

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of June 14, 2017 wherein the ministry denied the appellant’s request for coverage for basic dental services (tooth colored restorations for two teeth and anesthesia) set out in section 63 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because the appellant had reached his \$1,000.00 two year limit covering for the period ending December 31, 2018 as stated in Schedule C, section 4(1.1)(b) EAPWDR;

The ministry also determined they are not authorized to provide coverage for the Anesthesia, Parental Conscious Sedation, fee code 392446, as it is not set out in the Schedule of Fee Allowances – Dentist, effective April 1st, 2010;

Further, the ministry determined the appellant was not eligible for emergency dental services under section 64 EAPWDR and Schedule C, section 5 EAPWDR because the dental treatment was not being provided for the immediate relief of pain which is the definition for Emergency dental services set out in Schedule C, section 1 EAPWDR. The ministry noted that the preamble in the Schedule of Fee Allowances expands this definition to include a person who needs immediate attention to control infection or bleeding or if a person’s health or welfare is otherwise immediately jeopardized.

PART D – Relevant Legislation

EAPWDR - section 62,63, and 64 and Schedule C section 1 and 4 and Schedule of Fee Allowances – Dentist, Emergency Dental – Dentist, Crown and Bridgework

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Treatment plan dated May 2, 2017 from dentist (Dr. N);
- Memo from Pacific Blue Cross (PBC) to dentist (Dr. N) advising proposed treatment was not authorized.
- Letter of support from Dr. D dated May 18, 2017 which stated, “After using copious amounts of local anesthetic without success at numbing one side of his lower jaw, I have considered that management with a moderate sedation would hurdle this problem and likely enable to restore some teeth on both sides of his lower jaw in one appointment.
- On the Request for Reconsideration the appellant stated that “request be considered under pain and suffering due to 2 tries by my dentist under local anesthetic and pain being felt during attempted restorative dental”...
- PBC form showing the appellant’s claim details between November 3, 2016 to May 2, 2017. The form indicates the appellant had \$8.70 remaining of the maximum \$1,000 two year limit on April 6, 2017;

On May 2, 2017 the appellant’s dentist, Dr. N, submitted a proposed dental treatment plan to PBC for two tooth restorations and a local anesthetic for approval. The ministry has delegated PBC authority to administer all dental work on their behalf. On May 4, 2017 Dr. N. advised the appellant PBC had denied the proposed treatment plan because he had reached his two-year limit of \$1,000.00 for basic dental treatment and further that they denied the local IV anesthetic sedation because it did not fall under the Schedule of Fee Allowances – Emergency Dental – Dentist. The appellant requested the decision be reconsidered and the ministry requested him to submit all the documents summarizing the denial of the dental services, the Treatment Plan proposal prepared by Dr. N and the PBC Predetermination Form dated May 2, 2017.

The PBC Dental Claim Form showed that on May 2, 2017 the appellant did not have any funds for basic dental services as he had expended his \$1,000.00 limit for the period from January 1, 2017 to December 31, 2018. The period for the health supplement-dental is a two year period beginning January 1, 2003 and on each subsequent January 1 in the odd numbered year the dental supplement is re-instated.

At the hearing, the appellant stated he was appealing the ministry’s decision because he wanted the proposed treatment approved as an emergency dental treatment. The appellant stated that at a previous appointment Dr. D tried to freeze the lower jaw with a nerve block but it didn’t take and so he referred him to Dr. N. who would have to administer a mild sedative so the treatment could be done without pain. The appellant stated he has a low pain tolerance and as soon as the dentist started his procedure he would feel pain. The appellant stated he was advised by Dr. N. the treatment should be done soon and with the anesthetic administered to alleviate the appellant feeling any pain and then all the work that needs to be done at one appointment which would prevent decay and infection from setting in if left untreated. The appellant stated he can’t afford the dental fees and needs the treatment done on an emergency basis as he is aware that he does not have any more funds to pay for basic dental services.

In response to question from the panel the appellant stated the root canal procedure on February 22, 2017 was done under a local anesthetic administered by his dentist.

The panel finds the information from the appellant is admissible as the information surrounding his appointments with the two dentists provided further clarification on the appellant's proposed dental. The panel finds the testimony supports the information and record that was before the ministry at the time of reconsideration and is admissible under Section 22(4) of the Employment and Assistance Act.

The ministry relied on the facts as stated in the Reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration of June 14, 2017 wherein the ministry determined the appellant was not eligible for basic dental services because the appellant had reached his two year limit of \$1,000.00 for the period ending December 31, 2018 as set out in section 63 EAPWDR and Schedule C, section 4(1.1)(b) EAPWDR; also the ministry determined they are not authorized to provide coverage for basic dental services (fee code 392446 Anesthesia, Parental Conscious Sedation) not set out in the Schedule of Fee Allowances – Dentist (Schedule), effective April 1st, 2010;

Further, the ministry determined the appellant was not eligible for emergency dental services under section 64 EAPWDR and Schedule C, section 5 EAPWDR because the dental treatment did not meet the definition for Emergency dental services of being provided for the immediate relief of pain as defined in Schedule C, section 1 EAPWDR. The ministry noted that the preamble in the Schedule expands this definition to include a person who needs immediate attention to control infection or bleeding is a person's whose health or welfare is otherwise immediately jeopardized.

The legislation considered: EAPWDR

Dental supplements

Section 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.

Emergency dental and denture supplement

Section 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,
- (b) a family unit in receipt of hardship assistance, 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.

SCHEDULE C Health Supplements

Definitions

Section 1 In this Schedule:

"basic dental service" means a dental service that

- (a) if provided by a dentist,
 - (i) is set out in the Schedule of Fee Allowances — Dentist that is effective April 1, 2010 and is on file with the office of the deputy minister,
 - (ii) is provided at the rate set out for the service in that Schedule,

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

"emergency dental service" means a dental service necessary for the immediate relief of pain that,

- (a) if provided by a dentist,
 - (i) is set out in the Schedule of Fee Allowances — Emergency Dental — Dentist, that is effective April 1, 2010 and is on file with the office of the deputy minister, and
 - (ii) is provided at the rate set out in that Schedule, and

Dental supplements

Section 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).

Emergency dental supplements

Section 5 - The health supplements that may be paid for under section 64 [*emergency dental and denture supplements*] of this regulation are emergency dental services.

Eligibility for Coverage of Basic Dental Services – Section 63

Ministry Position

The ministry's position is that the health supplement coverage for basic dental services are those set out in Schedule C, section 4 (dental supplements) of EAPWDR. They are for basic dental services and the services provided are set out in the Schedule. The ministry stated that the two tooth restorations the appellant requested are set out in Schedule and would have been approved except the appellant's PBC claims history indicated that on May 2, 2017 the appellant had expended his dental health supplement of \$1,000 for the period of January 1, 2017 to December 31, 2018. The ministry argued it has no discretion to exceed the limit for basic dental services set out in Schedule C of the EAPWDR legislation. The ministry also argued that the proposed Anesthesia, Parental Conscious Sedation, Fee Code 92446 is not set in the Schedule and the ministry has no authority to provide a treatment not set out in the Schedule.

Appellant's Position

The appellant did not argue that he was eligible for basic dental treatment as he knew he had expended his \$1,000.00 limit. The appellant argued the treatment should be approved as emergency dental treatment.

Panel Finding

The evidence is that PBC has the delegated authority to administer dental supplements. The evidence supports the ministry's position that PBC had no authority to approve the treatment. The panel finds the legislation does not authorize the ministry to exceed the basic dental services limit for restorations. The panel also finds the ministry can only provide dental treatment set out in the Schedule and therefore does not have the authority to provide the appellant with Anesthesia, Parental Conscious Sedation, Fee Code 92446 as this treatment is not set out in the Schedule.

The panel finds the evidence reasonably supports the ministry's decision not to approve the proposed dental treatment plan dated May 2, 2017 and was a reasonable application of the legislation in the circumstances of the appellant.

Eligibility for Emergency Dental Services, section 64, Schedule C, section 5

Ministry's Position

The ministry's position is that emergency dental services is defined as a dental service that is for the immediate relief of pain that, if provided by a dentist, is set out in Schedule of Fee Allowances-

Emergency Dental-Dentist (Schedule 1). The ministry stated the preamble in Schedule 1 expands this definition to include a person who needs immediate attention to control infection or bleeding or if the persons health is otherwise immediately jeopardized.

The ministry stated that two of the services requested, tooth restorations under fee code 23314 and 23324, except for the anesthetic are listed in Schedule 1. The ministry argued that information had not been provided from a dental practitioner confirming that the appellant met the definition for emergency dental services or that he met the expanded definition that the dental treatment was required to control infection or bleeding or that the appellant's health or welfare is otherwise immediately jeopardized without treatment.

Appellant's Position

The appellant's position is that he was told by his dental practitioner that he needs the proposed dental treatment for these teeth to avoid decay and infection in the future and needs to have the mild sedation administered so the lower jaw can be numbed and the work completed. The appellant argued he has a low tolerance of pain and needs the mild sedation. The appellant did not provide any evidence that he was experiencing severe tooth pain, bleeding or that either tooth was infected.

Panel Finding

The evidence supports the ministry's position that the dental treatment is not required on an emergency basis. The evidence is that Dr. D.'s letter stated that the appellant required "moderate sedation" - Anesthesia, Parental Conscious Sedation, Fee Code 92446 - as an alternative to a local anesthetic, to enable the provision of the tooth restorations and does not state that the appellant requires the anesthetic for the immediate relief of pain or to control infection. The appellant's evidence is he has a low tolerance for pain and experiences pain when the dentist is doing his procedure which also does not support the definition for emergency dental services or the expanded definition found in the preamble of the Schedule 1. The proposed anesthetic, code 92446, is not listed in Schedule 1 and the ministry is only authorized to provide dental treatments set out in Schedule 1 in accordance with Schedule C, definitions – emergency dental services (a) of the EAPWDR.

The panel finds the ministry's decision to deny restorations as an emergency dental service is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant.

The panel finds the ministry's decision to deny the appellant an Anesthesia, Parental Conscious Sedation, Fee Code 92446 is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant.

Conclusion

Having reviewed and considered the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for basic dental services in excess of the \$1,000.00 limit; that he was not eligible for emergency dental services; and, that the ministry is not authorized to provide coverage for services not listed in the Schedule of Fee Allowances-Dentist, Emergency Dental – Dentist or Crown and Bridgework was reasonable.

Therefore, the panel confirms the ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the Employment and Assistance Act. The appellant therefore is not successful in his appeal.