

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated December 19, 2011 which found that the Appellant was ineligible for orthodontia treatment pursuant to section 71 of the Employment and Assistance Regulation ("EAR") because she did not have severe skeletal dysplasia with jaw misalignment by two or more standard deviations.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 71

PART E – Summary of Facts

The evidence before the Ministry at the time of the Reconsideration Decision consisted of copies of the following:

1. The Appellant's undated Request for Reconsideration prepared by her guardian and received by the Ministry on December 1, 2011;
2. A letter from Orthodontist #1 to the Appellant's Dentist #1 dated March 29, 2011;
3. A panoramic x-ray of the Appellant's mouth dated May 31, 2011;
4. 8 photographs of the Appellant and of her teeth dated May 31, 2011;
5. A letter from the Ministry to Orthodontist #2 dated October 12, 2011 regarding the denial of the Appellant's request for orthodontia supplements;
6. An Orthodontia Decision Summary dated October 12, 2011;
7. An Orthodontic Screening form completed by Orthodontist #2 and dated September 30, 2011;
8. An Orthodontic Assessment form completed by Orthodontist #2 and dated May 9, 2011;
9. Orthodontist #2 patient treatment notes regarding the Appellant dated May 31, 2011;
10. A letter from the Ministry to Orthodontist #2 dated May 9, 2011 requesting an Orthodontic Assessment of the Appellant;
11. A Request for Orthodontic Care form dated April 19, 2011 and completed by the Appellant's Dentist #2;
12. A fax letter from the Ministry to Orthodontist #2 dated December 13, 2011 requesting that he/she complete a clarification log regarding the Appellant's condition;
13. A clarification log completed by Orthodontist #1 and dated December 13, 2011;

The Ministry relied on the Reconsideration Decision. The Appellant's guardian submitted a letter dated January 22, 2012 which indicated that in her view it is vital that the Appellant receive help as she is in pain. The Panel finds that this written testimony is in support of the information and records that were before the minister when the decision being appealed was made and as such, the Panel finds the letter to be admissible pursuant to section 22(4) of the Employment and Assistance Act.

The Appellant resides with her grandmother who is her guardian. The Appellant's grandmother receives income assistance through the Child in Home of a Relative ("CIHR") program administered by the Ministry.

On or about March 29, 2011, the Appellant was examined by Orthodontist #1 for an orthodontic consultation. Following that consultation, Orthodontist #1 made the following findings:

Clinical Assessment:

- Class 1 malocclusion with a deep bite
- Crowding in both dental arches
- Blocked out and impacted tooth #23
- Congenitally missing tooth #32
- Small upper laterals with central diastema and prominent labial frenum

Further to this assessment, Orthodontist #1 made the following treatment recommendations:

- Treatment plan: Comprehensive orthodontic treatment with fixed appliances
- Estimated treatment time is 20 – 24 months
- Fibrectomy on tooth #22 and frenectomy

A Request for Orthodontic Care was prepared by Dentist #2 on April 19, 2011. In that form, Dentist #2 indicates that the Appellant has severe skeletal dysplasia with jaw misalignment of two or more standard deviations by checking a "Yes" box and he or she identifies Orthodontist #2 as requiring an assessment form.

Orthodontist #2 completed an Orthodontic Assessment form in regards the Appellant's condition. The date of the form is May 9, 2011 although it is not known on what date it was completed. In any event, in completing this form, Orthodontist #2 describes the Appellant's condition on the form and the accompanying patient treatment notes as "Class 1 deep bite, crowding in both arches, missing #32, small upper laterals, central diastema, strong lip band, prominent labial frenum, blocked out and impacted #23, records for FBI, once space closed frenectomy and fibrectomy on #22 to be done at same time, tx time 20-24 months."

Orthodontist #2 completed an Orthodontic Screening dated September 30, 2011. In response to the question of whether the Appellant meets the criteria of having severe skeletal dysplasia with jaw misalignment by two or more standard deviations Orthodontist checks the box "No" and writes "No skeletal dysplasia evident."

On December 13, 2011, the Ministry wrote to Orthodontist #2 to clarify the Appellant's condition. In response to the Ministry's question as to whether the Appellant had severe skeletal dysplasia with jaw misalignment by two or more standard deviations, Orthodontist #1 wrote "No severe skeletal dysplasia. Excess space in both arches, K-site #22, severe rotation #14 & 29, blocked out and partially impacted #23."

In the Request for Reconsideration, the Appellant's guardian states that due to her own age and reliance on income assistance, she is unable to pay for the Appellant's orthodontic treatment. She states further that the Appellant is in a lot of pain and a dentist won't help but rather she requires an orthodontist.

In the Appellant's Notice of Appeal, the Appellant's guardian states that the Appellant is in pain and that she has no resources to pay for the required orthodontic treatment.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision which found that the Appellant was ineligible for orthodontia treatment pursuant to section 71 of the Employment and Assistance Regulation ("EAR") because she did not have severe skeletal dysplasia with jaw misalignment by two or more standard deviations.

Section 71 of the EAR provides as follows:

71 (1) The minister may provide orthodontic supplements to or for a family unit if the orthodontic supplements are provided to or for a person in the family unit who meets the conditions under subsection (2) and who is a dependent child of a recipient of income assistance.

(2) For a child referred to in subsection (1) to be eligible for orthodontic supplements, the child's family unit must have no resources available to cover the cost of the orthodontic supplements and the child must

(a) have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations, and

(b) obtain prior authorization from the minister for the orthodontic supplements.

(3) Repealed. [B.C. Reg. 313/2007, s. 1 (f).]

[am. B.C. Regs. 313/2007, s. 1 (f); 48/2010, Sch. 1, s. 1 (k).]

The Appellant's guardian takes the position that the Appellant is in pain and requires orthodontic treatment. She states further that she does not have the resources to pay for the Appellant's orthodontic treatment.

The Ministry's position is that the Appellant does not meet the legislative requirements of section 71 of the EAR and therefore she is ineligible for orthodontia treatment. Specifically, the Ministry submits that the Appellant does not have severe skeletal dysplasia with jaw misalignment by two or more standard deviations.

Section 71(1) of the EAR provides that the Minister may provide orthodontic supplements to or for a family unit if the orthodontic supplements are provided to or for a person in the family unit who is a dependent child of a recipient of income assistance and who meets the conditions of section 71(2) of the EAR. In the Reconsideration Decision, the Ministry accepted that the Appellant was a dependent child of her grandmother.

Section 71(2) of the EAR provides that for a child referred to in subsection 1 to be eligible for orthodontic supplements, the child's family unit must have no resources available to cover the cost of the orthodontic supplements and the child must have severe skeletal dysplasia with jaw misalignment by two or more standard deviations and obtain prior authorization from the Minister for the orthodontic supplements.

In the present case, the Appellant's guardian is a recipient of income assistance who argues that she has no resources to pay for the Appellant's orthodontic treatment. The Ministry does not take issue with this.

However, upon consideration of the evidence, the Panel finds that the Ministry was reasonable in its conclusion that the Appellant does not have severe skeletal dysplasia with jaw misalignment by two or more standard deviations. This criterion was put to two orthodontists who had an opportunity to assess the Appellant and both orthodontists provided opinions that the Appellant did not suffer from such a condition. The Panel notes that in the Request for Orthodontic Care form dated April 19, 2011, the Appellant's Dentist #2 does indicate that the Appellant satisfies the criteria in s.71 of the EAR. However, Dentist #2 completes this form and then identifies Orthodontist #2 as the orthodontist who is to conduct the orthodontic assessment. Following that assessment, Orthodontist #2 confirms in the Orthodontic Screening form dated September 30,

2011 that the Appellant does not meet the required legislative criteria and this is confirmed by Orthodontist #1 in the December 13, 2011 Treatment Log. For these reasons, the Panel finds that Ministry reasonably determined that the legislative criteria in section 71(2) of the EAR have not been met by the Appellant.

The Panel finds that the Ministry's determination that the Appellant was not eligible for orthodontia treatment on the basis that she did not have severe skeletal dysplasia with jaw misalignment by two or more standard deviations was a reasonable application of the applicable enactment in the circumstances of the Appellant and the Panel therefore confirms the Ministry's decision.