

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the ministry's reconsideration decision of September 10, 2008 which determined that:

- 1) the appellant is eligible for coverage of specified dental procedures (listed in the reconsideration decision) under legislative provisions respecting basic and emergency dental service but, the appellant is not eligible for coverage for those dental procedures to be performed at rates in excess of those set out in the respective Schedule of Fee Allowances;
- 2) the appellant is not entitled to coverage for dental procedures that are not included in the Schedule of Fee Allowances (Dentist, Emergency Dental, Crown and Bridgework, Denturist).

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)

- Sections 62, 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 appellant is a person with disabilities (PWD) who has requested coverage for dental procedures under the EAPWDR. The evidence before the ministry at the time of reconsideration included:

- a "Treatment Plan" completed by the appellant's dentist and printed on July 16, 2008 (total amount of \$2422.50);
- an undated "Predetermination" completed by the appellant's dentist and printed on July 16, 2008 (total amount of \$3958.20);
- Blue Cross Dental Claims Details sheets respecting dental services the appellant received between January 1, 2007 and August 29, 2008;
- a "Predetermination" faxed to the ministry on September 4th 2008 with attached dental claim forms for services already provided to the appellant on July 16th, August 7th, and September 2nd of 2008; and,
- a ministry telephone log record of communication with the dentist's office (August 28th, 29th and September 2nd of 2008).

The ministry determined that the appellant's available balance for basic dental services is \$339.35. The ministry also determined that the appellant is eligible for the provision of emergency dental services in excess of the maximum of \$1000 over a 2 year period because the services to be provided are for the immediate relief of pain. However, the ministry determined that the Treatment Plan and Predetermination provided by the appellant's dentist were for dental services at rates in excess of those set out in the Schedule of Fee Allowances and that three of the requested services were for services not included in any of the Schedule of Fee Allowances (Root Canal, Commercial Laboratory Procedure, and Parenteral Conscious Sedation). A ministry telephone log indicates that in response to questions posed to the dentist and his staff on August 28, 2008 (i) the dentist assisting the appellant's dentist is not a specialist, (ii) the dental work requested was for the immediate relief of pain, (iii) a flat rate fee not time based fee is charged for the sedation and, (iv) some of the dental work has already been done.

At the hearing, the ministry reviewed the reconsideration decision and responded to panel questions regarding which procedures were approved at ministry rates. The ministry stated that the appellant's dentist would receive payment at ministry rates for approved services that have been provided and that the balance owing is the responsibility of the appellant.

At the hearing, the appellant stated that he has already received the dental services which were approved at ministry rates in the reconsideration decision. The appellant added that all of the procedures were required to alleviate the pain he was experiencing and associated difficulties with eating. The appellant stated that the total cost of the dental services he required, including the procedures not listed in any ministry Schedule of Fees was in excess of \$6,000.

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The panel makes the following findings of fact: (a) the dentist's rates for the approved dental procedures are in excess of ministry rates outlined in the Schedule of Fees; (b) the 3 dental procedures denied by the ministry are not listed in the ministry Schedule of Fees.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issues to be decided are (1) whether the ministry decision that the appellant is not eligible for coverage under the EAPWDR for basic and emergency dental procedures to be performed at rates in excess of those set out in the Schedule of Fee Allowances is reasonable and (2) whether the ministry decision that the appellant is not eligible for coverage under the EAPDWR for dental services that are not listed in any Schedule of Fee Allowances is reasonable.

Under section 62(1)(a) of the EAPWDR, the minister may provide any health supplement set out in section 2 [general health supplements] of Schedule C to or for a person who is a recipient of disability assistance.

Under section 63 of the EAPWDR, the minister may provide any health supplement set out in section 4 [dental supplements] of Schedule C to or for a person who is eligible for health supplements under section 62(1)(a) to (d).

Section 64 of the EAPWDR allows for the provision of health supplements set out in section 5 [emergency dental and denture supplements] of Schedule C to or for a person who is eligible under section 62(1).

Section 1 of Schedule C of the EAPWDR defines “basic dental service” as a dental service set out in the Schedule of Fee Allowances that is provided by a dentist at the rate set out in that Schedule and “emergency dental service” as a dental service that is set out in the Schedule of Fee Allowances – Emergency Dental necessary for the immediate relief of pain that is provided by a dentist at the rate set out in that Schedule.

Section 4 of Schedule C provides that health supplements under section 63 [dental supplements] are basic dental services to a maximum of \$1,000 for a specified 2 year period. Section 5 of Schedule C provides that emergency dental services may be paid under section 64 [emergency dental and denture supplements].

The ministry’s position is that the appellant has been granted approval for specified dental procedures as both basic and emergency dental services but not at higher rates than those specified in the ministry Schedule of Fee Allowances. The ministry also maintains that the appellant is not eligible for any dental services that are not listed in the Schedule of Fee Allowances.

The appellant’s position is that he had an emergency need for dental services, which he has received, and that he is unable to pay the difference between the ministry and dentist rates.

In reviewing the ministry’s reconsideration decision, the panel has examined the legislative provisions respecting the provision of “basic” and “emergency” dental services. While sections 63 and 64 of the EAPWDR allow for the provision of health supplements in the form of dental

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supplements under section 4 [basic dental] and 5 [emergency dental] of Schedule C of the EAPWDR, the definitions of both "basic" and "emergency" dental services provided in section 1 of Schedule C of the EAPWDR specifically state that to fall within the definition of those services, the service is to be provided at the rate set out in the Schedule of Fee Allowances. Therefore, the ministry is not authorized to pay for services at higher rates because those services do not fall within the legislative meaning of "basic dental" or "emergency dental" services. Accordingly, the panel finds that the ministry's decision that the appellant is not eligible for coverage for dental procedures to be performed at rates in excess of those set out in the Schedule of Fee Allowances is reasonable. The panel also finds that the ministry was reasonable in concluding that because the root canal, laboratory procedure and parenteral conscious sedation requested by the appellant's dentist are not listed services in the Schedule of Fee Allowances they are not services for which the ministry may provide coverage.

The panel confirms the ministry's reconsideration decision as being a reasonable application of the EAPWDR in the circumstances of the appellant.