

APPEAL NUMBER
2020-0182

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated July 17, 2020 which held that the appellant was not eligible for coverage of the cost of either Isolation of Endodontic Teeth (Fee Code 39101) or Root Canal – Calcified (Fee Code 33134).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disability Act (EAPWDA), section 25
Employment and Assistance for Persons With Disability Regulation (EAPWDR) sections 57(3), 63, 63.1, 64, 69.
PWDR Schedule C, sections 1, 4, 4.1 and 5.

PART E – SUMMARY OF FACTS

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

1. The appellant is a member of a family unit in receipt of disability assistance;
2. The appellant was experiencing extreme pain and trouble sleeping because of tooth pain;
3. The appellant had missed work because of tooth pain; and
4. On July 7, 2020, a Dentist recommended the applicant undergo two procedures – the Isolation of Endodontic Tooth 47 and a Root Canal on Tooth 47.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision that the appellant was not eligible for coverage of the cost of either Isolation of Endodontic Teeth (Fee Code 39101) or Root Canal – Calcified (Fee Code 33134) was reasonably supported by the evidence or a reasonable application of the enactment in the appellant's circumstance.

The Relevant Legislation

EAPWDA, section 25, permits the minister to delegate to any person any or all of the minister's powers, duties or functions.

- 25 (1) Subject to the regulations, the minister may delegate to any person or category of persons any or all of the minister's powers, duties or functions under this Act except
- (a) the power to prescribe forms, and
 - (b) the power to enter into an agreement under section 21 (2) or (2.1), unless section 21 (2.2) applies in relation to the agreement.

EAPWDR, section 57 authorizes the minister to provide a crisis supplement in specific circumstances.

- 57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if
- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
 - (b) the minister considers that failure to meet the expense or obtain the item will result in
 - (i) imminent danger to the physical health of any person in the family unit, or
 - (ii) removal of a child under the Child, Family and Community Service Act.
- (2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.
- (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or
 - (b) any other health care goods or services.

EAPWDR, sections 63 and 63.1 authorizes the minister to provide certain health supplements as described in Schedule C of the regulation.

- 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 under 19 years of age, 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.
- 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.

The portions of Schedule C that are relevant to sections 63 and 63.1 are:

1 "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 September 1, 2017 and is published on the website of the ministry of the minister, and

(ii) is provided at the rate set out in that Schedule for the service and the category of person receiving the service,

4 (1) In this section, "period" means

(a) in respect of a person under 19 years of age, a 2 year period beginning on January 1, 2017, 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) \$2 000 each period, if provided to a person under 19 years of age, and

(b) \$1 000 each period, if provided to a person not referred to in paragraph (a).

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 published on the website of the ministry of the 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 the person 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 the person 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.

The fee codes 39101 (Isolation of Endodontic Teeth) and 33134 (Root Canal – Calcified) are not set out in the Schedule of Fee Allowances – *Dentist* or Schedule of Fee Allowances - Crown and Bridgework.

EAPWDR section 64 permits the ministry to provide an emergency dental supplement for treatments identified in section 5 of Schedule C.

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.

The portions of Schedule C that are relevant to section 64 are:

1 "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 September 1, 2017 and is published on the website of the ministry of the minister, and
 - (ii) is provided at the rate set out in that Schedule for the service and the category of the person receiving the service, and
- (b) if provided by a denturist,
 - (i) is set out in the Schedule of Fee Allowances — Emergency Dental — Denturist, that is effective September 1, 2017 and is published on the website of the ministry of the minister, and
 - (ii) is provided at the rate set out in that Schedule for the service and the category of the person receiving the service;

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

EAPWDR section 69 permits the minister authority to provide certain supplements when there is a direct and imminent life threatening need.

69 (1) 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) the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, 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).

The portions of Schedule C that are relevant to section 69 are:

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [general health supplements] of this regulation:

(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

(i) the supplies are required for one of the following purposes:

- (A) wound care;
- (B) ongoing bowel care required due to loss of muscle function;
- (C) catheterization;
- (D) incontinence;
- (E) skin parasite care;
- (F) limb circulation care;

(ii) the supplies are

- (A) prescribed by a medical practitioner or nurse practitioner,
- (B) the least expensive supplies appropriate for the purpose, and
- (C) necessary to avoid an imminent and substantial danger to health;

(iii) there are no resources available to the family unit to pay the cost of or obtain the supplies;
(a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:

- (i) lancets;
- (ii) needles and syringes;
- (iii) ventilator supplies required for the essential operation or sterilization of a ventilator;
- (iv) tracheostomy supplies;

(a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required to thicken food;
- (ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;

(f) the least expensive appropriate mode of transportation to or from

- (i) an office, in the local area, of a medical practitioner or nurse practitioner,
- (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
- (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
- (iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the Hospital Insurance Act,
provided that
- (v) the transportation is to enable the person to receive a benefit under the Medicare Protection Act or a general hospital service under the Hospital Insurance Act, and
- (vi) there are no resources available to the person's family unit to cover the cost.

3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if

(a) the supplements are provided to a family unit that is eligible under section 62 [general health supplements] of this regulation, and

(b) all of the following requirements are met:

- (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
- (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
- (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
- (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
- (b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

The Appellant's Position

The appellant's representative on appeal questioned the basis for the denial.

The appellant's representative stated that the appellant requested that a Dentist extract the tooth that is causing the pain but that the Dentist refused to extract the tooth. The appellant then spoke with a specialist that also refused to

pull the tooth and only offered to provide a crown after doing a root canal. The appellant's representative told the panel that the reason the Dentist and specialist refused to pull the tooth was because it was an adult tooth and there was a concern that if it was removed other teeth would shift, presumably causing further dental problems.

The appellant's representative emphasized that the dental treatment is not cosmetic in nature; it is a medical necessity. The appellant's representative also told the tribunal that over-the-counter pain relief medication was not effective and that the appellant does not have the resources to afford the treatment that is recommended by the Dentist.

The appellant's representative also informed the tribunal that a person that worked at the ministry told the appellant's representative that there should be coverage and recommended that they get a letter from the dentist about why the dentist would not extract the tooth.

The Ministry's Position

The ministry stated that it has investigated any possible option to provide coverage.

The ministry stated that the treatment requested/recommended by the Dentist is not covered as a basic dental service or emergency dental service and therefore EAPWDR sections 63, 63.1 and 64 do not apply.

The ministry stated that EAPWDR section 57 does not apply to dental service because dental services are exempt from section 57 as "health care goods or services"

The ministry also stated that the dental services required do not qualify as a life threatening health need under section 69 of the EAPWDR. The ministry's position was that dental services do not come within the scope of section 69 of the EAPWDR.

The Panel's Decision

The panel is sympathetic to the appellant's position.

The panel is satisfied that the two treatments - Isolation of Endodontic Teeth (Fee Code 39101) and Root Canal – Calcified (Fee Code 33134) – are not listed in any Schedule of Fee Allowances and therefore are not covered by Schedule C of the EAPWDR. Consequently, sections 63, 63.1 and 64 do not apply.

Section 57(3)(a) of the EAPWDR excludes from coverage a supplement described in Schedule C. The treatment is not described in Schedule C and is excluded from the definition of basic dental service or emergency dental service. Therefore, this exemption does not apply.

Section 57(3)(b) of the EAPWDR excludes from coverage "any other health care goods or services." The EAPWDR uses the word "health" as an umbrella term that includes medical, dental and nutritional goods and services - see for example sections 63, 64 and 69. The panel considered what would be excluded under this section and the panel finds that it applies to health care goods or services that are similar to those described in Schedule C, but not included in Schedule C. The panel has determined that the two treatments for which coverage is sought are sufficiently similar to those included in Schedule C that section 57(3)(b) applies in this situation and excludes the appellant from being entitled to a supplement under EAPWDR section 57.

Section 69 of the EAPWDR requires that a person face "a direct and imminent life threatening need." Although the panel understands that the appellant is experiencing significant pain, there is insufficient information before the panel to establish that there is a direct and imminent life threatening need for the dental services. Furthermore, the panel finds that dental services do not come within the scope of sections 2(1)(a), 2(1)(f) or 3 of Schedule C. Consequently, the panel finds that Section 69 of the EAPWDR does not apply in this situation.

The panel finds that the appellant is not entitled to a supplement or benefit under the EAPWDA or EAPWDR. Therefore, the ministry's decision that the appellant was not eligible for coverage of the cost of either Isolation of

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Endodontic Teeth (Fee Code 39101) or Root Canal – Calcified (Fee Code 33134) was a reasonable application of the enactment in the appellant's circumstance.

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PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 Aug 10

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 Aug 12

PRINT NAME

Michael Skinner

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 Aug 12