

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the ministry's Reconsideration Decision dated 2010/MAY/26 which denied the appellant's request for a crown for her tooth. The ministry determined that information has not been provided to demonstrate that the appellant's dental condition precludes the provision of restorative services set out in the Restorative Services section of the Schedule of Fee Allowances – Dentist per Schedule C Section 4.1(2) of the Employment and Assistance For Persons With Disabilities Regulation and that one of the circumstances set out in Section 4.2 (2) (b) exists. In addition the decision noted that the appellant's dentist intends to charge fees in excess of the ministry rates for the procedure.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance For Persons With Disabilities Regulation (EAPWDR), Section 63.1
Employment and Assistance For Persons With Disabilities Regulation, Schedule C, Section 4.1.

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 Standard Dental Claim Form dated 18 Feb 2010
- a ministry log dated May 26, 2010 confirming illegible information on the Standard Dental Claim Form
- an undated Tooth Map
- the applicant's Request for Reconsideration dated 2010/04/09
- a letter from Pacific Blue Cross dated Mar. 12/10
- a fax from the appellant's dentist's office March 26, 2010
- a letter from Pacific Blue Cross dated Feb 24/10
- a copy of a dental x-ray dated Feb 18, 2010
- a fax from the appellant's dentist's office dated March 4, 2010
- a note from the appellant's physician dated 12 April 2010.

In its Reconsideration Decision, the ministry stated it had determined that the appellant's request for a crown did not meet the criteria set out in EAPWDR Schedule C, Section 4.1(2). The decision also stated that the information provided by the appellant's dentist does not demonstrate that the appellant's dental condition precludes the provision of restorative services set out under the Schedule of Fee Allowances Dentist which includes pre-fabricated restoration such as stainless steel crowns. The decision also stated that, while the appellant's physician confirms that the appellant has diabetes, the information does not establish that her medical condition precludes the use of a removable prosthetic. In addition the decision stated that the appellant's dentist intends to charge fees in excess of the Schedule of Fee Allowances and the ministry is not authorized to provide coverage for fees in excess of rates set out.

At the hearing, the appellant's representative told the panel that the Ministry's decision not to pay dentist's fees in excess of the Schedule of Fee allowances was not being contested. The representative then provided the panel with a written submission outlining the appellant's position. The representative also submitted a letter from the appellant's physician dated 4 June 2010 and a letter from the appellant's dentist dated 6/2/2010. The ministry did not object to the material being submitted. The panel reviewed the letters and accepted them as evidence under Section 22(4) of the Employment and Assistance Act (EAA). The representative told the panel that the appellant has schizophrenia, severe anxiety and diabetes type II. The representative told the panel that because of the diabetes the appellant's teeth need to be in good condition and a crown is needed to address a large cavity that could reach the nerve. The representative argued that there is sufficient evidence before the ministry to cover a gold crown and related work. The representative explained that a permanent gold crown was the only solution that would avoid infection. The representative pointed to the 4 June 2010 the letter from the appellant's physician which states that the appellant is diabetic and she is at risk for infections. The letter also states that the appellant has a severe mental health condition which makes assuming responsibility for a denture difficult at times. The representative also referred the panel to the dentist's letter of 6/2/2010 which states that the gingiva around a pre-fabricated crown would be more inflamed and require

constant treatment due to the suppressed immunity of a diabetic. The letter also states that infection around a custom made gold crown is minimal.

The ministry advised the panel that the letters submitted at the hearing were not in front of the ministry at Reconsideration and if they had been, the ministry's decision may have been different.

The panel concluded that the evidence is as follows:

- the appellant's physician advises that the appellant is diabetic and at risk of infection
- the appellant's dentist advises that a prefabricated crown will necessitate a constant treatment of the gum due to the appellant's diabetic condition
- the appellant's physician advises that, due to her mental health assuming responsibility for a denture would be difficult at times.

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 of a crown supplement.

The relevant legislation is EAPWDR Schedule C, Section 4.1(2) which states that two conditions must exist in order for the Ministry to pay for crown and bridgework. These are:

- (a) the dental condition precludes the provision of restorative services set out under the Restorative Services section of the Schedule of Fee Allowances – Dentist
- (b) one of the following circumstances exists:
 - (i) the dental condition precludes the use of a removable prosthetic
 - (ii) the person has a physical impairment that makes it impossible to place a removable prosthetic
 - (ii) the person has an allergic reaction to the prosthetic
 - (iii) the person has a mental condition that makes it impossible to assume responsibility for a removable prosthetic

The appellant's position is that she requires a permanent gold crown for her tooth as, due to her diabetes, a steel crown or a removable denture subjects her to infection. The ministry's position is that, at Reconsideration, there was no confirmation that the criteria of EAPWDR Schedule C, Section 4.1(2) (a) and (b) had been met.

The panel noted the physician's evidence and the dentist's evidence regarding the appellant's diabetic condition and its impact on her dental treatment. Specifically, the panel noted that a prefabricated crown will necessitate constant treatment of the gum due to the appellant's diabetic condition. Thus the panel determined the dental condition precludes the use of a prosthetic and an intolerance to the materials used in a removable prosthetic and, as such, the criteria of Section 4.1(2) (a) and (b) (i) and (iii) have been met. Accordingly, the panel finds that the ministry's decision is not reasonably supported by the evidence and the panel rescinds the ministry's decision.