

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (ministry) reconsideration decision dated October 27, 2016 in which the ministry denied the appellant dental coverage for root canals under the fee codes requested and full coverage for dental work including radiographs, a full cast metal crown and a bonded composite core (in conjunction with the crown). While the ministry found that the appellant meets the basic eligibility requirement for dental supplements under sections 63, 63.1 and 64 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the ministry determined it was not authorized to provide funding under the regulation as follows:

- for services that are not listed in the *Schedules of Fee Allowances - Dentist, Emergency Dental - Dentist, or Crown and Bridgework* and as specified under sections 1, 4.1, and 5 of Schedule C;
- for services beyond the financial and frequency limits set out in the *Schedule of Fee Allowances - Dentist* and as specified under sections 1 and 4 of Schedule C;
- for services requiring pre-authorization under section 4.1 of Schedule C; and
- as a life-threatening health need under section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation sections 63, 63.1, 64, and 69 and Schedule C sections 1 and 4, 4.1 and 5.

Schedules of Fee Allowances: Dentist, Emergency Dental - Dentist, and Crown and Bridgework.

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. A Request for Reconsideration (RFR) signed by the appellant on October 10, 2016 with the following documents attached:

(a) A statutory declaration sworn by the appellant on October 12, 2016 in which she states:

- She has a disabling medical condition that causes intense facial pain and makes it impossible to obtain dental treatment under a local anesthetic. Since 2007, she has had to have her dental work performed at a hospital dental clinic (the clinic).
- Due to her condition, she cannot have prosthetics, false teeth, or movable structures in her mouth.
- On May 30, 2016, she spoke to the clinic coordinator who explained that the appellant had to issue a deposit of \$3,000 or her dental surgery would need to be permanently cancelled due to the logistical circumstances surrounding the undertaking of the procedure. The appellant explained that due to her limited finances she would need to use her daughter's credit card to cover the deposit as she had not received confirmation from the ministry that they would cover the expense as of yet. The clinic coordinator confirmed that when the ministry approves the expense, the appellant will be reimbursed directly by the clinic as that is the normal procedure.
- On June 13, 2016, the appellant's spouse [advocate for this appeal] spoke to the ministry and the ministry confirmed that because the appellant's situation was life-threatening, the funding would likely be confirmed soon.
- On June 28, 2016, the appellant received a phone call from the ministry's Health Assistance Branch (HAB) who confirmed the appellant had been approved for the dental procedure. The caller repeated this information twice and when the appellant asked about the next step, she was told that the clinic deals directly with HAB and the appellant should inform the clinic to send the paperwork.
- On June 28, 2016, the appellant spoke to the clinic coordinator who confirmed the approval information from the ministry and asked the appellant to send in the paperwork.

(b) The appellant's phone records [4 pages], date range June 6 - 29, 2016, with calls to the ministry and the clinic marked with an arrow highlighting the dates and times of the calls.

(c) A credit card statement dated June 23, 2016 showing a payment of \$3,000 to the clinic on May 30, 2016.

(d) Two letters to the ministry from the appellant:

(i) May 25, 2016 in which she states:

- Due to her disability she cannot undergo ordinary dental work with local anesthesia and has had all of her dental work since 2007 carried out at the clinic under general anesthesia.
- She will now undergo surgery with a quoted cost of around \$6,000 as she cannot sustain dentures and/ or false teeth due to her medical condition. Her dental work therefore involves root canals and crowns. Her dental surgery will also include a procedure to remove infection

[Redacted]

from the roots of two teeth and the surgery is imperative in order to alleviate the non-dental pain that she suffers on an ongoing basis.

- On the basis of her argument [addressed by the panel in *Part F - Reasons for Panel Decision*], she requests the ministry to cover all of the expenditures associated with her dental work as she is taking narcotics on a regular basis to alleviate her severe pain.
- The approximate date of her emergency dental surgery is June 1, 2016 and she therefore requests the ministry's earliest consideration of the matter.

(ii) September 17, 2016 in which she states:

- On May 23, 2016, she sent the ministry a fax detailing an impending dental procedure that was to take place on June 16, 2016, for which she requested the ministry's approval and assistance for funding under section 4.1 of Schedule C of the EAPWDR.
- The reason she sent the letter [March 14, 2016 letter from the clinic] to the ministry on May 25, 2016 was due to the fact that the initial procedure was tentatively booked for May 2016 but due to the restructuring of the clinic and the complete shutdown of the clinic for over a month, the procedure was rescheduled for June.
- The clinic required a \$3,000 deposit as the procedure involved full anesthesia and required the use of a full [sic] due to the appellant's medical condition. On May 30, 2016, the appellant's daughter fronted the deposit on her credit card as the appellant's family unit is in receipt of social assistance and could not afford the expense. The clinic administrator confirmed that once they receive monies from the ministry's insurer they will reimburse the deposit. The appellant was informed that if she were to cancel the procedure she would unlikely be able to schedule it again.
- She did not receive an answer from the ministry until June 8, 2016 when she spoke to a ministry agent. The appellant explained that the dental procedure was scheduled for June 16, 2016 and there was an urgent need to obtain approval for the funding. The agent confirmed she would contact HAB to check on the status of the application.
- On June 13, 2016, three days before the dental procedure, the appellant spoke to a ministry agent who stated there was still no answer but the appellant's situation was considered "life threatening" and therefore was likely to get approved for funding.
- On June 27, 2016, eleven days after the procedure, the appellant contacted the ministry again and was told that the ministry would try to speed up the process.
- On June 28, 2016, she received a call from HAB stating that the appellant was approved for funding. When the appellant asked what to do next, she was told that the matter was now out of her hands and was henceforth between the clinic and the ministry's insurer.
- Two weeks ago [before September 17, 2016], the appellant went to the clinic and instead of picking up a cheque for the deposit, she was very surprised to be given a further bill for \$1,033 on top of the deposit that was fronted by her daughter.
- The ministry's insurer refused to pay because "treatment was provided prior to approval" and the insurer did not receive the request for approval before June 20, 2016 when the procedure had already taken place on June 16, 2016.

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(e) A letter from a dental resident at the clinic (on behalf of the appellant's dentist, Dr. F.) dated March 14, 2016, addressed *To Whom it May Concern* and stating as follows:

- The appellant presented at the clinic on March 14, 2016 with severe pain on the left side of her face, and clinical/ radiographic investigation revealed two teeth requiring extensive root canal therapy.
- The recommended treatments [for specified teeth] are root canal and possible apical surgery, \$1,500; root canal re-treatment, \$1,500, and two full crowns, \$1,500 each. The total cost of the treatment is estimated at \$6,000.
- The appellant's situation is complicated by her history of facial pain and her [medical condition] and the treatment will need to be done under general anesthesia. Extractions and partial dentures are not recommended due to her condition, which does not allow her to tolerate partial dentures.

(f) Two pages of dental radiograph images with notes describing observed problems with the appellant's teeth and treatment recommendations.

(g) A claim summary from the insurer [panel note: the ministry refers to this as a *Predetermination Summary*] listing fee codes for procedures under the appellant's policy number for June 20, 2016. The total amount claimed is \$4,416.14 and the plan reimbursed \$609.99. Explanatory notes indicate:

- There is no reimbursement for root canal treatments [fee codes 33135 and 33145], as these are not covered under the plan [amount claimed for each fee code was \$1,500].
- Radiographs [fee code 02102] were reimbursed up to the maximum allowed under the plan, \$41.12.
- Build-ups [fee code 23602] are only reviewed for pre-authorization when submitted in conjunction with crown/ bridge work; treatment plan approval must be obtained in writing through the ministry dental prior to treatment; and if treatment is provided prior to approval, payment will be denied [amount claimed was \$90.56].
- For the crown [fee code 27301], treatment plan approval must be obtained in writing through the ministry dental prior to treatment and if treatment is provided prior to approval, payment will be denied [amount claimed was \$702].

(h) A *Patient Receipt* from the clinic showing a deposit of \$3,000 paid by credit card on May 30, 2016.

(i) A *Statement* from the clinic for the period June 20 to August 29, 2016 showing a balance owing of \$1,033.79 with a note indicating it is the balance remaining after the insurer had paid its portion, and requesting payment by the appellant.

(j) A copy of the EAPWDR dental supplement provisions.

(k) A copy of a ministry schedule: *Schedule of Fee Allowances - Emergency Dental - Dentist* effective April 1, 2010.

2. Information and documents from the ministry record including:

(a) A table showing the appellant's claims history with the insurer for services provided on March 14, April 7, and June 16, 2016. Total dentist fees for two dentists at the clinic total \$4,474.14 and the ministry rate (total) is \$667.99. The table shows that the insurer covered the entire fee of \$13.59 for radiographs on March 14, 2016; \$41.12 out of the \$54.71 fee for radiographs on June 20, 2016; and \$0.00 for a bonded composite core (dentist's fee \$90.56), root canals (dentist's fee \$1,500 for each fee code), and a full cast metal crown (dentist's fee \$702) on June 20, 2016. Various other treatments and services listed in the table were covered in full by the insurer.

(b) Printouts of *Claim Details* (10 pages), printed by the ministry on October 26, 2016 showing amounts claimed and amounts paid by the insurer for dental services and treatments from March 31, 2015 to June 20, 2016. The grand total claimed was \$9,174.80 and the amount paid was \$750.45.

(c) A copy of the ministry's policy *Dental Supplement - Dentist*, outlining eligibility criteria for dental supplements, emergency dental and denture supplements, general anesthesia and IV sedation, and crown and bridge supplement. Each section for a specified service includes a pre-amble, the eligibility criteria for the service, and the payment process. In the reconsideration decision, the ministry emphasizes the procedure for dentists to request pre-authorization for crowns and bridgework under the section of the policy, *Eligibility for Crown and Bridgework Supplement*. The ministry notes that the procedure entails a preauthorization request to be submitted to the insurer and treatment should not begin until the dental office has received the decision from the insurer confirming the patient's eligibility.

(d) Copies of ministry schedules: *Schedule of Fee Allowances - Dentist*, *Emergency Dental - Dentist*, and *Crown and Bridgework*. All schedules are effective April 1, 2010

(e) The ministry's statements in the reconsideration decision indicating:

- The appellant is a recipient of disability assistance.
- The insurer did not receive the March 14, 2016 letter from the dentist and the ministry received it with the appellant's submission of May 25, 2016. Neither the insurer nor the ministry received the letter before May 25, 2016.
- On June 28, 2016, the ministry forwarded the appellant's submission to the insurer and contacted the appellant to advise that her dentist was to contact the insurer directly for application and assessment of dental coverage.
- The claims information in the insurer's *Predetermination Summary*, submitted by the appellant, is the same as the claims history table [summarized above].
- Requests for coverage of dental services are to be made by dentists directly to the insurer in advance of services being provided. The insurer summarizes the available coverage for the dentist in the form of a predetermination, and upon reviewing the predetermination the dentist can then provide dental services according to the available coverage by the insurer and in consultation with the patient. **Requests for dental services are not processed by the ministry** [highlighted by the ministry].

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- The appellant's claims history with the insurer indicates that as of the date of the ministry's reconsideration decision, she had \$249.55 of her limit for basic dental services for the period beginning January 1, 2015 and ending December 31, 2016 [\$1,000 minus \$750.45 for services provided between March 31 and June 20, 2016].
 - The ministry provides coverage for root canals in the *Schedule of Fee Allowances - Dentist*, under different fee codes than the codes that were cited in the March 14, 2016 letter from the appellant's dentist.

Additional submissions and admissibility of new information

1. A Notice of Appeal signed by the appellant on November 6, 2016 with attached 3-page submission that provides argument as well as additional details regarding the scheduling of the dental work at the clinic. The appellant states:

- At the time of the dental check-ups leading to the June 2016 procedure, the clinic had suddenly shut down due to systemic inefficiencies in the way it was run. At the time the dental provider was due to file the funding request directly with the insurer, the dental clinic was not in operation. The clinic was shut down for the month of May 2016.
- On April 6, 2016, the appellant had a long talk with her long-term dentist whom she had been seeing at the clinic for the past eleven years. He told her that he had three available surgical dates in May and would be more than happy to carry out her dental work. He then resigned from the clinic and the surgery did not occur until June 16, 2016 and was performed by a different dentist (Dr. F.).
- Prior to the surgery, the appellant's advocate met with the clinic coordinator who confirmed that the clinic would re-open and was committed to patients who were already on the operating room (OR) list. On May 24, 2016, the appellant participated in a conference call with the clinic coordinator, her new dentist, Dr. F. and other patient administrators. All parties agreed that the surgery will go ahead upon the payment of the \$3,000 deposit, or the procedure would be postponed indefinitely. The appellant was taking narcotic painkillers at this time due to the pain in her teeth. She was told by a clinic administrator that the clinic will return the \$3,000 deposit to her once the ministry approved the funding as this "happens all the time".

The panel admits the above noted information under section 22(4)(b) of the *Employment and Assistance Act* (EAA) as evidence in support of information and records that were before the minister at the time the decision being appealed was made. As noted, the information provides additional details regarding the scheduling of the appellant's dental procedure including the temporary shutdown of the clinic, as described in the appellant's September 27, 2016 letter to the ministry that was provided for the reconsideration.

2. At the hearing, the appellant provided a 3-page submission titled *Additional Evidence*. The submission contains the letter from the clinic dated March 14, 2016 [already part of the reconsideration materials] and describes seven telephone calls in November 2016 between the clinic, the clinic's oversight agency, and HAB. These calls include the following conversations:

- November 21, 2016: In a discussion regarding the clinic's information that the procedure would be permanently cancelled if postponed and the appellant would be reimbursed by the clinic for the deposit, the clinic coordinator denied that she had provided such information.

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- November 23, 2016: In a discussion with the oversight agency director, the director stated that there were no plans for the clinic to pay or to ask for reimbursement or forgiveness of the cost, and he apologized if there has been a misunderstanding. He indicated that the balance owing by the appellant is \$805.
 - November 24, 2016: The advocate received a call from a supervisor at HAB who stated that the clinic had overcharged the ministry for a number of costs associated with the dental surgery. The supervisor further stated that the ministry had falsely described the appellant's situation as life-threatening, and in actuality, it does not follow the guidelines for life-threatening situations and neither the clinic nor the ministry followed the protocol and procedure for reimbursement of funds associated with the dental surgery.
 - November 29, 2016: In a conversation with the HAB supervisor, the supervisor indicated there was no pre-authorization sent by the clinic to the insurer for the crown work [fee code 27301]. The clinic performed a gold crown procedure rather than a stainless or porcelain one because "stainless and porcelain are not performed at this clinic." The appellant indicates that she was given choices on the day of the surgery, June 16, 2016, and as the fee codes were not explained to her, she asked for the most durable crown, which was gold. The supervisor stated that she was going to approve the ministry rate for the crown (\$539.90) under "exceptional circumstances". Regarding the root canals, the insurer indicated that the fee codes used by the clinic might be specialist fee codes and those codes do not exist in any of the *Schedules of Fee Allowances*. The closest matches are fee codes 33141 (\$521.77) and 33131 (\$469.13) and there was no pre-approval form sent by the clinic. As well, there was no pre-approval sent for the composite core bond (fee code 23602 - \$90.56). The supervisor confirmed that she was going to approve this charge.

The ministry objects to the additional submission on the basis it is new information that was not before the minister at reconsideration. The ministry states that the crux of the reconsideration decision is that the dental work had to be preapproved and it is confusing if some of the services the appellant was denied are now being approved. The panel notes that all of the phone calls described in the additional submission are dated after the reconsideration decision and relate to the appellant's subsequent discussions with the clinic and HAB regarding the lack of reimbursement for the deposit that was paid as well as the outstanding bill from the clinic.

The results of those discussions are that HAB has indicated that the clinic overcharged the appellant for services, provided the wrong fee codes for the root canals and provided misinformation regarding the type of crown that would be covered; and that HAB has agreed to fund some of the services that were denied at reconsideration. The panel notes that these phone discussions were not before the minister at the reconsideration, and excepting the information that root canals are funded by the ministry under a different fee code (as that information was before the minister), the panel does not admit the submission into evidence under section 22(4)(b) of the EAA. The panel finds that the information regarding the appellant being overcharged; the type of crown that was offered; and the retroactive funding for some services, does not corroborate or substantiate the information the ministry had at reconsideration and is therefore not in support of the information and records that were before the minister.

The panel admits the information in the submission indicating that pre-approval from the insurer had not been obtained from the clinic and that the clinic will not consider reimbursement of the deposit or forgiveness of the cost of the treatment. These facts were clearly before the minister when the reconsideration decision being appealed was made.

The appellant attended the hearing with her advocate (appellant's spouse). After the advocate provided submissions, the panel chair called a recess. Questions and the ministry's submission took place following the recess. In her oral testimony, the appellant summarized her argument on appeal and further explained the medical condition that prevented her from undergoing regular dental treatment. She stated that her treatment must be planned by all stakeholders in advance as she requires OR facilities. Following the resignation of the appellant's long-term dentist and the letter of March 14, 2016 that was provided by the appellant's new dentist, the clinic was shut down between May and June 2016. The appellant was told the clinic would re-open under an entirely new administration but people already on the list were to have their treatment performed even while the clinic was officially shut down. The appellant was told that if she postponed the June 2016 surgery date, she would be taken off the list and her treatment would be postponed indefinitely.

In response to questions, the appellant confirmed the following:

- The March 14, 2016 letter from the dentist was the only statement she received from the clinic other than the payment confirmation/ account statements. She confirmed that the letter was provided to her and not to the insurer and the clinic told her to submit it to the ministry. The appellant stated that she did try to call the insurer but was told that they do not speak to the public, only to the dental provider.
- The ministry advised that the ministry would follow up with HAB because HAB is not normally accessible to the public. It was an exception for HAB to speak directly to the appellant [the June 28, 2016 phone call from HAB], and when HAB called the appellant, the caller told her that all of the work, and not just certain procedures, was approved.
- The appellant was not given the ministry's policy document [*Dental Supplement - Dentist*] that outlines the procedure for preauthorization.
- Regarding her seven years of prior treatment at the clinic, the appellant explained that she "only had to sign a paper" as she was not covered by ministry funding at that time.

At the hearing, the ministry explained that the insurer makes the decision on coverage for dental treatment with assistance from HAB. The ministry confirmed that the insurer and HAB do not communicate with the public. The ministry explained that the normal procedure is for the clinic to send documentation to the insurer for preauthorization and the dentist outlines the work that is required. The ministry explained that the reason the ministry denied the dental supplement is because the treatment was not preapproved.

The ministry indicated that it cannot explain why the fee codes for the root canals were different between the clinic and the insurer but the reason for (one of) the \$1,500 fee codes is that it is a re-treatment and the insurer will not fund service on the same tooth until five years (60 months) has elapsed since the last treatment on the same tooth. The ministry noted that the March 14, 2016 letter from the dentist clearly shows that one of the \$1,500 fee codes for the root canals is for re-treatment.

In response to a question from the appellant, the ministry stated it does not know why the ministry (HAB) called the appellant on June 28, 2016 to say that she is approved for funding. In response to questions from the panel, the ministry reiterated the statements in the reconsideration record which state that the ministry does not process requests for dental work. The ministry explained that requests are decided by the insurer, not the ministry. The ministry expressed surprise that the ministry forwarded the dentist's letter to the insurer as that is not the normal process. The ministry explained that there is no protocol for dealing with a letter from a dentist that was submitted to the ministry in error and that should have been sent to the insurer. However, the appellant should have been referred back to her dentist to ask that the clinic submit the letter to the insurer.

The panel admits the oral testimony under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the minister when the decision being appealed was made. In particular, the oral testimony corroborates and adds additional details to the evidence regarding ministry procedures for preauthorization, the procedure/ attempts to obtain preauthorization that were actually followed, and the appellant's communications/ attempts at communication with the insurer and HAB.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of October 27, 2016 which denied the appellant dental coverage for root canals under the fee codes requested and full coverage for dental work including radiographs, a full cast metal crown and a bonded composite core (in conjunction with the crown) was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. While the ministry found that the appellant meets the basic eligibility requirement for dental supplements under sections 63, 63.1 and 64 of the EAPWDR, the ministry determined it was not authorized to provide funding under the regulation as follows:

- for services that are not listed in the *Schedules of Fee Allowances - Dentist; Emergency Dental - Dentist*, or *Crown and Bridgework* and as specified under sections 1, 4.1, and 5 of Schedule C;
- for services beyond the financial and frequency limits set out in the Schedule of Fee Allowances - Dentist and as specified under sections 1 and 4 of Schedule C;
- for services requiring pre-authorization under section 4.1 of Schedule C; and
- as a life-threatening health need under section 69 of the EAPWDR.

Legislation - EAPWDR

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.

Crown and bridgework supplement

63.1 The minister may provide a crown and bridgework supplement under section 4.1 of Schedule C to or for

(a) a family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who is a person with disabilities.

Emergency dental and denture supplement

64 The minister may provide any health supplement set out in section 5 [*emergency dental supplements*] of Schedule C to or for

(a) a family unit in receipt of disability assistance.

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 - 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 — 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) In this section, **"period"** means

(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

(b) \$1 000 each period, if provided to a person not referred to in paragraph (a),

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.

Ministry's policy

The relevant policy on which the ministry also based the reconsideration decision is set out as follows. Each Part includes a preamble regarding a specified service, and a description of the corresponding fee schedule with similar wording for each service.

Ministry of Social Development policy: *Dental Supplement - Dentist*

Part A - Preamble - Dental Supplements – Dentist

The *Preamble - Dental Supplements - Dentist* provides details on the ministry's dental supplements and information on how to confirm eligibility and obtain payment for services rendered.

Part B - Schedule of Fee Allowances - Dentist

The *Schedule of Fee Allowances - Dentist* lists the eligible services and fees associated with the ministry's dental supplements and the provision of basic dental services. It contains the rules, frequency and financial limits associated with each service.

Part C - Preamble - Emergency Dental and Denture Supplements - Dentist

Part D - Schedule of Fee Allowances - Emergency Dental - Dentist

Part E - Preamble - Crown and Bridgework Supplement

The *Preamble - Crown and Bridgework Supplement* provides details on the ministry's crown and bridgework supplement and information on how to confirm eligibility, request preauthorization and obtain payment for services rendered.

Part F - Schedule of Fee Allowances – Crown and Bridgework

The overall intent of the Ministry of Social Development dental supplements is to provide coverage for basic dental services to eligible...Persons with Disabilities clients.

Eligibility for Dental Supplements

It is important to note that not all ministry clients are entitled to basic dental services through the ministry's dental supplements. To ensure active coverage is in place, eligibility must be confirmed for all clients prior to proceeding with any treatment.

Adults

Adult clients who are eligible for basic dental services under ministry dental supplements are eligible for a \$1,000 limit every 2-year period beginning on January 1 st of every odd numbered year.

Emergency Dental and Denture Supplements

For ministry clients who are not eligible for the previously noted 2-year limit or those who have exhausted their limit, some short-term assistance may be available through Emergency Dental and Denture Supplements...Emergency Dental allows for treatment of an eligible person who needs immediate attention to relieve pain, or to control infection or bleeding or if a person's health or welfare is otherwise immediately jeopardized.

Payment Process

Claims under the ministry's dental supplements will be paid in accordance with the *Schedule of Fee Allowances - Dentist* and represent the maximum amount the ministry can pay for the services billed.

Schedule of Fee Allowances - Dentist - Effective April 1, 2010

RADIOGRAPHS

Note: All radiographs will be limited to \$54.71 per patient every 2 calendar years. A complete series, fee items 02101 and 02102 or thirteen films, fee item 02123, will be paid only once every 3 years.

ROOT CANAL THERAPY

Note: Paid once per tooth per lifetime on permanent teeth or retained primary teeth ONLY...The listed fee includes any procedural radiographs, vitality test and open and drain. Post-operative

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radiographs may be requested to support claims for two canals on permanent cuspid or anterior teeth.

- 33111 One canal
- 33121 Two canals
- 33131 Three canals
- 33141 Four or more canals

Schedule of Fee Allowances - Emergency Dental - Dentist - Effective April 1, 2010

[Panel note: Root canal procedures are not described under this Schedule]

Eligibility for Crown and Bridgework Supplement

The ministry recognizes that in some exceptional circumstances the appropriate treatment for a compromised tooth is a crown or bridgework. An exception to the general policy of providing a conservative dental restoration or removable prosthetic may be considered if the individual meets the criteria of specific ministry categories and the ministry is of the opinion that the person has a dental condition that cannot be corrected through the provision of basic dental services because:

(b) one or more of the following circumstances exist:

- ii. The person has a physical impairment that makes it impossible for him or her to place a removable prosthetic.

General Information

Porcelain-Fused-to-Metal (PFM) crowns/ bridges will not be approved for tooth numbers 6, 7 and 8. Only full cast metal (gold) crowns/ bridges will be covered for molar teeth.

General Information continued

Treatment plan approval must be obtained in writing through the ministry dental contractor, prior to treatment. Only treatment outlined in the *Schedule of Fee Allowances - Crown and Bridgework* will be considered for coverage under the program. A ministry contracted dental consultant reviews the requests for crown and bridgework.

Procedures for Confirming Eligibility

As not all ministry clients are eligible for the Crown and Bridgework Supplement and coverage can change from month to month, eligibility must be confirmed prior to requesting treatment approval and again immediately prior to commencing with treatment to ensure the approval is still valid.

Procedures for Requesting Preauthorization

A request for preauthorization for a crown or bridge must be submitted in writing to [the insurer] outlining the proposed treatment plan on a standard dental claim form marked "FOR PREAUTHORIZATION." When submitting a request, it is essential that [the insurer] be provided with all relevant information to support the request. Applications for this type of work must include the following:

- Crown or bridge treatment plan including tooth number(s) and fee codes...:
- a clinical explanation as to necessity...;and
- relevant information regarding the client's medical condition(s) that would support the need for a crown or bridge.

Failure to provide any of the above-noted information will result in the treatment plan being returned and unnecessary delays in the adjudication of the request.

Procedures for Requesting Preauthorization continued

Once a decision has been reached on the requested dental treatment, the dental office will receive written notification. Treatment should not begin until the dental office has received the decision in writing from [the insurer] and the patient's eligibility is confirmed. If treatment is provided prior to approval or if the patient's coverage has cancelled, payment will be denied.

Payment Process

Treatment that is approved under the ministry Crown and Bridgework Supplement will be paid in excess of the patient's basic dental limit and in accordance with the rates outlined in the *Schedule of Fee Allowances - Crown and Bridgework*...These fees represent the maximum amount the ministry can pay for the services billed. All other dental treatment must be completed either within the patient's basic dental limit or in accordance with the Emergency Dental and Denture Supplements.

Schedule of Fee Allowances - Crown and Bridgework - Effective April 1, 2010

Fee Description – Crowns

27301 Crown, Full cast Metal \$539.90

CORES

23602 Bonded Composite Core, in Conjunction with Crown \$90.56

Analysis and decision

The ministry notes that the appellant is a recipient of disability assistance who 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* and as set out in sections 63, 63.1 and 64 and Schedule C of the EAPWDR. However, the ministry found that pursuant to the *Schedules of Fee Allowances* and the applicable sections of the EAPWDR, the ministry was not authorized to fund root canals under the fee codes requested or provide full coverage for dental work including radiographs, a full cast metal crown and a bonded composite core (in conjunction with the crown).

Eligibility for coverage of root canals under fee codes 33135 and 33145

Appellant's position

While the appellant's argument centers on the issue of pre-approval for a crown and associated composite bond core, she submits that for all of the work requested, there were no ministry documents or confirmation by the ministry that she was not eligible to receive the necessary funding. She submits that she was acting on the instructions given to her by the clinic, in particular, the March 14, 2016 letter from the dentist explaining the situation and the work that needed to be done on her teeth. She argues that the regulations are explicit about a "dental provider's responsibility to liaise directly with the insurer on funding matters for dental work".

Ministry's position

The ministry notes that the appellant had \$249.55 of her limit for basic dental services remaining for the period ending December 31, 2016 but argues that the ministry is not authorized to utilize that balance to pay for services that are not set out in the *Schedule of Fee Allowances - Dentist*. The ministry summarizes the sections of the EAPWDR that authorize the minister to cover basic and emergency dental services [sections 63 and 64 respectively] at the rates set out in the *Schedules of Fee Allowances*.

The ministry submits that while it will provide coverage for root canals under the *Schedule of Fee Allowances - Dentist*, the root canal fee codes that the appellant's dentist requested [fee codes 33135 and 33145] are not set out in that Schedule. The ministry argues that it is therefore not authorized to provide coverage for those services, as the ministry can only cover the fee codes that are set out in the Schedule. The ministry states that there are no exceptions in policy and the ministry has no discretion in the matter.

Panel's decision

The health supplements that may be provided by the ministry under section 63 of the EAPWDR are those services set out in section 4 of EAPWDR Schedule C and include "basic dental services" defined in section 1 of Schedule C, as services that are listed in the *Schedule of Fee Allowances - Dentist*. Similarly, sections 63.1 and 64, respectively, authorize the ministry to provide a supplement for crown and bridgework and emergency dental services. Crowns and bridgework are authorized

under section 4.1(1)(b) of EAPWDR Schedule C, as those services set out in the *Schedule of Fee Allowances - Crown and Bridgework*. Emergency dental services must be for the immediate relief of pain under section 5 of Schedule C, and must also be listed in the *Schedule of Fee Allowances - Emergency Dental - Dentist*.

Essentially, 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 corresponding *Schedule of Fee Allowances* as outlined above. As the fee codes requested by the appellant in the letter from her dentist are not set out in the *Schedule of Fee Allowances - Dentist*, or in any of the Schedules described above, the panel finds that the ministry reasonably applied the Regulation in determining that the ministry is not authorized to fund root canals under fee codes that are not in the Schedules.

The ministry's evidence is that root canals are typically funded under the fee codes set out in the *Schedule of Fee Allowances - Dentist*. It is therefore unfortunate that the appellant's dentist appears to have cited the "wrong" fee codes as argued by the appellant. However, there is no evidence to indicate that the dentist contacted the ministry or the insurer to amend the request for root canals to correspond with the fee codes in the applicable *Schedule of Fee Allowances - Dentist*.

Although the appellant argues that the Regulation is explicit regarding a "dental provider's responsibility to liaise directly with the insurer on funding matters for dental work", the panel notes there is no such requirement in the EAPWDR. In any event, as noted above, there is no evidence that the dental provider discussed the fee codes for root canals with the insurer. Taken at face value, the fee codes requested are not eligible for funding under the EAPWDR or the *Schedules of Fee Allowances* referenced therein. The panel therefore finds that the ministry's decision to deny funding for root canals was a reasonable application of section 63 and section 4(1.1) of Schedule C of the EAPWDR.

Eligibility for fees in excess of financial limits - radiographs

Appellant's position

As noted above, the appellant's argument centers around the issue of pre-approval for a crown and associated composite bond core. She nevertheless submits that in relation to all of the work requested, there were no ministry documents or indication by the ministry in phone conversations, confirming that she was not eligible to receive the necessary funding. She submits that she was acting on the instructions given to her by the clinic, in particular, the March 14, 2016 letter from the dentist explaining the situation and the work that needed to be done on her teeth.

Ministry's position

The ministry notes section 63 of the EAPWDR, which stipulates that the ministry may provide basic dental services as defined in section 1 of Schedule C of the EAPWDR. The ministry notes that the definition under section 1 references services that are set out in the *Schedule of Fee Allowances - Dentist* and that the *Notes* included in this Schedule set out financial and frequency limits for the

provision of certain services. The ministry argues that these limits are an integral part of the Schedule as they determine the amounts/ rate that the ministry is authorized to pay. Given that the *Note in the Schedule of Fee Allowances - Dentist* states that radiographs are limited to \$54.71 per patient every two calendar years, and the appellant's claim history shows that she had already claimed \$13.59 for radiographs in March 2016, the ministry argues that she is eligible for only \$41.12 of the \$54.71 claimed for the radiographs performed on June 20, 2016 [\$54.71 - \$13.59]. The ministry further argues there is no exception in policy and the ministry has no discretion in the matter.

Panel's decision

As noted earlier, the health supplements that may be funded by the ministry under section 63 of the EAPWDR are those services set out in section 4 of EAPWDR Schedule C and include "basic dental services", defined in section 1 of Schedule C as services that are listed in the *Schedule of Fee Allowances - Dentist*. As noted by the ministry, the *Schedule of Fee Allowances - Dentist* also sets out financial and frequency limits for certain services including radiographs. While it is unfortunate that the appellant appears to have received erroneous information from HAB indicating that "all of the work was approved", the appellant's dental claims history shows that the ministry already funded radiographs ("two images" - fee code 02112) in the amount of \$13.59 in March 2016. Under the *Schedule of Fee Allowances - Dentist*, there is a limit of \$54.71 for radiographs over a two-year period as noted by the ministry. Given these financial and frequency limits for radiographs, the panel finds that the ministry reasonably determined that the ministry was authorized to fund \$41.12 for radiographs in June 2016, rather than \$54.71 (for "complete full mouth series", fee code 02102), as requested in the appellant's claims history.

The panel notes that funding for radiographs may also be available pursuant to the *Schedule of Fee Allowances - Emergency Dental - Dentist*, for the immediate relief of pain. The appellant reports that she was taking narcotics for "severe pain" prior to having her dental work done. Nevertheless, the fee codes for the radiographs listed in the appellant's claims history are included under basic dental service, and are not coded as emergency services. The *Schedule of Fee Allowances - Dentist* is referenced in section 1 of Schedule C of the EAPWDR and the financial and frequency limits set out in this Schedule therefore fall under the statutory scheme for basic dental services. Accordingly, the panel finds that the ministry reasonably applied the EAPWDR by denying the full amount of funding requested for the radiographs.

Eligibility for coverage as a life-threatening health need

Appellant's position

The appellant argues that funding for her dental procedures should be provided under a life-threatening health need because the ministry characterized her situation as "life-threatening" and indicated the funding would likely be approved soon as the ministry was trying to speed up the process.

Ministry's position

The ministry notes that section 69 of the EAPWDR authorizes the minister to provide a health supplement for *medical supplies, medical transportation, or medical equipment and devices*, as set out in Schedule C of the EAPWDR, 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 the EAPWDR. The ministry notes that other criteria must also be met including the requirement that the health supplement is necessary to meet a direct and imminent life-threatening need. The ministry acknowledges that information submitted by the appellant suggests that she may face a direct and imminent life-threatening health need for the dental services requested. The ministry argues, however, that section 69 of the EAPWDR does not apply to dental supplements as only medical supplies and equipment, and medical transportation are covered under section 69.

Panel's decision

As noted by the ministry, section 69 of the EAPWDR authorizes the minister to provide the health supplements set out in Schedule C [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 other criteria are met including a direct and imminent life-threatening need for the health supplement with the supplement being necessary to meet that need.

Further, as noted by the ministry, dental services are not included in the sections of Schedule C that are referenced in section 69. Even if a direct and imminent life-threatening need is established, the remedy under section 69 applies only to *medical supplies, medical transportation, and medical equipment and devices*. Dental supplements are not covered under these headings and are therefore not the health supplements referenced in sections 2 or 3 of EAPWDR Schedule C for the purposes of section 69(d).

The panel therefore finds that the ministry reasonably determined that dental supplements are not eligible as a life-threatening health need under section 69 of the EAPWDR. While the evidence indicates that the ministry classified the appellant's need for dental services as life-threatening, there is, unfortunately, no authority for funding dental services under section 69 of the EAPWDR. Accordingly, the panel finds that the ministry reasonably applied the Regulation to deny funding for dental services under this section.

Eligibility for coverage of a full cast metal crown and bonded composite core

Appellant's position

As noted earlier, the appellant's argument centers around the issue of pre-approval for a crown and associated composite bond core. In her appeal submission of November 7, 2016, the appellant argues there was no transgression from section 4.1(2) of the EAPWDR [regarding the necessity of the crown] and the ministry documents do not state she was not eligible to receive funding for her June 16, 2016 dental procedure. In fact, in phone conversations with the ministry prior to her dental

[Redacted]

work being performed, the ministry indicated they were processing her request for funding, and two weeks after the work was performed, HAB called her on June 28, 2016 stating that she was approved for funding.

The appellant acknowledges that she did not submit the March 14, 2016 pre-authorization request from her dentist to the ministry until May 25, 2016, but she argues that she was acting on the instructions of her dental provider who did not follow protocol. Her dentist provided a letter addressed *To Whom It May Concern*, which the clinic gave to the appellant rather than forwarding it to the insurer. After the appellant faxed the letter to the ministry, no one from the ministry told her that the dentist was following the wrong protocol for requesting services. The appellant argues that the ministry received the dentist's letter requesting the dental work she needed, prior to the work being performed, and she cannot understand why the ministry held onto the letter for a month and did not forward it to the insurer until June 20, 2016, four days after the dental work had been performed. She argues that if the ministry had "held its duty of care responsibly" and "responded to the alleged erroneous application within reasonable time", corrective action could have been made so that she would not be out of pocket for the dental work.

The appellant submits that she has no recourse against improper procedures followed by the dentist/clinic and she understands that this appeal process relates to the reconsideration decision of the ministry. However, she feels that she is caught in the middle of mistakes made by both the ministry and the dental provider and she is left with a bill that she does not have the means to pay. She argues that the ministry should take responsibility for the mistakes under the ministry's duty of care to clients, and sort out the situation with the dental provider rather than leaving her with the burden of the decision to not cover the cost of her crown.

Ministry's position

The ministry notes in the reconsideration decision, that crown and bridgework services require the preauthorization of the minister under section 4.1(1)(d) of Schedule C of the EAPWDR. The ministry emphasizes in the reconsideration decision that requests for dental services are not processed by the ministry. The ministry submits that there is no evidence that a request for preauthorization was received by the insurer.

The ministry argues that the ministry is unable to provide coverage for a crown [fee code 27301 - \$702] and a bonded composite core [fee code 23602 - \$90.56] because preauthorization from the insurer is required in advance of the treatment as outlined in the *Ministry of Social Development Policy: Dental Supplement - Dentist*. The ministry notes that the preauthorization requirement/procedures are set out in the section of the policy titled *Eligibility for Crown and Bridgework Supplement* [under the *General Information*, and *Procedures for Requesting Preauthorization* headings].

The ministry argues that preauthorization was not obtained by the dentist prior to the dental work being performed, noting that neither the insurer nor the ministry received the March 14, 2016 letter from the dentist before May 25, 2016. While the ministry accepts that this letter "appears to be a

request for pre-authorization of root canals and crowns” for specified tooth numbers, the ministry submits that the “intended recipient is not described in detail” as the letter is addressed *To Whom it May Concern.*

The ministry summarizes the procedures for requesting preauthorization for crowns and bridgework under the policy, noting that a written request for preauthorization is to be submitted by the dentist to the insurer on a standard dental claim form, and it is essential for the dentist to provide specific information including the treatment plan, fee codes requested, and an explanation as to the necessity of the crown/ bridgework. The ministry notes that the policy states that the failure to provide any of the above-noted information will result in the treatment plan being returned to the dental provider and unnecessary delays in the adjudication of the request. The ministry further notes that the policy indicates that treatment should not begin until the dental office has received a decision in writing from the insurer that confirms the patient’s eligibility. Furthermore, if treatment is provided prior to approval, payment will be denied.

Panel’s decision

Section 63.1 of the EAPWDR authorizes the minister to provide a crown and bridgework supplement under section 4.1 of Schedule C to or for a person with disabilities. Section 4.1 of Schedule C sets out the specific requirements for the supplement: the service must be provided by a dentist; it must be set out in the *Schedule of Fee Allowances - Crown and Bridgework*, it must be provided for at the rates set out in that Schedule, and pursuant to section 4.1(1)(d), **the person must have received the pre-authorization of the minister.**

The basis of the ministry’s denial of the supplement for the crown and the associated bonded composite core is that a request for preauthorization was not forwarded by the dentist to the insurer and the work was performed by the dentist in advance of the treatment plan being authorized by the insurer. The ministry notes that those requirements are set out in the *Ministry of Social Development Policy: Dental Supplement - Dentist*, and argues that the requirements were not met because the insurer did not receive the dentist’s letter requesting services until June 20, 2016 [after the work had been performed].

While the ministry describes section 4.1(1)(d) of EAPWDR Schedule C in the reconsideration decision, the ministry states in its *Notes*, and again under the *Decision* heading, that “requests for dental services are not processed by the ministry”. The evidence, however, is that the ministry processed the request for services by accepting the letter from the dentist that the appellant faxed to the ministry on May 25, 2016, holding onto the letter for almost one month, and then sending the letter to the insurer who received it on June 20, 2016, four days after the dental work had been completed.

Further evidence indicates that during the period that the ministry was holding the letter from the dentist, the ministry communicated to the appellant in phone conversations that the ministry was processing her request for funding and that funding would likely be approved soon given the urgent nature of her situation. The appellant then received a phone call from the ministry’s health branch (HAB) after the dental work had been performed, informing her that the funding is approved.

The ministry does not dispute any of the conversations that took place and the panel accepts as fact, the appellant's evidence regarding the process that was followed in her attempt to seek pre-authorization from the ministry prior to the dental work being performed. While the panel is able to consider ministry procedural requirements as set in policy, the panel's jurisdiction under section 24(1) of the *Employment and Assistance Act* is to determine whether the ministry's reconsideration decision is reasonably supported by the evidence, or in this case, whether the decision was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. Therefore, the panel cannot determine the reasonableness of the ministry's decision on the basis of the ministry's procedural policies, but the panel will certainly give weight to internal procedures and policy that is referenced in the legislation or that is in support of the legislative requirements.

In the circumstances of the appellant, the ministry's procedural policies do not reflect the legislative requirements regarding pre-authorization of crown and bridgework *by the minister*. While the *Schedules of Fee Allowances* are referenced in the EAPWDR provisions respecting dental supplements, these Schedules set out fee codes, rates, and financial and frequency limits and do not address treatment pre-authorization. The ministry's policies dealing with pre-authorization by the insurer are not set out or reflected in the EAPWDR, and while the ministry argues that it does not process requests for dental services, a plain reading of section 4.1(1)(d) of Schedule C of the EAPWDR indicates that the appellant must receive the pre-authorization of the minister.

There is no delegation of authority under the Regulation for pre-authorization by the insurer without any input from the minister, and there is nothing in the Regulation stating that requests for pre-authorization must be in a specific form and manner as prescribed by the minister. Regardless of whom the letter from the dentist is addressed to, the evidence is that the appellant sought the pre-authorization of the minister for a crown and bonded composite core on May 25, 2016, approximately three weeks before her scheduled treatment. She then followed up with the ministry and the clinic as evidenced by her descriptions and records of phone calls.

While the ministry confirmed at the hearing that the proper procedure for seeking preauthorization was not followed, the Regulation authorizes the minister to make pre-authorization decisions. In this case, the appellant's dental work was authorized after the work was performed [as indicated by the phone call from HAB on June 28, 2016] but the ministry was processing the request for pre-authorization well before the crown procedure took place on June 16, 2016 and the clinic told the appellant that she would be reimbursed for her deposit after the fact, once the ministry approved the funding.

Regardless of when the ministry communicated approval for the dental supplement, the evidence is that the ministry had the information required [in the letter from the dentist] to make a pre-authorization decision before the procedure was performed, was processing the request for a dental supplement for crown and bridgework before the procedure was performed, and denied the funding at the reconsideration on the basis that the procedure for preauthorization in the ministry's policy was not followed. The panel finds that the ministry unreasonably denied the dental supplement for crown and bridgework on the basis of procedural and policy requirements that are not reflected in the Regulation.

Accordingly, the panel finds that the ministry failed to base its decision to deny the supplement on the applicable provision in section 4.1(1)(d) of Schedule C of the EAPWDR. The panel therefore finds that the denial of dental coverage for a full cast metal crown and bonded composite core was not a reasonable application of the applicable enactment in the circumstances of the appellant.

Conclusion

The panel found that the ministry was reasonable in denying a dental supplement for root canals under fee codes 33135 and 33145, radiographs in excess of financial and frequency limits, and as a life-threatening health need under the EAPWDR. The panel also found that the ministry's denial of a dental supplement for a full metal cast crown and bonded composite core was made pursuant to procedures and policy that do not accurately reflect all of the requirements in section 4 of Schedule C of the EAPWDR. The panel therefore finds that the ministry's reconsideration decision was not a reasonable application of the applicable enactment in the circumstances of the appellant. The panel rescinds the decision pursuant to section 22(4)(b) of the *Employment and Assistance Act* and the appellant is successful in her appeal. The panel refers the decision back to the minister for a decision as to amount.