

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The reconsideration decision of January 4, 2010 denied the appellant's request for reimbursement for dental work that exceeded the legislated amount the appellant was eligible for pursuant to the Employment and Assistance for Persons with Disabilities Regulation, s. 63, s. 64, s. 69, and Schedule C, s. 1, s. 4 and s. 5. The ministry determined that the appellant's request for dental coverage exceeded the eligible amount by \$253.92.

**PART D – RELEVANT LEGISLATION**

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Regulation [EAPWDR], s. 63, s. 64, s.69  
Employment and Assistance for Persons with Disabilities Regulation, Schedule C, s. 1, s. 4, and s.5  
Schedule of Fee Allowances - Dentist that is effective January 1, 2007

**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:

- medical notes dated October 19, 2009 by the appellant's doctor for treatment of mouth pain;
- copies of prescriptions dated October 19, 2009 for pain medication prescribed by the appellant's doctor, and November 2, 2009 by the appellant's dentist for antibiotics;
- a letter dated November 10, 2009 from the appellant's community counselor stating the appellant:
  - was assessed by her dentist for dental services which indicated that she required two root canals;
  - was examined by her doctor and was prescribed antibiotics and pain medication to manage the swelling and pain;
  - wished to make application for funding for these treatments;
- a treatment plan and pre-authorization request dated December 9, 2009 totaling \$520.48 for the following dental services:
  - root canal, permanent [code 33111] - \$254.17
  - one retentive preformed post [code 25731] - \$94.66
  - composite filling, permanent [code 23115] - \$171.65
- a letter dated December 11, 2009 from the appellant's dentist confirming that the ministry informed the dentist that the appellant had used \$905.09 of her eligibility \$1,000.00 for basic dental services;
- the appellant's request for reconsideration dated December 11, 2009, stating that basic dental treatment cannot fix her dental problems; and,
- a copy dated January 10, 2010 of the appellant's dental claims details under her benefits plan showing an amount of \$905.09 paid for basic dental services from January 1, 2009 to January 4, 2010.

The ministry's reconsideration decision found that:

- since the appellant is a recipient of disability assistance, the ministry could consider her request under s. 63 and Schedule C of the EAPWDR which provides for basic dental services to a maximum of \$1,000.00 for a two year period beginning January 1, 2009;
- the appellant had a balance of \$94.91 remaining for basic dental services until January 1, 2011;
- the appellant was not eligible for full coverage of the root canal therapy [code 33111] and the posts prefab retentive [code 25731] under the Schedule of Fee Allowances - Dentist because the amount for these two procedures exceeded her balance remaining for basic dental services;
- the appellant's doctor prescribed antibiotics and pain medication to manage the swelling and pain, therefore the appellant was eligible for dental services under s. 64 for emergency dental services listed in the Schedule of Fee Allowances - Emergency Dental - Dentist;
- root canals [code 33111] and posts [code 25731] are not set out in the Schedule of Fee Allowances - Emergency Dental - Dentist;
- the appellant was eligible for coverage for tooth coloured restorations - bonded anterior 5 surfaces [code 23115] which is set out in the Schedule of Fee Allowances - Emergency Dental - Dentist, since this dental treatment was for the immediate relief of pain; and,
- there was no information to indicate that the appellant faced a life threatening health need for the requested procedures.

**PART E – SUMMARY OF FACTS [cont'd]**

The appellant submitted a letter dated January 12, 2010 to the Tribunal stating that she is a person with disabilities impaired by alcoholism which is life-threatening. Her mouth pain and swelling prevent her from maintaining adequate nutrition and isolate her from participating in group recovery programs. She feels that the treatment plan prepared by her dentist is necessary to meet her health needs, and she has no other source of funding for the \$253.92 shortfall in her coverage. The panel admitted the letter pursuant to s. 22(4) of the Employment and Assistance Act [EAA], as evidence in support of information before the ministry at reconsideration. The ministry concurred.

The appellant submitted the following documents at the hearing:

- a copy of her doctor's notes describing the appellant's poor dentition, resulting in pain and requiring dental services to alleviate the pain and possible infection;
- a doctor's note diagnosing the appellant with alcoholism, and confirming her disability status; and,
- a note dated April 22, 2008 stating that her family doctor is leaving the clinic and she will be seen by a new doctor.

The panel admitted the documents pursuant s. 22(4) of the Employment and Assistance Act [EAA], as evidence in support of information before the ministry at reconsideration. The ministry concurred.

The appellant stated that:

- she suffers from symptoms of deficiency disease, anemia, demineralization, and fatigue;
- her dental problems flared up on October 19, 2009 causing pain and swelling for which her doctor prescribed pain medication and her dentist prescribed antibiotics;
- she is only able to eat limited amounts of soft foods and soup, is still in constant pain and requires the treatment outlined in the dentist's treatment plan and pre-authorization request to meet these serious health needs; and,
- the documents she submitted at the hearing will support her claim that she suffers from alcoholism, which has caused severe dentition problems that require root canal therapy and the other procedures that go with this procedure, and she can't have one procedure without the others because the post is necessary for the filling [bonding] to adhere to.

The ministry reiterated the reconsideration decision and stated that:

- the ministry has no discretion to pay for basic dental services in excess of the \$1,000.00 maximum per 2-year period, in this case from January 1, 2009 to January 1, 2011;
- the ministry can only pay for emergency dental services that are listed in the Schedule of Fee Allowances - Emergency Dental - Dentist;
- there was no evidence of a life-threatening need for the dental procedures requested by the appellant, but if there had been, the \$1,000.00 maximum for basic dental services would still apply; and,
- the ministry did not know why the retentive preformed post [code 25731], which is listed in the Schedule of Fee Allowances - Emergency Dental - Dentist, was not included in the emergency dental services approved for the appellant.

The panel's findings of fact were:

- the amount of basic dental services that the ministry can pay is \$1,000.00 per 2-year period and can only be paid in accordance with the Schedule of Fee Allowances - Dentist;
- emergency dental services may be approved for the immediate relief of pain and can only be paid in accordance with the Schedule of Fee Allowances - Emergency Dental - Dentist;
- the retentive preformed post [code 25731] @\$94.66 and composite filling [code 23115] @\$171.65 are listed in the Schedule of Fee Allowances - Emergency Dental - Dentist; and,
- the root canal [code 33111] is listed only in the Schedule of Fee Allowances - Dentist.

**PART F – REASONS FOR PANEL DECISION** (State the reasons for the panel decision)

The issue under appeal was whether it was reasonable for the ministry to deny the appellant's request for reimbursement for dental work that exceeded the legislated amount the appellant was eligible for pursuant to the EAPWDR, s. 63, s. 64, s. 69, and Schedule C, s. 1, s. 4, and s.5. The ministry determined that the appellant's request for dental coverage exceeded the eligible amount by \$253.92.

The EAPWDR sets out the legislative criteria for dental supplements as follows:

**Dental supplements**

**63** The minister may provide any health supplement set out in section 4 [dental supplements] of Schedule C that is provided to or for a family unit if the health supplement is provided to or for a person in the family unit who is eligible for health supplements under section 62 (1) (a) to (d) or (f) [general health supplements]. (B.C. Reg. 170/2008)

**Emergency dental and denture supplements**

**64** The minister may provide any a health supplements set out in section 5 of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is eligible for health supplements under section 62 (1) [health supplements].

**Health supplement for persons facing life threatening health need**

**69** The minister may provide any health supplement set out in Schedule C [health supplements] to a family unit that includes a person with disabilities, 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

- (a) the person faces a life-threatening health need and there are no resources available to the person's family unit with which to meet that need, and
- (b) the minister determines that the health supplement is necessary to meet that need.

**Schedule C****Definitions**

**1** In this Schedule: "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 , and
- (b) if provided by a denturist,
  - (i) is set out in the Schedule of Fee Allowances - Denturist 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; (B.C. Reg. 315/2006).

"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

**Dental supplements**

**4** (1) In this section, "period" means 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) \$700 each calendar year, if provided to a dependent child,
- (b) \$1 000 each period, if provided to a person not referred to in paragraph (a), (B.C. Reg. 163/2005)
- (c) Repealed. (B.C. Reg. 163/2005).

**Emergency dental supplements**

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

The ministry argued that the appellant had used all but \$94.91 of her the basic dental services amount that she was eligible for from January 1, 2009 to January 1, 2011. They approved emergency dental services in the amount of \$171.65 for a permanent composite filling [code 23115] in accordance with the Schedule of Fee Allowances - Emergency Dental - Dentist. They applied her balance of \$94.91 against the two remaining procedures, the retentive preformed post [code 25731] in the amount of \$94.66 and the root canal [code 33111] in the amount of \$254.17, leaving her with a balance of \$253.92 not covered by eligible dental supplements.

**PART F – REASONS FOR PANEL DECISION [cont'd]**

The appellant argued that she is in considerable pain and requires the dental procedures to alleviate the pain. Her doctor and dentist prescribed medication for the pain and swelling, but, without the procedures in the treatment plan, she will continue to be unable to eat properly, attend group therapy, or overcome her deficiency disease, anemia and fatigue, and she will continue to suffer from pain and swelling.

The panel found that the ministry's decision to deny full coverage for a root canal [code 33111] was a reasonable application of the EAPWDR, s. 63 and Schedule C, s. 1 and s. 4, because this procedure is a basic dental service, provided by a dentist in accordance with the fees established in the Schedule of Fee Allowances - Dentist.

However, the panel found that the ministry's decision to deny emergency dental coverage for the retentive post procedure [code 25731] was not a reasonable application of the EAPWDR, s. 64 and Schedule C, s. 5, since this procedure is in accordance with the Schedule of Fee Allowances - Emergency Dental - Dentist. The ministry approved the request for permanent composite filling [code 23115] pursuant to the EAPWDR, s. 64 and Schedule C, s. 5 because the appellant required the procedure for the immediate relief of pain and the fee was listed in the Schedule of Fee Allowances - Emergency Dental - Dentist. It was not reasonable for the ministry to approve one of these procedures and not the other, when both are in accordance with the EAPWDR, s. 64 and Schedule C, s. 5, and both are listed in the Schedule of Fee Allowances - Emergency Dental - Dentist.

Given the above, it was not reasonable for the ministry to calculate that the amount of dental supplements for which the appellant is ineligible is \$253.92. The amount should have been \$159.26 [\$254.17 for the root canal minus the \$94.91 balance for basic dental services].

Therefore, the panel found that the ministry's decision was not a reasonable application of the applicable enactment in the circumstances of the appellant and rescinds the decision.