

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 16 January 2013 which held that the appellant is not eligible for a supplement for orthodontic treatment for her dependent child, her son, under section 65 of the Employment and Assistance for Persons with Disabilities Regulation because he did not meet all the criteria set out in the legislation. Specifically the ministry determined that that the son 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 consisted of the following:

1. The appellant is a recipient of disability assistance and her son is a dependent child.
2. A Request for Orthodontic Care completed by the appellant's son's dentist submitted to the ministry on 21 March 2012. The dentist checked "yes" that there is severe skeletal dysplasia with jaw misalignment of 2 or more standard deviations. The dentist notes: "Class II 100% deep overbite. Therefore patient has severe clenching habit."
3. An Orthodontic Assessment completed by an orthodontist dated 18 September 2012. The orthodontist describes the orthodontic problem as:
 - Profile Maxilla – retrusive; mandular – retrusive.
 - Occlusion Molar (L) – II, (R) – II.
 - Overjet – 4mm, Overbite – 110%.
 - Comment: Difficulty relaxing and closing in centric relation.The orthodontist sets out a proposed treatment plan.
4. An Orthodontic Screening form completed by an orthodontist contracted by the ministry dated 16 October 2012. The contracted orthodontist states: "Severe skeletal dysplasia not demonstrated."
5. The appellant's Request for Reconsideration received by the ministry on December 13, attached to which is a "To whom it may concern" letter from the son's physician. The physician writes:

"This gentleman suffers from chronic dental pain. He also has difficulty eating. Both these issues seem to arise from known dental issues. He has seen a dentist who recommended corrective braces. He cannot afford these. Your assistance with this gentleman is appreciated."

Several images were attached, both of the son's face and x-rays of his teeth.
6. In response to a letter from the ministry seeking clarification, a letter from the first orthodontist dated 15 January 2013. He writes:

"In response to your specific inquiry, I concur with the assessment of the Orthodontic Screening committee that severe skeletal dysplasia with jaw misalignment by two or more standard deviations is not demonstrated in this case, and therefore this case does not meet the stated criteria."

In her Notice of Appeal dated 22 January 2013 the appellant states as Reasons for Appeal that her son is in so much pain that he gets really bad headaches. His dentist said he needs braces for his teeth and they cannot afford them.

After reconsideration but before the hearing, the appellant sent a submission dated 14 February 2013 to the Tribunal that included some x-ray images and a diagram showing the son's overbite, as well as the aforementioned letter from the physician and images sent in at reconsideration. (When scanned and transmitted to the panel and the ministry, the x-ray images were unreadable. As the panel does not have the expertise or mandate to interpret x-rays, the panel finds that the unreadability of these

images would not have made a material difference to the appellant's argument.)

At the hearing, the appellant stated that her son suffered from bad headaches and had trouble eating. She said that these problems have begun when her son was 14 years old. The son's physician sees her son's dental condition as a medical issue, attributing the headaches to his dental problems. He has had his wisdom teeth removed, but this did not seem to help. She noted that the orthodontist had filled in the form showing that he needed braces.

The panel finds the appellant's submission before the hearing and her testimony at the hearing relating to her son's dental condition are in support of information that was before the ministry at reconsideration. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

At the hearing, the ministry relied on its position at reconsideration.

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 for her son 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 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 and a dependent child of that person*] 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 and subsequently confirmed by the appellant's orthodontist, 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's son has 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 her son's overbite has resulted in a serious medical condition, confirmed by his physician, with bad headaches and difficulty eating. Denying this treatment recommended by the orthodontist is unreasonable.

The panel notes that the legislation provides for the application of a technical and objective criterion on a case-by-case basis. Assessing whether this criterion is met requires the expertise of specialists in the field. The evidence is that an independent orthodontist contracted by the ministry found that severe skeletal dysplastic with jaw misalignment by 2 or more standard deviations was not evident in any of the son's medical records submitted by the appellant's orthodontist. The appellant's orthodontist subsequently confirmed this assessment. The panel finds that the ministry reasonably relied on the screening of the orthodontist contractor, and subsequent confirmation by the appellant's orthodontist, in determining that the appellant's son 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.