

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated October 20, 2016, which denied the appellant's request for a supplement to cover a portion of the cost of dental services. The ministry found that the services requested are not included in the "basic dental service" pursuant to Section 4, or "emergency dental service" under Section 5, or as a "crown and bridgework" under Section 4.1 of Schedule C to the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), and that the ministry is not authorized to provide coverage for fees in excess of the rates set out in the appropriate Schedule of Fee Allowances.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 63, 63.1, 64 and Schedule C, Sections 1, 4, 4.1 and 5.

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

## PART E – Summary of Facts

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

- 1) Estimate from a dental clinic dated September 7, 2016 indicating a list of services totaling \$5,135 and insurance expected of \$886.55;
- 2) Statement from the clinic dated September 8, 2016 indicating a list of services totaling \$193.80, less a patient payment of \$80.35, for a balance owing of \$113.45;
- 3) Pacific Blue Cross (PBC) statement dated September 8, 2016 indicating total dentist billing of \$5,135 and an eligible amount of \$2,414.43; and,
- 4) Request for Reconsideration dated October 5, 2016, with attached letter.

In the letter dated September 5, 2016 attached to the Request for Reconsideration, the appellant's mother wrote that:

- At the appellant's previous visit to the dentist in October 2006, he had a wisdom tooth extracted and the appointment did not go well. The appellant found this traumatic and would not return to a dentist.
- She finally persuaded the appellant to see another dentist who discussed the need for immediate treatment as 3 wisdom teeth are broken and these teeth and some cavities will be causing pain and infection very soon.
- She and the appellant's father were aware that the ministry probably would not approve payment for sedation and they understood that dentists may charge more than the fee guide, but they were stunned to see the bottom line on the estimate.
- Neither they nor the appellant can afford to pay the bill.
- It is prudent for the appellant's mental and physical health not to wait until he needs emergency treatment, antibiotics and pain killers.

### ***Additional information***

In the Notice of Appeal dated October 31, 2016, the appellant's mother wrote that:

- They understood from the start of this process that the appellant would not be eligible for full coverage of the total bill, including sedation and the difference between the dentist's rate and the 2010 fee schedule.
- They are requesting coverage for the part of the bill that PBC approved (\$2,414.43) for all the items set out in the Schedule of Fee Allowances.
- The appellant only had occasional discomfort but they think that with 3 wisdom teeth broken at the gum line and 17 teeth with cavities, some with extensive decay, pain is imminent.
- If they wait for his next two \$1,000 [limits] in 2017 and 2019, not only would the appellant be in pain, there would be no coverage remaining for preventative cleaning until 2019.
- The dentist will provide a note if required.
- They believe it is unfair that the appellant, or any other person with a disability, should be denied basic dental treatment until he is in pain or it becomes an emergency.

Prior to the hearing, the appellant provided an undated letter in which his dentist wrote that:

- The appellant was seen in the dentist's office on October 12, 2016 for extensive and necessary treatment of his dental disease.
- Extensive dental treatment and complex surgical intervention was performed at that time; not only did the appellant have active and extensive dental decay, but also a more urgent matter of acute pericoronitis and alveolar abscess on both 38 and 48 grossly decayed and partially impacted wisdom teeth.

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- Due to the extent of the infection and disease process, urgent attention was required and post-operative complications were minimal.

The appellant attended the hearing with his parents who acted as his advocates. At the hearing, the appellant and his parents stated that:

- Nowhere in the information provided by the ministry did it say that the ministry required confirmation from the dentist that the dental services were emergency dental services. It would have been helpful if this information was communicated by the ministry up front because they did not know this was required until well after the reconsideration denial. They did not seek the assistance of an advocate.
- The appellant did not have pain at the time, although he did have discomfort and that they would not lie about the degree of pain.
- They realized that the ministry would not pay for the fluoride treatment or for sedation, but they thought that the ministry would pay for all of those services that are covered in the Schedules since the appellant was finally seeing a dentist that he trusted.
- They had to go ahead with the dental services and they have paid the bill. They did not want the required dental work to be drawn out and it has been a great benefit to the appellant to get this work done. He has changed his dental habits and he is feeling much better.
- They received the balance of the \$1,000 maximum from the ministry towards the total bill.
- They received a reconsideration package, which included a list of local advocates as well as a list of places providing subsidized dental work.

The ministry relied on the facts set out in the reconsideration decision as summarized at the hearing. The ministry clarified at the hearing that:

- The \$1,000 maximum is for a two-year period and there was a typographical error in the reconsideration decision, which stated that the appellant would have another \$1,000 for basic dental services "...as of January 1, 2016," rather than January 1, 2017.
- There is no carry-over permitted to the following year for services incurred in the previous year.
- The ministry received the letter from the dentist approximately 4 days prior to the hearing.

### ***Admissibility of Additional Information***

The ministry objected to the admissibility of the undated letter from the dentist and argued that it relates to treatment which occurred on October 12, 2016 after the reconsideration process was underway and there was no evidence of a need for emergency dental services at the time of reconsideration. The appellant argued that the appellant was in need of dental services and the letter from the dentist confirms the extent of the services required and is in support of the appellant's request, which is information the ministry had at reconsideration.

The panel reviewed the undated letter, which referred to extensive infection and a need for urgent attention. The panel notes that this information was not before the ministry at reconsideration. At reconsideration, the appellant's parents acknowledged that there was no need for emergency dental services as they wrote that it seems prudent "not to wait until he needs emergency treatment, antibiotics, and pain killers." The panel finds that the undated letter does not corroborate the information before the ministry at reconsideration, is not in support of the information and records before the ministry at reconsideration pursuant to Section 22(4) of the *Employment and Assistance Act* and is, therefore, not admissible.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover a portion of the cost of dental services, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances. The ministry found that the services requires are not included in the "basic dental service" pursuant to Section 4 or "emergency dental service" under Section 5 or as a "crown and bridgework" under Section 4.1 of Schedule C of the EAPWDR, and that the ministry is not authorized to provide coverage for fees in excess of the rates set out in the appropriate Schedule of Fee Allowances.

The EAPWDR provides as follows:

### **Dental supplement**

- 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 . . .

Schedule C of the EAPWDR sets out:

### **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).

Section 1 of Schedule C further defines "basic dental service" as follows:

"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 . . .

### **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 . . .

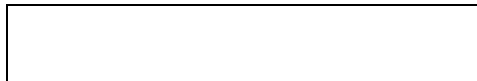
Schedule C of the EAPWDR also provides:

### **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 office of 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. . . .

### **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 . . .

Schedule C of the EAPWDR also provides:

**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.

Section 1 of Schedule C further defines "emergency dental service" as follows:

"**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 . . .

**Preamble Schedule of Fee Allowances- Dentist**

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<sup>st</sup> of every odd numbered year.

**Schedule of Fee Allowances- Emergency Dental- Dentist**

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

Emergency Dental and Denture Supplements is available for all eligible Ministry of Social Development clients, including those who do not have a 2-year limit under the Ministry's Dental Supplements or those who have exhausted their limit. ... 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.

*Ministry's position*

The ministry has determined that the appellant is a Person With Disabilities (PWD) and is, therefore, eligible to receive the health supplements set out in Schedule C of the EAPWDR; however, the ministry's position is that the appellant's request for a supplement to cover a portion of the cost of dental services is not included in the "basic dental service" pursuant to Section 4 or "emergency dental service" under Section 5 or as "crown and bridgework" under Section 4.1 of Schedule C of the EAPWDR. The ministry argued that it is not authorized to provide funding for the dental services listed under fee codes 16301, 92424, and 92435 as they are not set out in the associated Schedules of Fee Allowances. The ministry argued that the appellant is not eligible for coverage of Topical Fluoride Treatment as he is not under 19 years of age, as required in the Schedule of Fee Allowances- Dentist. The ministry argued that there is a maximum amount of \$1,000 that may be paid for a two-year period for basic dental services and the appellant is eligible for \$886.55, or the balance remaining for the two year period from January 1, 2015 to December 31, 2016. The ministry argued that while this limit for dental services may be exceeded if the services qualify as "emergency dental services," there was no indication that the appellant required emergency dental services for the immediate relief of pain and to control infection or bleeding or that his health or welfare was immediately jeopardized.

*Appellant's position*

The appellant's position is that in September 2016 his dentist recommended immediate treatment as 3 broken wisdom teeth and some cavities would be causing pain and infection very soon. The appellant, through his parents, argued that it was prudent for his mental and physical health to not wait until he needed emergency treatment, antibiotics and pain killers, and he therefore proceeded to have the dental work completed. The appellant acknowledged that he would not be eligible for full

coverage of the total bill, including sedation and the difference between the dentist's rate and the 2010 fee schedule, and he requested coverage for the part of the bill that PBC approved (\$2,414.43) for all the items set out in the Schedule of Fee Allowances- Dentist. The appellant argued that it is unfair that he was not advised that a letter was needed from his dentist and that he, or any other person with a disability, should be denied basic dental treatment until they are in pain or it becomes an emergency situation.

*Panel's decision*

The appellant does not dispute that some of the dental services as outlined in the PBC statement dated September 8, 2016, indicating total billing of \$5,135, are not included in the related Schedules of Fee Allowances, or are included at a reduced rate compared to the amount charged by the dentist for the service. He requested coverage for the part of the bill that PBC approved (\$2,414.43). Section 4(1.1) of Schedule C of the EAPWDR stipulates that the health supplements that may be paid for dental work are "basic dental services" to a maximum of \$1,000 each period, defined in Section 4(1)(b) to be a two year period, and the appellant does not dispute that the ministry had already paid \$113.45 for basic dental services in the two year period, leaving \$886.55 remaining in that period, for which the ministry found the appellant eligible.

Section 5 of Schedule C specifies that the health supplements to be paid for under Section 64 of the EAPWDR are "emergency dental services," and Section 1 of Schedule C further defines "emergency dental service" to mean a dental service necessary for the immediate relief of pain that, if provided by a dentist, is set out in the Schedule of Fee Allowances – Emergency Dental – Dentist and is provided at the rate set out in that Schedule. The Preamble to the Schedule of Fee Allowances- Emergency Dental-Dentist extends coverage to those who have exhausted their two-year limit for those emergency dental services required "...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."

There was no evidence that the appellant's dental services were necessary for the immediate relief of pain and the appellant's mother wrote in the Notice of Appeal that the appellant only had "occasional discomfort" although they thought that, with 3 wisdom teeth broken at the gum line and 17 teeth with cavities, pain would be imminent. While the appellant's mother wrote at reconsideration that the dentist discussed the need for immediate treatment or the appellant's condition would be causing pain and infection "very soon," she also acknowledged that they considered it would be prudent not to wait until the appellant needed emergency treatment, antibiotics and pain killers, and he therefore proceeded to have the dental work completed. The panel finds that the ministry reasonably determined that there was insufficient information to establish that the appellant required emergency dental services for the immediate relief of pain and to control infection or bleeding or that his health or welfare was immediately jeopardized as set out in the above-noted Schedule.

The appellant argued that it is unfair that he was not advised that a letter was needed from his dentist regarding his need for emergency dental services and that it is also unfair that he, or any other person with a disability, should be denied basic dental treatment until they are in pain or it becomes an emergency situation. However, the appellant's mother acknowledged receiving the list of local advocates to act as a potential resource for the appellant's reconsideration, and these were not pursued, and she also received the ministry's Reconsideration and Appeals brochure that states that additional documentation or information may be provided to support one's case. The panel finds that the ministry reasonably applied Sections 1 and 5 of Schedule C of the EAPWDR in conjunction with

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the Preamble to the Schedule of Fee Allowances- Emergency Dental- Dentist. Under the EAPWDR, the ministry is not afforded the discretion to waive the requirements as detailed in the legislation.

*Conclusion*

In conclusion, the panel finds that the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover a portion of the cost of dental services that are not included as "basic dental service," "emergency dental service," or "crown and bridgework" under Schedule C to the EAPWDR, was a reasonable application of the applicable enactment in the appellant's circumstances, and the panel confirms the decision. The appellant's appeal, therefore, is not successful.