

[]

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the ministry's Reconsideration Decision dated January 26, 2009 which denied the appellant's request to be have the Ministry pay for certain dental procedures. The decision stated the ministry has no details on certain procedures, so they are denied. The ministry decision also stated that the rates charged for emergency procedures were in excess of the ministry's stipulated rates and the ministry would only pay the stipulated rates.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance For Persons With Disabilities Regulation, Sections 62, 63 & 64
Employment and Assistance For Persons With Disabilities Regulation, Schedule C, Sections 1, 4(1.1) and 5

PART E – SUMMARY OF FACTS

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision was being made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

The evidence before the ministry at Reconsideration was:

- a ministry telephone log dated January 21, 2009
- a fax from the appellant's dentist to the ministry dated Jan 22, 2009
- print outs of the appellant's Pacific Blue Cross dental claim history dated 2009-01-21 and 2009-01-26
- a ministry document titled Dental Supplement Dentist, January 21, 2007
- a ministry document titled Payment Process dated January 1, 2007
- a ministry document titled Schedule of Fee Allowances – Emergency Dental – Dentist Effective January 1, 2007

In its Reconsideration Decision, the ministry stated that the rates charged by the appellant's dental practitioner for emergency procedures (Appendix C in the decision) were in excess of the ministry's stipulated rates and the ministry would only pay the stipulated rates. The ministry decision also stipulated that certain procedures (Appendix D in the decision) were not requested through Pacific Blue Cross and, as the ministry has no details on these procedures, they are denied.

The ministry provided no additional information for the panel to consider.

The appellant stated in his Notice of Appeal to the Tribunal that the procedures were performed during an emergency appointment when his tooth broke, shards of the tooth became lodged in his gum and he had difficulty eating. He also stated that all of the procedures were required for his health and well being.

The panel confirmed that the evidence showed the following:

- that the appellant's dental practitioner submitted fees for emergency dental procedures
- that the ministry has a schedule of fee allowances which it uses to determine the amounts to be paid for dental procedures.

PART F – REASONS FOR PANEL DECISION

The issue in this case is the reasonableness of the ministry's decision to deny the appellant's request for payment in full of emergency dental procedures. The Employment and Assistance PWD Regulation Sections 62 and 64 state that the minister may provide an emergency dental and denture supplement to a recipient of disability assistance. EAPWD regulation, Schedule C 1 (a) states that "emergency dental service" is dental service provided by a dentist that is required for the immediate relief of pain that:

- (i) is set out in the Schedule of Fee Allowances – Emergency Dental-Dentist that is effective January 1, 2007 and is on file with the office of the deputy minister, and
- (ii) is provided at the rate set out in the Schedule.

The ministry's position is that:

- it will only pay the stipulated rates in the Schedule for the procedures set out in Appendix C of its decision
- it will not pay for the procedures set out in Appendix D of its decision as these were not submitted to Blue Cross as the ministry thus has no information about them.

The appellant argues that all the procedures were required due to an emergency when his tooth broke.

The panel noted that the appellant's tooth broke and shards of the tooth had to be removed from his gum. The panel concluded that the fees submitted were for emergency dental service for the immediate relief of pain. The panel noted that the legislation requires that fees the ministry will pay must be in accordance with the Schedule of Fee Allowances. Accordingly, the panel finds that the amounts payable per Appendix C are the amounts stipulated in the Schedule. The panel also noted that there is no legislative requirement for the fees for procedures to be submitted to Pacific Blue Cross. Accordingly, the panel finds that fees for procedures per Appendix D are allowable per the set rates in the Schedule. The panel therefore rescinds the Ministry's Reconsideration decision and refers the decision back to the Ministry for a determination as to the amount payable under the Schedule for the procedures in Appendix D.