

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of January 20, 2022 (the “Reconsideration Decision”), in which the Ministry determined that the Appellant was not eligible to request a reconsideration of the Ministry decision to deny the Appellant’s claim for dental services provided to the Appellant between 2016 and 2019 because the Appellant had not requested a reconsideration of the decision within the time prescribed in section 71(2) of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”).

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (“EAPWDA”)- section 16
EAPWDR- section 71

Part E – Summary of Facts

The Appellant is a recipient of disability assistance. Between 2016 and 2019, the Appellant received a number of dental services at the office of a new dentist after moving dental offices. Claims for services provided were not submitted to the Ministry's dental insurer within the time prescribed by the insurer and were denied when eventually submitted in February, 2021. According to the dentist, the Appellant was notified of the denial by the dentist in both February of 2021 and October of 2021. The Appellant did not request reconsideration until January 7, 2022.

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

- The Ministry's Dental Supplement – Dentist coverage manual (the "Dental Supplement");
- The Appellant's Request for Reconsideration, dated January 5, 2022 (the "January 5 RFR"), in which the Appellant described:
 - the Appellant's history of mental health stresses, including the suicide of a sibling in 2014;
 - how the Appellant came to be a patient of the dental office which did not submit the claims; and
 - that a staff member of the new dental office, who had also been a staff member at the old office, had failed to submit claims for services provided at the new office, despite having done so when employed at the old dental office;
- A Request for Reconsideration, dated January 18, 2018 by the Appellant, but which appears to have been submitted on January 18, 2022 (the "January 18 RFR"), in which the Appellant describes the same issues with the processing of dental claims as was described in the January 5 RFR; and
- A summary of dental services received by the Appellant between July 19, 2016 and July 8, 2019 (the "Claims Summary") and submitted to the Ministry's insurer on February 17, 2021, none of which were paid due to having been submitted more than one year after the services were provided but most of which were for services for which some coverage would have been available had they been submitted within the time prescribed.

The Appellant's Notice of Appeal, dated January 31, 2022, was completed by tribunal staff and no specific reason was set out for the Appellant's disagreement with the Reconsideration Decision.

At the hearing of the appeal, the Appellant went into more detail about a recent history of mental health stressors, including:

- the suicide of the Appellant's sibling in or about 2014;
- an assault on the Appellant in 2018;
- the death of the Appellant's mother in 2020;
- a bike accident in May, 2020

The Appellant described the above incidents as, understandably, having a significant impact on

the Appellant's mental health functioning, particularly as the Appellant continues to reside at the same location where the Appellant's sibling's suicide occurred.

The Appellant had moved dental offices in or about 2016. One of the staff members at the new dental office had also been at the Appellant's old dental office and had been processing claims through the Ministry's insurer there. For reasons that are not clear, the staff member was not submitting claims at the new office between 2016 and 2019 and the Appellant paid the full fees for the services charged. The Appellant described not noticing that the claims set out in the Claims Summary to the Ministry's insurer were not being made, citing the mental health stressors described above and also that the Appellant had ordinarily had regularly had to make some out of pocket payment for dental fees at the old dental office in cases where the Ministry insurers did not provide coverage 100% for the services being provided.

When the claims were eventually submitted, it appears from the Claims Summary, on or about February 17, 2021, the Ministry's insurer denied coverage as they were submitted beyond the one-year limit prescribed by the Ministry's insurer.

The Appellant also gave evidence about:

- having initially contacted the Ministry's insurer about the denial of the claims set out in the Claims Summary;
- having subsequently contacted the dentist's office about the denial on the advice of the Ministry's insurer; and
- having, finally, followed up with the Ministry about the denial before requesting reconsideration.

The Appellant also cited mental health stressors and a lack of access to technology as a reason for the delay in applying for reconsideration of the denial of the dental benefits after becoming aware that they had been denied. The Appellant did not specifically say when the decision to deny the claims was received.

The Ministry advised the panel that it was relying on section 71(2) of the EAPWDR, which requires that, under ordinary circumstances, a request for reconsideration must be submitted within 20 business days after a recipient is notified of a decision that the recipient wishes the Ministry to reconsider.

The Ministry advised that it has some discretion to extend the time to request a reconsideration and occasionally does so by a couple of weeks but, in this case, the Appellant submitted the request up to almost a year after the decision to deny the claims set out in the Claims Summary was communicated to the Appellant. The Ministry also cited that the Appellant had not provided any evidence from a doctor confirming that the Appellant's mental health was a factor in the delayed request for reconsideration.

The panel admits the oral evidence given at the hearing of the appeal as evidence that is not part of the record but that is reasonably required for a full and fair disclosure of all matters related to the appeal.

Part F – Reasons for Panel Decision

Issue Under Appeal

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible to request a reconsideration of the denial, in February, 2021, of the claims set out in the Claims Summary because the Appellant had not made the request for reconsideration within the time prescribed by section 71(2) of the EAPWDR.

Relevant Legislation

The full text of the legislation is after the decision.

Panel Decision

Although the Appellant did not specifically say when the denial of the claims described in the Claims Summary was communicated, the Appellant's evidence about:

- having initially contacted the Ministry's insurer about the denial;
- having subsequently contacted the dentist's office about the denial on the advice of the Ministry's insurer;
- having, finally, followed up with the Ministry about the denial before requesting reconsideration; and
- having delayed applying for reconsideration due to mental stressors and a lack of access to technology

is consistent with the Reconsideration Decision finding that the Appellant was aware of the decision to deny the dental claims some time between February, 2021 and October, 2021.

In either case, the evidence before the Ministry was that the Appellant was aware of the denial of the claims described in the Claims Summary more than 20 days prior to submitting a request for reconsideration on January 7, 2022 and, quite possibly, well more than 20 days prior to submitting the request for reconsideration, the time limit provided for in section 71(2) of the EAPWDR.

In the result, the panel finds that the Ministry reasonably determined that it was not able to reconsider the decision to deny the Appellant coverage for the dental claims set out in the Claims Summary.

As an aside, the panel notes that it is not clear that the Appellant's request for reconsideration could have succeeded, even had it been submitted within the time prescribed in section 71(2) of the EAPWDR. On the evidence, the reason for the denial was that the claims in the Claims Summary had not been submitted on time, an error attributable to the dental office's failure to remit the claims in a timely fashion and the Appellant's failure, although understandable in the circumstances, to note that no insurance coverage was being applied to the fees being charged.

The issue appears to be one that ought properly be worked out between the dental office which made the error and the Appellant.

The Appellant is not successful in the appeal.

Schedule A Legislation

Section 16 of the EAPWDA governs reconsideration and appeal rights for recipients of disability assistance:

Reconsideration and appeal rights

16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;
- (b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;
- (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
 - (i) the maximum amount of the supplement under the regulations, and
 - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
- (e) a decision respecting the conditions of an employment plan under section 9 [*employment plan*].

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

(3) Subject to a regulation under subsection (5) and to sections 9 (7) [*employment plan*], 17 and 18 (2) [*overpayments*], a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the [Employment and Assistance Act](#) and the regulations under that Act.

(5) The Lieutenant Governor in Council may designate by regulation

- (a) categories of supplements that are not appealable to the tribunal, and
- (b) circumstances in which a decision to refuse to provide disability assistance, hardship assistance or a supplement is not appealable to the tribunal.

Section 71(2) of the EAPWDR requires a recipient seeking reconsideration of a Ministry decision or determination to submit a request within 20 days of being notified of the decision or determination:

How a request to reconsider a decision is made

71 (1) A person who wishes the minister to reconsider a decision referred to in section 16

(1) [*reconsideration and appeal rights*] of the Act must deliver a request for reconsideration in the form specified by the minister to the ministry office where the person is applying for or receiving assistance.

(2) A request under subsection (1) must be delivered within 20 business days after the date the person is notified of the decision referred to in section 16 (1) of the Act and may be delivered by

- (a) leaving it with an employee in the ministry office, or
- (b) being received through the mail at that office.

2022-00017

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)

2022/04/12

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2022/04/12

Print Name

Effie Simpson

Signature of Member

Date (Year/Month/Day)

2022/04/12