR):

- Sections 62, 63, 64, 69
- Schedule C, Sections 1, 4, 5

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 defined in EAPWDR Schedule C, Section 1.

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

- PBC claim receipt dated June 17, 2015 listing payment of \$113.45 for dental services rendered to the appellant on March 11, 2015;
- request for reconsideration dated May 25, 2015 in which the appellant wrote that she suffers from a blood infection with numerous abscessed teeth that would be cheaper to replace than fix.
- treatment estimate dated March 12, 2015 submitted by the appellant’s dentist (Dr. S.) for dental extractions and dentures, broken down as follows:
 - estimated insurance payment: \$3,809.80
 - estimated patient’s portion: \$4,844.20
 - Total: \$8,654.00
- handwritten note by the appellant’s family doctor stating that the patient has extensive dental caries (decay) and infection. Would benefit from a complete dental clearance. This would improve her general health and recurrent infection.

In her notice of appeal dated June 15, 2015 the appellant noted that she has two abscessed teeth and continuously has throat and lung infections caused by her blood infection.

At the hearing the appellant stated that the blood infection could kill her, and that she can’t afford to pay for the portion of dental costs that exceed ministry rates. She asked her family doctor about having the procedure done in a hospital under MSP coverage, but was told that although her health condition warrants hospital-based treatment she is not eligible unless she is in severe pain. She has attempted to see two other dentists, but they will not see her without a deposit being paid in advance. She has also enquired about receiving dental services through a local homeless shelter but has been told that they do not replace teeth. She added that she is unable to find a job because no one will hire a person with rotten teeth.

Pursuant to section 22(4) of the *Employment and Assistance Act*, the Panel admits the information in the appellant’s notice of appeal and the appellant’s oral evidence as being consistent with and therefore in support of the information that the ministry had when it made its reconsideration decision.

The ministry relied on its reconsideration decision, and the ministry representative added that there are dentists in the appellant’s home community who will do the needed dental work without exceeding allowable ministry rates.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of June 5, 2015 in which the ministry denied coverage for fees that exceeded ministry rates for dental extractions and dentures set out in Employment and Assistance Act for Persons with Disabilities Regulation (EAPWDR) Sections 62, 63, and 64 and Schedule C, Sections 4 and 5, and denied coverage under the "direct and imminent life-threatening health need" provisions in EAPWDR Section 69 because the requested health supplement for dental extractions and dentures did not fall under the health supplements listed in this section, namely medical supplies, medical transportation or medical equipment and devices.

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), (b) (iii), (d) or (e) [*general health supplements*],

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*],

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,
 - (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,

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, and
 - (b) \$1 000 each period, if provided to a person not referred to in paragraph (a).
 - (c) Repealed. [B.C. Reg. 163/2005, s. (b).]
- (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 and 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.

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 appellant argues that she requires complete dental extractions and dentures because she has abscessed teeth which must be removed in order to prevent a life-threatening infection. She also cannot find a job due to her visibly rotten teeth. She has no financial resources to pay for dental services that exceed ministry rates, and she has attempted to obtain the necessary procedures from other dentists and from the local homeless shelter at allowable ministry rates.

The ministry's position is set out in the reconsideration decision. The health supplements payable as basic dental procedures are limited to a maximum of \$1,000 every 2 years, beginning January 1st in every odd-numbered year. The appellant has \$886.55 remaining for basic dental services until January 1, 2017. The ministry may also provide emergency dental services for an eligible person who needs immediate attention to relieve pain or to control infection, at a rate set out in the *Schedule of Fee Allowances – Emergency Dental- Dentist*. The ministry may also provide for dentures at a rate set out in the *Schedule of Fee Allowances-Dentist*. Appendix C of the reconsideration decision breaks down the procedures in the treatment proposal provided by the appellant's dentist. The treatment proposal submitted by the appellant's dentist totals \$8,654.00, which exceeds allowable ministry rates by approximately \$4,635.61.

The ministry argues that it is not authorized to provide coverage for fees in excess of the rates contained in the fee schedules. The ministry also argues that dental services and dentures are not included in the allowable health supplements for a person with a direct and imminent life-threatening health need in EAPWDR Section 69.

Panel Decision

With respect to dental services, under EAPWDR Sections 63 and 64 the ministry is only authorized to provide basic or emergency dental coverage at the rates set out in the *Schedule of Fee Allowances – Dentist* and *Schedule of Fee Allowances-Emergency Dental-Dentist* as defined in Section 1 of EAPWDR Schedule C. The treatment estimate provided by the appellant's dentist exceeds the rates in both schedules of fee allowances. Accordingly, the panel finds that the ministry reasonably concluded that it is not authorized to provide coverage for the appellant's fees in excess of ministry rates.

With respect to coverage under EAPWDR Section 69, the ministry accepts that the appellant faces a direct and life-threatening need, but argues that this health supplement applies only to medical supplies and medical transportation as set out in Sections 2(1)(a) and (f) of Schedule C and to medical equipment and devices set out in Section 3. Dental services and dentures are not included in the allowable supplement. Accordingly, the panel finds that the ministry reasonably concluded that the provisions of Section 69 do not apply to the appellant's request for dental services and dentures.

In conclusion the panel finds that the ministry's reconsideration decision is a reasonable application of the applicable enactment in the circumstances of the appellant, and confirms the decision.