

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's Reconsideration Decision dated June 13, 2017 which determined that the appellant's request for coverage for basic dental services was denied, because:

- the request for coverage was in excess of the \$1,000 two-year limit for the period January 1, 2014 to December 31, 2016, and
- the amount requested was in excess of the maximum ministry fee allowances for restorations, and

because the ministry is not authorized to provide coverage for basic dental services over the \$1,000 limit except for dentures and because the ministry is not authorized to provide coverage for fees in excess of the maximum fee allowances as a set out in the *Schedule of Fee Allowances - Dentist (SFA)*.

## PART D – Relevant Legislation

*Employment and Assistance for Persons With Disabilities Regulation*, Sections 63 & 64 and Schedule C, Sections 1 definition of "Basic Dental Services", and sections 4 and 5

## PART E – Summary of Facts

### **Nature of the Appellant's Application**

The appellant applied for a dental supplement to repair a tooth but was denied because the ministry found that she had been supplied with basic dental services in excess of what is allowed.

### **Documents and Information Before the Minister at Reconsideration**

The documents and information before the ministry at the time of the reconsideration decision included:

- A. 12 pages of Pacific Blue Cross claim details for the appellant**
- B. Schedule of Fee Allowances-Dentist effective April 1, 2010**
- C. Schedule of Fee Allowances - Crown and Bridgework Effective April 1, 2010**
- D. Request for Reconsideration dated May 30, 2017**

The appellant says that she desperately needs her tooth fixed because it is chipped, has been repaired three times before and that there is no more coverage for it although it is very sharp, painful and constantly cuts her lip.

### **E. The Decision to be Reconsidered**

In the Decision to be Reconsidered ministry says that not all regulatory criteria have been satisfied, and principally that the appellant has received the maximum allowable amount for basic dental service and that she has reached the two-year restoration limit of \$1,000.

### **F. Various Standard Dental Claim Forms With Attachments and Notes as follows:**

<b>Tooth</b>	<b>Date of Bill</b>	<b>Date of Service</b>	<b>Amount</b>	<b>Handwritten Note on the Claim Form</b>
11	May 15, 2017	February 6, 2017	141.99	<i>Please reassess the charges for February 6, 2017 thank you!</i>
35	May 15, 2017	February 20, 2017	96.28	<i>Please reassess the charges for February 20, 2017 thank you!</i>
Fax note from the dentist with attached Standard Dental Claim Forms advising the appellant has another appointment on May 29, 2017 to redo the same restoration on the same tooth; the claim forms are				
11	May 23, 2017	May 15, 2017	141.99	<i>This claim was not even submitted to the ministry due to two-year limits filling for each tooth. This claim <u>will not be paid</u>. Please see attached ministry's fee guide</i>
45	May 23, 2017	July 18, 2016	144.04	<i>with attached partial print of another document advising in part Total for Patient \$144.04 and later on the same line \$36.46</i>

**Information Provided on Appeal**

The appellant did not attend the appeal at the time set for the hearing to begin. The panel confirmed that the appellant had been notified of the time of the hearing, by registered mail delivered to the appellant on July 4, 2017. Pursuant to section 86(b) of the *Employment and Assistance Regulation*, the panel, being satisfied that the appellant was notified of the hearing, commenced the hearing in the absence of the appellant.

Approximately 20 minutes after the scheduled start time for the hearing, the appellant joined the hearing by teleconference, was advised that the hearing was almost concluded, but was given an opportunity to speak. After asking some questions of the ministry, the appellant disconnected from the teleconference hearing. The hearing concluded, and during the panel's deliberations, after the ministry representative had left hearing, the appellant again connected and was told that the hearing was concluded and the panel was now deciding. She was asked to disconnect and it did so.

**Appellant's Additional Evidence**

The appellant submitted no additional evidence.

**Ministry's Additional Evidence**

The ministry submitted no additional evidence.

## PART F – Reasons for Panel Decision

### Issue on Appeal

The issue on appeal is whether the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated June 13, 2017, to deny the Appellant's request for coverage for basic dental services was reasonably supported by the evidence or was a reasonable application of the applicable enactment, namely *EAPWDR* sections 4 & 5 and Schedule C, section 4 in the circumstances of the Appellant. The ministry denied the application because:

- the appellant's request for coverage was in excess of the \$1,000 two-year limit for the period January 1, 2014 to December 31, 2016, and
- the amount requested was in excess of the maximum ministry fee allowances for restorations, and

because the ministry is not authorized to provide coverage for basic dental services over the \$1,000 limit except for dentures and because the ministry is not authorized to provide coverage for fees in excess of the maximum fee allowances as a set out in the *Schedule of Fee Allowances – Dentist (SFA)*.

### Relevant Legislation

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

#### 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.

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#### 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,
- (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 – Definitions

"**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,

#### 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).
- (c) Repealed. [B.C. Reg. 163/2005, s. (b).]

### **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.

### **General Scheme of the Legislation**

The general scheme is that under section 63 *EAPWDR* an individual who is in receipt of disability assistance may be provided with dental services to a maximum of \$1,000 in any two year period; a period is defined as a two-year block of time beginning January 1, 2003 and thereafter every second January 1 in an odd numbered year, and specific amounts which may be paid for specific dental services within the varying time periods.

#### **Sections 63 & 64 *EAPWDR***

Section 63 *EAPWDR* is the authority for the minister to provide a dental supplement to an individual who is in receipt of disability assistance and section 64 is the minister's authority to provide emergency dental supplements.

#### **Schedule C, Sections 4 & 5 *EAPWDR***

Schedule C defines "*basic dental service*" as a dental service that is provided according to the Schedule of Fee Allowances-Dentist. That Schedule sets out in detail the types of services and the frequency with which they may be provided as well as providing a prescribed fee for each service.

Schedule C, Sections 4 & 5 *EAPWDR* provide that a person may be provided with a maximum of \$1,000 basic dental services in a "period", which is a two-year block of time beginning January 1, 2003 and then on January 1 in subsequent odd-number of years. The dollar amount of services provided are subject to specific limitations for specific types of dental work as set out in the *SFA*.

The *SFA* sets out, with respect to some, but not all, services how frequently specific services may be provided at ministry expense. There are various periods of time within which a service of one sort or another may be provided. For example a person may have a Retentive Post placed only once per tooth in a five-year period, an intra-oral incision and abscess drainage is limited to once per tooth per lifetime, and services of the type that the appellant sought approval for is limited to 5 surfaces (or the dollar equivalent) per tooth in a two-year period.

The ministry denied coverage, saying that the appellant had reached the maximum allowance for tooth restorations for a specific tooth for the two-year period of March 1, 2015 to March 1, 2017. The ministry said that as the maximum allowance had been reached, the appellant was not eligible for further restoration for that tooth, which was performed February 6, 2017, as it was within the 2-year period. The ministry said that there was no exception "in policy" and the ministry has no discretion.

## Parties' Positions at Appeal

### *Appellant's Position*

The appellant's position was that she was in a lot of pain, the tooth that she wished repaired, tooth 11, was jagged and cuts into her and it looks like the tooth is going to break off more. She did not understand why she would be denied the cost of repairing tooth 11 since the legislation provides that she is entitled to a dental supplement of \$1,000 in fixed two-year periods consisting of an all odd-numbered year followed by an even-numbered year. Her position was that any dental supplement provided to her before January 1, 2017 should not count toward a dental supplement for the period January 1, 2017 to December 31, 2018. She said she should be entitled to enough money to pay for the dental work required on the particular tooth.

### *Ministry Position*

The ministry's position was that when dental supplements are being considered, there are two calculations of time entitlements:

- (a) a fixed period consisting of an odd-numbered year followed by an even-numbered year, during which a person is entitled to \$1,000 in dental supplements. This is the "two-year period" set by section 4(1)(b) of Schedule C, and
- (b) various periods of time, which the ministry representative termed as "floating periods" which are for various supplements referred to in the *SFA*. In the appellant's case when one is dealing with a particular tooth, the "floating period" begins when work is first done on that particular tooth and consists of an allowance of \$171.65 that may be spent on that tooth during the ensuing two years (beginning when work was first done on that tooth).

### *Panel Finding*

The panel observes that the term "*period*" as defined in Schedule C section 4(1)(b) to mean "*a 2 year period*" consisting of a length of time beginning January 1 in an odd-numbered year and ending December 31 in the subsequent even-numbered year can lead to confusion when that same phrase "*a 2 year period*" is used in the *SFA*.

The panel finds that within the *SFA*, there are a number of time periods prescribed and that to interpret the phrase "*a two-year period*" within the *SFA* as meaning the same as when that phrase is used in section 4(1)(b) of Schedule C (that is a fixed 2-year period) would not be consistent with how other periods of time are clearly used in the *SFA*. To interpret only the *SFA* phrase "*a two-year period*" as meaning a fixed period from January 1 of an odd-numbered year to December 31 of the subsequent even-numbered year, but interpret other *SFA* time periods as commencing when service is provided to a particular tooth and ending (for example) 90 days or 5 years or 2 years later would be inconsistent.

The panel finds that there are two different time period calculations used in the legislation; a 2-year fixed period during which an individual may receive up to \$1,000 in dental services, and various periods (which the ministry refers to as "floating periods") which begin on the happening of a particular event (such as the first repair on a particular tooth, as was the case here) and end on the happening of some other prescribed event, such as the expiry of 90 days, 5 years, or 2 years as was the case here.

The panel finds that while the total dental supplement the appellant is entitled to is \$1,000 in fixed 2-year periods, in this case each of the periods January 1, 2015 to December 31, 2016, and then in the next fixed 2-year period from January 1, 2017 to December 31, 2018, that \$1,000 in each fixed 2-year period is subject to the limitations for each type of dental service provided set out in the *SFA*.

The limit prescribed in respect of the tooth the appellant needs repaired is described by fee item 23115, which is a maximum of \$171.65 in a “floating period”, specifically the 2-year period which began in March 1, 2015, when the appellant had work performed on tooth 11, and ended March 1, 2017.

The appellant had work done on tooth 11 on March 2, 2015 for \$75.47 and more work on tooth 11 on January 10, 2017 for \$96.18, which totals \$171.65, the maximum permitted for that one tooth (tooth 11) within the “floating” 2-year period. Therefore on January 10, 2017 the appellant had reached the maximum amount payable for tooth 11 and would not be eligible for further work on it until after March 1, 2017.

Therefore, the claim for \$141.99 for service on February 6, 2017 was after the date when the maximum amount for tooth 11 had been reached, and the appellant was not eligible for services provided for tooth 11 on February 6, 2017.

The panel finds that in the case of the appellant, as was argued by the ministry, she had reached the maximum permitted for services to tooth 11 as at January 10, 2017, and was not eligible for further services for tooth 11 until after March 1, 2017.

### **Conclusion**

Having reviewed and considered all the evidence and relevant legislation, the panel finds that the ministry’s reconsideration decision, which determined that the appellant was not eligible for the dental supplement claimed, was reasonably supported by the evidence and was a reasonable application of the applicable enactment, and confirms the ministry’s reconsideration decision dated June 13, 2017.

The appellant is not successful in her appeal.