

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the “ministry”)’s reconsideration decision dated March 8, 2017, finding the appellant is not eligible to receive funding for a ceramic crown because she does not meet the eligibility requirement for such a crown in section 4.1(2)(a) and 4.1(2)(b) of Schedule C to the Employment and Assistance for Persons with a Disability Regulation (EAPWDR).

## PART D – Relevant Legislation

The relevant legislation is sections 63, 63.1 and 69 of the EAPWDR and sections 4 and 4.1 of Schedule C of the EAPWDR.

## PART E – Summary of Facts

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

4. The appellant's Request for Reconsideration containing a letter in which she states:
  - i. This is her third application for this crown;
  - ii. The current stainless steel crown, installed about 15 years ago in order to stabilize the tooth following the extraction of the tooth ahead of it, has become unstable and needs to be replaced;
  - iii. The current stainless steel crown causes her discomfort and pain due to the fact that it has deteriorated and become sharp on certain edges, is higher than the surrounding teeth and is difficult to keep clean;
  - iv. The current stainless steel crown also causes her pain because she has an allergy to all stainless steels except gold and silver so that this crown causes an allergic reaction in her mouth.
5. A Pacific Blue Cross ("PBC") application form dated January 10, 2017, for a ceramic crown completed by the appellant's dentist.
6. A letter from PBC to the appellant's dentist dated January 10, 2017, stating that the appellant's request for a crown or bridge is denied because (i) "the documentation provided does not indicate that the dental condition precludes the provision of restorative services set out under the Restorative Services section of the Ministry of Housing and Social Development Schedule of Fee Allowances – Dentist"; (ii) "the clinical explanation submitted does not confirm that this patient's needs cannot be met through the MSDSI Basic Dental Program"; and (iii) "the information provided does not confirm that one of the circumstances listed above under subsection [4.1(2)(b) of the EAPWDR] exists.
7. A copy of the appellant's previous 2 applications for the ceramic crown.

### Additional Evidence

The appellant submitted a number of documents at appeal which were not before the ministry at the time of the reconsideration decision. These are:

1. A submission from the appellant's advocate dated May 15, 2017, which argues that the appellant does qualify under section because:

*We know that the professional opinion of the dentist is to NOT extract the tooth, as stated in his letter, and to replace the temporary stainless steel crown with a zirconia crown. Ergo, the dental condition precludes the use of a removable prosthetic.*

*Further, the allergic reaction and intolerance of the stainless steel in her due to mast cell disease that [the appellant] suffers from preclude the use of stainless steel in her mouth, again as stipulated by [the dentists] letter and [the appellant's specialist's] confirmation.*

2. A letter dated April 19, 2017, from an allergy, asthma and clinical immunology specialist stating that the appellant "has mast cell activation disorder. She is sensitive to variety of environmental factors and will need to minimize exposure to these."

3. A letter from the appellant's dentist dated May 2, 2017 which states:

*This tooth has a stainless steel crown which is significantly worn. There is no indication to extract the tooth, and given the fact that she is missing tooth #36, it is highly advisable to keep this molar to reduce the occlusal load from shifting to her anterior teeth. The consequences of this would be premature wear and breakdown of these otherwise healthy teeth. Given [the appellant's] chemical and stainless steel allergies and sensitivities, a zirconia crown would be recommended and benefit her the most.*

4. A number of publications concerning Mastocytosis and mast cell activation disorders.

In accordance with section 22(4) of the Employment and Assistance Act, the panel must determine whether this additional evidence is admissible or not. In order to be admissible, the evidence must be in support of evidence that was before the ministry at the time of the reconsideration decision. If it is new evidence that is not in support of evidence that was before the ministry at the time of the reconsideration decision then it is not admissible.

In this case, the panel finds that these items of additional evidence speak to the appellant's need for a new, non-stainless steel crown, which was information in the appellant's request for the crown and in her reconsideration request and so are admissible as they do not contain any new information that was not before the ministry at the time of the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated March 8, 2017, finding the appellant is not eligible to receive funding for a ceramic crown because she does not meet the eligibility requirement for such a crown in section 4.1(2)(a) and (b) of Schedule C to the EAPWDR.

The relevant legislation is sections 63, 63.1 and 69 of the EAPWDR and sections 4 and 4.1 of Schedule C of the 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,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

### 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, or
- (b) a family unit, if the supplement is provided to or for a person in the family unit who
  - (i) is a continued person, and
  - (ii) was, on the person's continuation date, a person with disabilities.

### 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).

### 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.

(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.

This appeal was held by written hearing by consent of the parties in accordance with section 22(3)(b) of the *Employment and Assistance Act*.

### The Appellant's Position

In the appeal submission the appellant's advocate argues that the appellant does meet the requirements of section 4.1(2)(a) and (b) of Schedule C to the EAPWDR because:

*... the professional opinion of the dentist is to NOT extract the tooth, as stated in his letter, and to replace the temporary stainless steel crown with a zirconia crown. Ergo, the dental condition precludes the use of a removable prosthetic.*

And:

*Further, the allergic reaction and intolerance of the stainless steel in her due to mast cell disease that [the appellant] suffers from preclude the use of stainless steel in her mouth, again as stipulated by [the dentists] letter and [the appellant's specialist's] confirmation.*

### The Ministry's Position

The ministry did not make a submission in this appeal.

In its reconsideration decision the ministry states that:

- The information before it does not establish that the dental condition precludes the provision of stainless steel crowns.
- The information before it does not establish that the dental condition precludes the provision of prefabricated plastic crowns.
- The information before it does not establish that one of the circumstances in section 4.1(2)(b) applies to the appellant.

### The Panel's Decision

The panel finds that the appellant requires a new crown; that the appellant's dentist has recommended that the tooth not be removed; and that the appellant suffers from a medical condition that produces an allergic reaction in her mouth to stainless steel crowns.

In order to qualify for a ceramic (or zirconium) crown the appellant must meet the requirements of both section 4.1(2)(a) and 4.1(2)(b).

In order to meet the requirements of section 4.1(2)(a) the appellant must show that "*the dental*

*condition* precludes the provision of the restorative services [a stainless steel crown].“ The advocate’s argument that the appellant has *a medical condition* that precludes the use of stainless steel in her mouth does not meet the requirements of section 4.1(2)(a) which refers to “the dental condition” (i.e. the condition of the tooth itself) not a “medical condition” (here, the appellant’s allergy to metals). In which case it was reasonable for the ministry to find that the appellant did not meet the requirement of this section.

In order to meet the requirements of section 4.1(2)(b) one of the four circumstances listed must apply to the appellant. While there is insufficient evidence to support the propositions that subsections (i), (ii) or (iv) apply to the appellant, the evidence does indicate that the appellant “has an allergic reaction or other intolerance to the composition or materials used in a removable prosthetic” as she has an intolerance of stainless steel. However, as the ministry points out, plastic crowns are available as an alternative to stainless steel crowns under restorative services and there is no indication that the appellant has an intolerance of that material.

As the evidence does not support the appellant’s assertion that she meets the legislative criteria in section 4.1(2)(a) and (b) the Panel finds that the ministry’s reconsideration decision was a reasonable application of the relevant legislation and confirms the ministry’s reconsideration decision.