

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated 26 March 2012 which held that the appellant is not eligible for a supplement for orthodontic treatment under section 65 of the Employment and Assistance Regulation because he did not meet all the criteria set out in the legislation. Specifically the ministry determined that that the appellant did not have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 65

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

1. The appellant is a person with disabilities who is eligible for health supplements.
2. A Request for Orthodontic Care dated 25 July 2011 prepared on behalf of the appellant by an orthodontist. He indicates "Yes" to the question whether his patient has severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations.
3. A letter from the ministry to the orthodontist in response to the above Request dated 04 August 2012. The ministry stated that only persons who meet the criterion of having severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations will be considered. The ministry requested the orthodontist complete an Orthodontics Assessment form and provide other records only if his patient meets the criterion.
4. An Orthodontics Assessment form completed by the appellant's orthodontist dated 04 August 2011, to which was attached a Certified Specialist in Orthodontics Standard Information Form dated 02 November 2011. This form in turn referred to an attached Diagnosis and Treatment Plan prepared by the orthodontist, also incorporated into a letter to the ministry from the orthodontist on the same date. The description of the orthodontic problem in the Orthodontic Assessment and the diagnoses in the 02 November documents and the treatment plan described in these documents differ only in format.

The orthodontic diagnosis provided by the orthodontist reads:

1. Class I skeletal relationship
 - Mandibular anterior teeth retroclination
 - Over-eruption of the upper anterior teeth
 - Excess gingival display on full smile
 - Normal TMJ function
 - End-on Class II molar, right side
 - Class I molar, left side
 - Moderately excessive overjet 4.5mm
 - Excessive overbite 75%
 - Partial palatal impingement
 - Moderately-severe maxillary crowding
 - Mandibular mis-alignment
 - Retained primary dentition upper cuspids #53,63
 - Impacted upper cuspids #13,23
 - Abnormal maxillary central frenum attachment

The fees for the treatment plan proposed by the orthodontist would be \$7810, with an estimated treatment duration of 22-24 months.

5. A ministry Orthodontic Screening form completed by an orthodontist contracted by the ministry dated 30 January 2012. The form refers to the EAPWDR section 65 (2)(a) criterion:

"have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations." In answer to the question whether the patient meets this criterion, the contract orthodontist marks "No." The contract orthodontist states why, as follows:

"No severe skeletal dysplasia evident. Etiology is primarily dental in relation to impacted upper cuspids. Ideally this patient would have orthodontic correction but he doesn't meet current criterion."

6. This screening was used as the basis of the ministry decision to deny the requested treatment. The decision was conveyed to both the appellant and the orthodontist in letters dated 08 February 2012.

In his Request for Reconsideration dated 12 March 2012, the appellant attached a Diagnosis and Treatment Plan completed by the same orthodontist of the same date with information identical to that dated 02 November 2011. The appellant also writes: "The family unit is low income."

Before reconsideration, the ministry wrote to the orthodontist on 20 March 2012 referring to his orthodontic assessment and asking him to advise whether the appellant meets the severe skeletal dysplasia criterion. The ministry received no reply prior to its deadline for making its reconsideration decision.

In his Notice of Appeal dated 03 April 2012, the appellant gives as Reasons: "I felt that the decision was unreasonable." Attached is a letter from his orthodontist of the same date apologizing for not responding to the ministry's letter of 20 March 2012, as he was out of the country. He writes:

"In response to this letter, I feel [the appellant] has a severe malocclusion and would benefit greatly not only functionally but socially from having orthodontic treatment."

In an email to the tribunal dated 01 May 2012 the ministry stated the ministry's submission is its reconsideration summary.

The panel finds that the new information provided by the appellant's orthodontist is in support of the information and records that were before the ministry at the time of reconsideration. The information concerning the appellant's orthodontic condition is consistent with the orthodontist's earlier assessment. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant is not eligible for a supplement for orthodontic treatment under section 65 of the EAPWDR because he did not meet all the criteria set out in the legislation. More specifically, the issue is whether the ministry determination that the appellant does not have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations as required under section 65(2)(a) of the EAPWDR is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The ministry did determine that the appellant was a person with disabilities who is eligible for health supplements.

The relevant provision of the legislation is set out in the EAPWDR as follows:

Orthodontic supplement

65(2) For a person referred to in subsection (1) [a person with disabilities who is eligible for health supplements] to be eligible for orthodontic supplements, the person's family unit must have no resources available to cover the cost of the orthodontic supplements and the person must

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

Relying on the Orthodontics Screening provided by the orthodontist contracted by the ministry, the position of the ministry is that the diagnosis and treatment plan submitted by the appellant's orthodontist does not constitute confirmation that the appellant has a severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations. The ministry also finds that the fact that the orthodontist submitted an Orthodontic Assessment to the ministry does not constitute confirmation that the appellant met the severe skeletal dysplasia criterion. The ministry stated that it is not unusual for the ministry to receive completed Orthodontic Assessment forms from orthodontists when this requirement has not been met, despite the direction from the ministry not to proceed with submitting the assessment if the patient does not meet this criterion.

The position of the appellant is that he has a severe malocclusion and would benefit greatly not only functionally but socially from having orthodontic treatment. Denying this treatment would be unreasonable.

The panel notes that an independent orthodontist contracted by the ministry found that skeletal dysplastic with jaw misalignment by 2 or more standard deviations was not evident in any of the medical records submitted by the appellant's orthodontist. The panel finds it reasonable that the ministry attempted before reconsideration to seek the orthodontist's confirmation that the appellant met the criterion. When asked specifically to confirm whether the appellant has the condition described in the criterion, the orthodontist referred instead to the appellant having a severe malocclusion. Without further information that the appellant's severe malocclusion is a result of severe skeletal dysplasia, and the extent of any jaw misalignment expressed in standard deviations, the panel finds that the ministry reasonably relied on the screening of the orthodontist contractor in determining that the appellant did not meet the criterion set out in section 65(2)(a) of the EAPWDR.

Accordingly, the panel finds that the ministry's decision that the appellant was not eligible for an orthodontics supplement was reasonably supported by the evidence. The panel therefore confirms the ministry decision.