

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 20, 2016 which denied the appellant's request for a dental supplement of sedation (nitrous oxide) because the ministry is not authorized to provide supplements that are not set out in the Schedule of Fee Allowances– Dentist pursuant to sections 63 and 69, and schedule C sections 1 and 4 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 63, and 69, and Schedule C, Section 1 and 4.

Schedule of Fee Allowances- Emergency - Dentist

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at the time of the reconsideration decision consisted of:

1. letter from the appellant's dentist, signed and dated February 26, 2016, in which he supports the appellant's need for nitrous oxide;
2. standard dental claim form signed by the same dentist as previously mentioned and dated February 26, 2016. The form lists the total cost of nitrous oxide to be used for the appellant's dental work at \$480.00;
3. letter from the appellant's second dentist, signed and dated March 12, 2016, in which she describes the appellant's medical condition of severe anxiety, urgent need for dental work and the medical reasons for the nitrous oxide;
4. Request for Reconsideration (RFR), signed and dated May 13, 2016. In it the appellant describes her phobia to needles, her inability to be sedated by needle and her rapidly deteriorating dental condition.

In the Notice of Appeal (NOA), signed and dated May 29, 2016, the appellant states:

- the ministry is discriminating against her disability, which is severe Trypanophobia (needle phobia), by providing a sedative that can only be administered via intravenous needle (IV);
- she is excluded from receiving the routine dental work she needs and without which her physical and mental health will be compromised.

Evidence On Appeal

At the hearing the appellant's representative reiterated the information that was provided in the RFR and NOA and added that

- the appellant does not have the financial means to pay for nitrous oxide;
- the ministry provides nitrous oxide in other circumstances; and
- the ministry discriminates against the appellant when it provides sedation for others but not for the appellant.

At the hearing the ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision which denied the appellant's request for a dental supplement of sedation (nitrous oxide) because the ministry is not authorized to provide supplements that are not set out in the Schedule of Fee Allowances– Dentist pursuant to sections 63 and 69, and schedule C sections 1 and 4 of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The legislation provides as follows:

Dental supplements

63 The minister may provide any health supplement set out in section 4 [*dental supplements*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

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

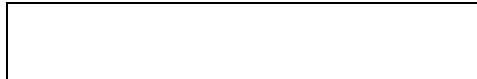
- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) a person in the family unit is eligible to receive premium assistance under 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,
- (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 hygienist" means a dental hygienist registered with the College of Dental Hygienists established under the *Health Professions Act*;

"dentist" means a dentist registered with the College of Dental Surgeons of British Columbia continued under the *Health Professions Act*;

"denturist" means a denturist registered with the College of Denturists of British Columbia established under the *Health Professions Act*;

"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, and
- (b) if provided by a denturist,
 - (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

- (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.

Position of the Parties

The appellant's position is that the ministry's position is counterintuitive. The appellant argues that the ministry is aware of her medical condition and is still only willing to provide a sedative that will trigger her severe anxiety and is therefore not actually providing her with a solution to her dental problems.

The ministry's position is that the appellant is eligible for basic dental services pursuant to section 63 of the EAPWDR and pursuant to Schedule C, section 4 of the EAPWDR the ministry can only provide supplements that are listed in the Schedule of Fee Allowances – Dentist. Nitrous oxide is not listed in the Schedule of Fee Allowances - Dentist and that the ministry does not have the authority make exceptions.

The Panel's Decision

The ministry has determined that pursuant to section 63 of the EAPWDR the appellant is eligible for basic dental services and she does not dispute this. The panel finds that the ministry was reasonable to determine that the appellant, who is a disability recipient, is eligible for basic dental services pursuant to section 63 of the EAPWDR.

Section 4 (5) and (6) of Schedule C of the EAPWDR lists the dental supplements that can be provided by the ministry and states that recipients are limited to these supplements. Nitrous oxide (code 92414) is not listed as a supplement that can be provided by the ministry. The appellant argued that the ministry provides nitrous oxide under certain circumstance but did not provide evidence to establish as such. The panel finds that the ministry reasonably determined that the appellant is not eligible for a supplement of nitrous oxide pursuant to section 4 (5) and (6) of Schedule C of the EAPWDR and it is not an item listed in the Schedule Fee Allowance - Dentist.

Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for sedation (nitrous oxide) because the ministry is not authorized to provide supplements that are not set out in Schedule of Fee Allowances – Dentist pursuant to sections 63 and 69, and schedule C sections 1 and 4 of the EAPWDR, was a reasonable application of the applicable enactment in the circumstance of the appellant and, therefore, the panel confirms the decision.