

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated March 30, 2017 that denied the appellant’s request for coverage for pit and fissure sealants for two dependent children because the ministry determined that the children did not meet the eligibility requirements to receive pit and fissure sealants under section 72 of the *Employment and Assistance Regulations (EAR)* and section 7 of Schedule C and the associated Schedule of Fee Allowances - Dentist. Specifically, the ministry determined that the appellant’s children were not eligible to receive pit and fissure sealants because they were both 15 years of age or older when they received the treatments and the Schedule of Fees-Dentist specifies that such treatments are only paid for children under 15 years of age.

PART D – Relevant Legislation

EAR section 72
EAR Schedule C sections 1 and 7

PART E – Summary of Facts

With the consent of both parties the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* (EAA).

The documentary evidence before the ministry at reconsideration included the following:

1. A letter from the appellant's dentist dated December 15, 2016 on behalf of appellant's child A. The letter is addressed to the Ministry of Housing & Social Development and notes that under the ministry policy " . . . Sealants are covered up to & including age 14." The letter goes on to argue that " . . . the age for sealants should be covered up to and including the month they turn 19 as per the healthy Kids program for basic procedures."
2. A letter from the appellant's dentist dated December 15, 2016 on behalf of appellant's child B. This letter is essentially the same as the one above except that the dentist added the following comment "*Patient turned 15 on (date) which means we missed the eligibility date less than 2 mths.*"
3. A 4-page statement providing Claim Details for dental services provided for child A on September 26, 2016; October 7, 2016; November 21, 2016; November 28, 2016 and December 12, 2016 including pit and fissure sealants.
4. A 4-page statement providing Claim Details for dental services provided for child B on September 26, 2016 and November 28, 2016 including pit and fissure sealants.
5. The appellant's *Request for Reconsideration* dated March 16, 2017. The appellant submitted two Requests – one on behalf of each child. On behalf of Child A the appellant stated that the dentist felt that this was a necessary procedure and child A has been 15 years of age for only two months when the procedure was done. The rest of the information provided by the appellant is argument and is addressed in Part F. On behalf of Child B the appellant stated that this child has weak teeth and that sealants may reduce future dental costs for the Healthy Kids program. In addition, the appellant stated that the dentist feels that this treatment is part of healthy tooth care. The rest of the information provided by the appellant is argument and is addressed in Part F.

The appellant's *Notice of Appeal* was signed and dated on May 4, 2017. The appellant gave the following reasons for her appeal: "*Sealants is a simple preventative that can protect the teeth from decay, regardless of your age. Healthy Kids program is available for children up to age of 19. Sealants are only covered up to age 14. Reconsideration for age should be changed to 19. Why should a patient wait for a tooth to decay when it can treat it earlier. More cost efficient.*"

The *Reconsideration Decision* was dated March 30, 2017 and stated that the health supplements that the minister is authorized to provide under section 72 and Schedule C, section 7 of the EAR are "basic dental services". A "basic dental service" is defined in Schedule C, section 1 as a dental service that is provided by a dentist, is included in the Schedule of Fee Allowances-Dentist, and is provided at a rate set out in that Schedule. The ministry noted that in the Schedule of Fee Allowances-Dentist there is a note regarding eligibility for pit and fissure sealants that states: "*Sealants will be paid once per tooth per lifetime on permanent caries-free occlusal surfaces on bicuspid and molars for children under 15 years of age. If an occlusal restoration is necessary within one year of a sealant, the fee for the sealant will be deducted from the restoration charge if performed by the same practitioner.*" The ministry noted that both child A and child B were 15 years of age or

older on the dates the dental services were provided and therefore did not meet the eligibility criteria. The ministry stated that there is no exception to the policy for coverage for pit and fissure sealants for children who are 15 years of age or older and the ministry has no discretion in this matter. Consequently the ministry denied the appellant's request.

The appellant did not provide a written submission.

The ministry's written submission was dated June 1, 2017 and confirmed that the ministry submission would be the *Reconsideration Decision*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision that determined that denied the appellant's request for coverage for pit and fissure sealants for two dependent children because the ministry determined that the children did not meet the eligibility requirements to receive pit and fissure sealants under section 72 of the *Employment and Assistance Regulations (EAR)* and section 7 of Schedule C and the associated Schedule of Fee Allowances – Dentist, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant's children were not eligible to receive pit and fissure sealants because they were both 15 years of age or older when they received the treatments and the Schedule of Fees-Dentist specifies that such treatments are only paid for children under 15 years of age.

The relevant legislation is as follows:

From the EAR:

Dental and optical supplements – healthy kids program

72 The minister may provide a health supplement in accordance with section 7 [*dental and optical services – healthy kids program*] of Schedule C to or for a family unit if

(a) the supplement is provided to or for a dependent child in the family unit who is not eligible to receive the supplement under another provision of this Division, and

(b) a person in the family unit is receiving premium assistance under the *Medicare Protection Act*.

Schedule C

Health Supplements

Definitions

1 In this Schedule:

"audiologist" means an audiologist registered with the College of Speech and Hearing Health Professionals of British Columbia established under the *Health Professions Act*;

"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,

Dental and optical services — healthy kids program

- 7 (1) In this section, "**period**" means a 2 year period beginning on January 1, 2009, and on each subsequent January 1 in an odd numbered year.
- (2) Subject to the following limits, the minister may pay under section 72 [*dental and optical supplements — healthy kids*] of this regulation for the following health care services for a child of a person who, when the service was provided, was receiving premium assistance:
- (a) basic dental services, to a maximum total of \$1 400 for each period for all basic dental services provided to the child during the year;
 - (b) basic eyewear and repairs;
 - (c) pre-authorized eyewear and repairs;
 - (d) emergency dental services.

Appellant's Position

The appellant argued that the pit and fissure sealant treatment should be available to children until they are 19 years of age since this is the age that applies to the Healthy kids program. She suggests that this would be more cost efficient. The appellant also argued that child B was only 2 months over the age of 15 when she had the pit and fissure sealant treatment.

Ministry's Position

The ministry argued that the health supplements that the minister is authorized to provide under section 72, and Schedule C, section 7 of the EAR are "basic dental services". A "basic dental service" is defined in Schedule C, section 1 as a dental service that is provided by a dentist, is included in the Schedule of Fee Allowances-Dentist, and is provided at a rate set out in that Schedule. The ministry stated that in the Schedule of Fee Allowances-Dentist there is a note regarding eligibility for pit and fissure sealants that states: "*Sealants will be paid once per tooth per lifetime on permanent caries-free occlusal surfaces on bicuspids and molars for children under 15 years of age. If an occlusal restoration is necessary within one year of a sealant, the fee for the sealant will be deducted from the restoration charge if performed by the same practitioner.*" The ministry noted that both child A and child B were 15 years of age or older on the dates the dental services were provided and therefore did not meet the eligibility criteria. The ministry stated that there is no exception to the policy for coverage for pit and fissure sealants for children 15 years of age or older and the ministry has no discretion in this matter. Consequently the ministry denied the appellant's request.

Panel Decision

The panel notes that child A and child B are eligible for basic dental services as outlined in section 72 of the EAR and section 7 of Schedule C. The panel also notes that section 1 of Schedule C of the EAR specifies that basic dental services are those provided by a dentist and set out in the Schedule of Fee Allowances-Dentist. In the Schedule of Fee Allowances-Dentist there is a note regarding eligibility for pit and fissure sealants that states: "*Sealants will be paid once per tooth per lifetime on*

permanent caries-free occlusal surfaces on bicuspid and molars for children under 15 years of age. If an occlusal restoration is necessary within one year of a sealant, the fee for the sealant will be deducted from the restoration charge if performed by the same practitioner.” The panel concludes that the legislation and ministry policy do not provide the ministry with discretion in their application and it is beyond the mandate of the panel to consider whether and how the relevant legislation might be changed. Since it is uncontested that child A and child B were 15 years of age or older at the time of the treatment in question the panel concludes that the ministry reasonably determined that the appellant’s children had not satisfied the eligibility criteria for that treatment contained in section 72 of the EAR and section 7 of Schedule C of the EAR.

CONCLUSION

The panel finds that the Ministry’s decision dated March 30, 2017 that found that the appellant’s children were not eligible for coverage for pit and fissure sealants, was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the Ministry decision; the appellant is not successful in her appeal.