

APPEAL NUMBER
2021-0161

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of July 28, 2021 (the “Reconsideration Decision”), in which the Ministry determined that the Appellant was:

- ineligible for a dental supplement under section 63 of the *Employment and Assistance for Persons with Disability Regulation* (“EAPWDR”) in respect of a Porcelain/Ceramic/Polymer Glass Crown (“Fee Code 27201”); and
- eligible for a dental supplements under section 63 of the EAPWDR in respect of a Root Canal, two canals (“Fee Code 33121”) and Permanent bicuspid, Bonded, three surfaces (“Fee Code 23313”) but only up to those rates prescribed in the Schedule of Fee Allowances – Dentist (the “Basic Schedule”), as required by section 1 of Schedule C to the EAPWDR.

PART D – RELEVANT LEGISLATION

EAPWDR- sections 63, 63.1, 64, and 69, Schedule C- sections 1, 4, 4.1 and 5.

PART E – SUMMARY OF FACTS

The Appellant is a recipient of disability assistance.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- the Dental Supplement – Dentist (the “Fee Schedule”), which included the Basic Schedule, the Schedule of Fee Allowances – Emergency Dental – Dentist (the “Emergency Schedule”), and the Schedule of Fee Allowances – Crown and Bridgework (the “Crown Schedule”);
- the Appellant’s Request for Reconsideration (“RFR”), which included:
 - a handwritten note, in which the Appellant:
 - stated that “not having (sic) the treatment done is possessing (sic) a direct and imminent (sic) threat to my health and well being”; and
 - described being in extreme pain and having to take medication to stop infection; and
 - a predetermination summary (the “Predetermination”) which set out the fees charged by the Appellant’s dentist (the “Dentist”) as follows:
 - \$270.00 for Fee Code 23313;
 - \$704.00 for Fee Code 33121; and
 - \$1,339.00 for Fee Code 27201, for which an alternate service was also suggested - namely a Porcelain/Ceramic/Polymer Glass Crown fused to metal base (“Fee Code 27211”).

In the Notice of Appeal, filed August 6, 2021 and completed over the telephone, the Appellant set out, as the reason for the appeal:

"If I don't get the treatment it will directly and imminently impact my health and well being. I am in extreme pain. The Ministry should respect the treatment plan set out by my dentist. When I talk to the supervisor they say there is money available for treatment".

At the hearing, the Appellant was able to describe in more detail some of the background facts. The Appellant described suffering from a brain tumour which makes expressing thoughts somewhat difficult. The Appellant bit an apricot pit in the middle part of May, 2021, which caused damage to three teeth, including one which the Appellant describes as having a hole in it. Since that date, the Appellant describes having been in extreme pain and taking medications regularly to deal with infection. The Appellant also describes having restricted jaw movement.

The Appellant described having had some dealings with Ministry staff, including one individual who informed the Appellant that coverage was available for the treatments being sought on an emergency basis. The Appellant otherwise described frustration from trying to get answers from the Ministry and its insurance coverage provider.

The Appellant described not being able to locate any dentist who could provide the services recommended by the Dentist at the rates set out in the Fee Schedule. The Appellant was also advised that extractions were an option. The Appellant does not want to have teeth extracted as an alternative to the treatments that were recommended by the Dentist. The Appellant stated that extractions would create an imminent health threat, particularly to the Appellant’s long term health, as eating would be more difficult if teeth were extracted. At the hearing, the Appellant was advised that extractions would likely qualify the Appellant for denture supplements but the Appellant stated that denture supplements would likely be more expensive than the costs set out in the Predetermination.

The Appellant stated that the infection and pain is an imminent health threat. The Appellant does not have the funds to pay for the uncovered portions of Fee Code 33121 and 23313 or for Fee Code 27201 and cannot locate any dentist who will perform those treatments at the Ministry rates. The Appellant also described having contacted a charity which advised that it could only assist with the cost of X-rays but could not provide any specific treatments. The Appellant stated that it was impossible to find dentists who would provide services at those rates set out in the Fee Schedule.

The Ministry representative at the hearing stated that the Ministry is limited to providing coverage at the rates set out in the Fee Schedule and that section 69 of the EAPWDR does not provide for coverage of items in sections 4 (Dental Supplements), 4.1 (Crown and Bridgework Supplement), 4.2 (Denture Supplements), or 5 (Emergency dental supplements) of Schedule C, to the EAPWDR. In effect, section 69 applies only to the health items set out in sections 2(1)(a), 2(1)(f), and 3 of Schedule C to the EAPWDR. Those sections refer to medical or surgical supplies, transportation costs, and medical equipment and devices, respectively.

The Ministry representative also advised that Fee Code 27211, described as an alternative treatment to Fee Code 27201 in the Predetermination and which appears in the Crown Schedule, could not be approved because the Dentist had not provided the information required under section 4.1 of Schedule C to the EAPWDR.

Finally, the Ministry representative described a publicly available phone line that recipients of assistance could call to locate dentists who provide services at those rates set out in the Fee Schedule.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was:

- ineligible for a dental supplement in respect of Fee Code 27201 because that service is not among those provided for in the Dental Schedule, the Emergency Schedule, or the Crown Schedule; and
- eligible for dental supplements in respect of Fee Code 33121 and Fee Code 23313 but only up to those rates prescribed in the Basic Schedule, as provided for by section 1 of Schedule C to the EAPWDR.

Panel Decision

To be eligible for a dental supplement under section 63 of the EAPWDR, a recipient must satisfy the basic criteria of that section. As the Appellant is in receipt of disability assistance, the Appellant meets the basic criteria for a dental supplement:

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 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.

Likewise, as a recipient of disability assistance, the Appellant meets the basic eligibility criteria for a crown and bridgework supplement under section 63.1 of the EAPWDR and for an emergency dental and denture supplement under section 64 of the EAPWDR:

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.

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.

In addition to the basic criteria provided for under the EAPWDR, however, the supplements sought must be ones that meet the definitions of “basic dental service” and “emergency dental service” as those terms are defined in section 1 of Schedule C to the EAPWDR:

"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,
- (b) if provided by a denturist,
 - (i) is set out in the Schedule of Fee Allowances — 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 person receiving the service, and
- (c) if provided by a dental hygienist,
 - (i) is set out in the Schedule of Fee Allowances — Dental Hygienist 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;

"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;

Fee Code 27201 is not provided for in the Basic Schedule, the Emergency Schedule, or the Crown Schedule. As such, it is simply not an item for which the Ministry has the legislative authority to provide a supplement.

The panel finds that the Ministry's determination that it could not provide a supplement in respect of Fee Code 27201 was a reasonable application of the EAPWDR in the Appellant's circumstances. While the panel notes the Appellant's comments regarding the cost of the treatment recommended by the Dentist in comparison to the cost of extraction and dentures, it is beyond this panel's jurisdiction to decide the reasonableness of the Fee Schedule itself.

It is also noteworthy that the Appellant may be eligible for coverage of Fee Code 27211, an "alternative" service to 27201, which is a service for which some coverage is available under the Crown Schedule. However, eligibility for Fee Code 27211 would be subject to the Dentist providing further information that satisfies the legislative criteria for a crown and bridgework supplement set out in section 4.1 of Schedule C to the EAPWDR.

Both Fee Code 33121 and Fee Code 23313 appear in the Basic Schedule. However, the rates set out for these items are \$144.04 for adults and \$330.93, respectively. Again, the definition of "basic dental service" in section 1 of Schedule C limits the amount that the Ministry may pay for basic dental services to the rates prescribed in the Basic Schedule. The Ministry has no legislative authority to provide supplements in excess of the rates set out in the Basic Schedule, the Emergency Schedule, or the Crown Schedule. In this case, the panel finds that the Ministry's determination that it was limited to providing supplements at the rates set out in the Dental Schedule for Fee Code 33121 and Fee Code 23313 was a reasonable application of the applicable legislation.

Finally, section 69 of the EAPWDR provides for certain health supplements in cases of persons facing direct and imminent life threatening health need:

Health supplement for persons facing direct and imminent life threatening health 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).

(2) For the purposes of subsection (1) (c),

(a) "adjusted net income" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and

(b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit, other than a dependent child.

Section 69 requires, however, that the person seeking such a health supplement be "otherwise not eligible for the health supplement under this regulation." In this case, the Appellant does meet the basic eligibility for dental supplements under the EAPWDR. As such, the Appellant is not a person who is "otherwise not eligible" for dental supplements. In addition, the supplements that may be provided under this section are limited to the items described in sections 2(1)(a) and (f) and section 3 of Schedule C to the EAPWDR. Those items are not among the items for which the Appellant is seeking a supplement and, as such, are not applicable to the Appellant's circumstances. The panel finds that the Ministry was reasonable in its determination that the Appellant is not eligible for coverage of the items set out in the Predetermination under section 69 of the EAPWDR.

In view of all of the foregoing, the Appellant is not successful in this appeal.

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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)

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

Part H – Signatures

Print Name

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2021/August/24

Print Name

Katherine Wellburn

Signature of Member

Date (Year/Month/Day)

2021/August/24

Print Name

Robert McDowell

Signature of Member

Date (Year/Month/Day)

2021/August/25