

## **PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The decision under appeal is the ministry reconsideration decision of October 1, 2009 which denied the Appellant coverage for fees over and above the rates set out in the Schedule of Fee Allowances – Dentist for services in relation to his son's orthodontic treatment.

## **PART D – RELEVANT LEGISLATION**

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 63 and 64  
Schedule C, Sections 1, 4 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 included the following:

- Letter from Orthodontist to Ministry dated October 21, 2008
- Orthodontic Assessment dated December 31, 2008
- Letter from Ministry to Orthodontist dated December 19, 2008
- Extract from Dental Supplement dated January 1, 2007, seven pages
- Orthodontic Screening dated February 16, 2009
- Letter from Ministry to Orthodontist dated March 4, 2000
- Letter from Ministry to Appellant dated March 4, 2009
- Letter from Orthodontist to Oral Surgeon dated May 5, 2009
- Estimate from Oral Surgeon dated July 23, 2009
- Pacific Blue Cross Dental Pre-authorization Remittance Statement dated August 6, 2009
- Letter from Oral Surgeon to Ministry dated August 12, 2009
- Letter from Orthodontist to Appellant dated September 3, 2009
- Pacific Blue Cross Dental Claim information dated September 30, 2009, five pages
- Letter from Appellant to Ministry dated September 16, 2009

The Appellant's son (the Son) requires orthodontic treatment. An Orthodontic Assessment dated December 31, 2008 was submitted by the Son's orthodontist. The Treatment Plan set out called for four teeth to be extracted and a mandibular holding arch put in place; full edgewise appliance therapy; and, retention. The treatment time was 36 months and the fee was \$7100. In a letter dated March 4, 2009 the Ministry advised the Appellant as follows: "The Orthodontic Screening Committee has approved orthodontic supplements for your child." The Son was referred to an oral surgeon for the extractions. The oral surgeon submitted a preauthorization form to Pacific Blue Cross for the extractions but only a portion of the cost was preapproved. PBC returned a Dental Pre-authorization Remittance Statement dated August 6, 2009 to the oral surgeon stating that only \$508.87 of the \$1330.00 claimed would be covered as that was the maximum available. By letter dated August 12, 2009 the oral surgeon wrote to the Ministry asking that the Ministry cover the excess of \$821.13. A letter from the orthodontist dated September 3, 2009 confirms that the extractions are necessary for the Son's orthodontic treatment to continue and without them orthodontic treatment will have to be abandoned.

On Appeal the Appellant submitted the following additional evidence: The Appellant called his oral surgeon during a break at the hearing and learned that the oral surgeon's office was an "accredited facility" and that the oral surgeon's office was awaiting a decision on whether the anesthetic services would be covered by the additional \$500 that might be available

The panel accepted the evidence submitted by the Appellant as being evidence in support of the information and records before the Ministry on Reconsideration pursuant to section 22(4) of the EAA.

The Appellant explained he has not considered having his son's extractions done in two phases, some this year and the rest next year. He also explained that he was not aware of the information in

the reconsideration decision about a further \$500 in basic coverage being available for sedation performed in an accredited facility. He has not tried to obtain an estimate from another oral surgeon.

According to the PBC records the Son has \$520.36 remaining for basic dental services this year.

ATTACH EXTRA PAGES IF NECESSARY

## PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The panel must decide if the Ministry's decision to refuse to authorize the oral surgeon's fees in excess of the amounts set out in the Schedule of Fee Allowances – Dentist (the Fee Schedule) was reasonable.

EAPWDR Schedule C, s.4(1.1) states that the health supplements that may be provided under s.63 are "basic dental services". Basic dental services are defined in Schedule C as follows:

**"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 January 1, 2007 and is on file with the office of the deputy minister, and
  - (ii) is provided at the rate set out for the service in that Schedule,

The limit is \$700 in a calendar year and it may be exceeded for emergency services. In the EAPWDR "emergency dental services are defined in Schedule C as follows:

**"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 January 1, 2007 and is on file with the office of the deputy minister, and
  - (ii) is provided at the rate set out in that Schedule, and

The Appellant argues that the extractions were always part of the orthodontic treatment plan and that plan was approved by the Ministry in their letter of March 4, 2009. He knew that the orthodontist would not perform the extractions but was not prepared for the oral surgeon's estimate to be approved only in part. The Appellant is a single father on disability income and he cannot afford to pay for the excess. He argues that since the orthodontic treatment cannot go ahead without the extractions then they are part of the orthodontic treatment and not basic dental care. The Appellant argues that the extractions cannot be performed without IV or general anesthetic as his son is young and one of the extractions is complicated as the unerupted tooth is actually in his son's nasal cavity.

The Son attended and read a statement describing that he was devastated when he learned that the Ministry would not pay for his braces after telling him they would. He wants a "future smile" and he doesn't want the tooth in his nasal cavity causing him problems later in life.

The Ministry argues that the extraction services are basic dental services and the amounts claimed for each procedure exceed the amounts set out in the Fee Schedule so only the amount of \$508.87 was allowed. In addition, on reconsideration an amount of \$55.62 was allowed under "emergency services" for relief of pain. The Ministry argues that it is up to the dental practitioner to prioritize treatment so that available coverage is utilized in the patients' best interests. When dentists charge

more than the amounts set out in the Fee Schedule then it is up to the patient to negotiate with their dentist. The Ministry argues that the Appellant's claim does not qualify for a crisis supplement as crisis supplements may not be provided for Schedule C items and dental fees are a Schedule C item.

A Review of the Fee Schedule – Dentist reveals that the Ministry has allowed all of the items claimed on the oral surgeon's estimate at the Ministry rates plus the 10% available for oral surgeons. The \$700 limit does not affect this; in fact 11.49 remains. Originally the Ministry allowed nothing for GA and Intravenous Sedation claimed at \$375 in the oral surgeon's estimate. On reconsideration Procedure No. 92444 was allowed for one hour. Treatment start and finish times must accompany the estimate. The oral surgeon claimed four units of time and the Ministry says a unit is 15 minutes. The 55.62 allowed for 92444 includes the 10% increase for the oral surgeon. \$11.49 was paid from the amount remaining in the \$700 for Basic Dental Services and the rest was paid under Emergency Services, \$44.13.

The Ministry argues that the access to an additional \$500 of basic dental services when treatment is completed in an accredited private facility or hospital might be available to the Appellant but it is up to the dental practitioner to apply for that. The phone call to the Appellant's oral surgeon indicates that that request is being pursued but the results were not before the Ministry on reconsideration and are not before this panel on Appeal.

This panel finds that the Ministry did allow each procedure claimed by the oral surgeon at the rates set out in the Fee Schedule. The Ministry has authority to pay oral surgeons an extra 10% and this was done. The Ministry has no authority to pay more than the amounts set out in the Fee Schedule. The Fee Schedule overall limit of \$700 was exceeded for one emergency procedure, an hour of general anesthetic or IV sedation as that service is for the immediate relief of pain. It should be noted that whether procedures are paid for under basic dental coverage or emergency coverage the amounts allowed for each procedure are the same. The emergency fees cannot be used to pay the excess the oral surgeon charges for individual procedures. Emergency procedures can be allowed when the \$700 limit on basic services has been reached but these procedures will still only be authorized at the rate in the Fee Schedule. While the reconsideration decision did not deny on this basis the panel notes that the excess dental fees do not qualify for a crisis supplement as they are already Schedule C benefits.

The Appellant and his dental practitioner will have to explore the best way to use the available coverage including the potential for an additional \$500 of basic dental services referred to above. It is regrettable that the Appellant thought the extractions were approved along with the orthodontic plan and it is easy to see why he thought that. Unfortunately that misunderstanding cannot change the amounts allowed under the Fee Schedule.

Therefore, the panel finds that the Ministry's decision was a reasonable application of the applicable enactments in the circumstances of the Appellant and confirms the Ministry's decision.