

**PART C – Decision under Appeal**

The decision under appeal is the December 5, 2013 reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”), in which the ministry determined that the appellant’s daughter (the “patient”) was not eligible for orthodontic treatment as provided in Sections 62 and 65 of the Employment and Assistance for Persons with Disabilities Regulation (the “EAPWDR”). In particular, the ministry found that the dental requirements of appellant’s daughter failed to meet the criteria of Section 65 (2)(a) in that she has not been diagnosed with a severe skeletal dysplasia with jaw misalignment of two or more standard deviations.

**PART D – Relevant Legislation**

EAPWDA Section 5  
EAPWDR Sections 62 and 65

## PART E – Summary of Facts

The appellant is designated as a person with disabilities, and is a recipient of disability assistance. The appellant submitted a completed Orthodontic Assessment form for her daughter to the ministry on July 11, 2013 which described the patient's orthodontic problems.

On October 29, 2013 the appellant was advised by the ministry that her daughter was not eligible to receive orthodontia as she does not meet the criteria. The appellant requested a reconsideration of that decision.

The information before the ministry at the time of reconsideration included the following:

- A letter from the Health Assistance Branch, dated June 19, 2013, to the orthodontist, outlining the required criteria for authorization of treatment and providing an Orthodontic Assessment form to be completed.
- A Request for Orthodontic Care form, signed by the referring dentist, dated June 18, 2013.
- A letter from the referring dentist, dated June 18, 2013, describing the patient's diagnosis of bilateral acute myositis, outlining the current treatment regimen which includes ULF TENS and an orthotic appliance, and referral for orthodontic care.
- A completed Orthodontic Assessment form, dated July 11, 2013 and signed by the orthodontist, describing the patient's orthodontic problems. Details included:
  - Straight Maxilla and Mandibular Profile
  - Molar Occlusion – I right/ I left); Cuspid Occlusion – I left/II right
  - Anterior, Unilateral, Posterior (left side) Crossbite
  - Lower mid-line 1mm to Rt.
  - Overjet 0-3mm, Overbite 5%
  - Upper overcrowding (moderate) 6mm; Lower overcrowding (moderate) 5mm.
  - Bilateral posterior openbite; history of TMJ disc displacement with and without reduction (episodes of closed lock) limited range of motion on opening +++ facial muscle pain.
- A letter from the orthodontist, dated July 11, 2013, outlining the diagnostic findings (noted in assessment above) and recommended treatment plan for the patient.
- A letter from the orthodontist, dated July 11, 2013, to the appellant outlining the recommended treatment plan, associated costs and payment schedule.
- A series of diagnostic photos from the orthodontist, dated June 12, 2013.
- A letter from the orthodontist, dated July 11, 2013, to the referring dentist outlining the diagnostic findings and recommended treatment plan for the patient.
- A completed Orthodontic Screening form, dated October 7, 2013, completed by the ministry contracted orthodontist, indicating that the patient does not meet the legislated criteria, adding that there is, "No skeletal dysplasia apparent. Pt's malocclusion more related to moderate

Maxillary Grinding.”

- A letter from the ministry, dated October 29, 2013 to the orthodontist, explaining that the patient has been denied her request for an orthodontic supplement, as she has not met the required criteria. Attached to the letter is an Orthodontia Decision Summary indicating that the patient is a dependent child of a recipient of income [sic] assistance; there are no resources available to the family to cover the cost of the orthodontic treatment; orthodontia has not been provided without prior authorization from the minister; and the patient does not have severe skeletal dysplasia with jaw misalignment by two or more standard deviations, meaning that the ministry's criteria have not been met.
- The patient's Attendance Summary, provided by her school, indicating that she has been absent for 8 periods and excused for 218 periods of her 684 period school term.
- The appellant's Request for Reconsideration (RFR), dated November 22, 2013 and signed by the appellant.
- A letter from the orthodontist, dated November 18, 2013, requesting a reconsideration of the ministry decision. He explains that the patient has a long history of TMJ issues and that with the orthotic treatment provided by the patient's dentist earlier in the year she showed marked improvement in all areas. He adds that the next step to continue the patient's progress would be orthodontic treatment to stabilize a new jaw position. He states that without this treatment the patient may begin to experience the debilitating symptoms she had before and that this relapse has already begun. He adds that he fears that her condition will worsen and at that point, surgery becomes the best option.
- A Clarification Log which states that the ministry contacted the orthodontist on December 5, 2013 requesting that he advise as to whether the patient meets the required criteria of severe skeletal dysplasia with jaw misalignment by two or more standard deviations. The orthodontist telephoned that same day, indicating that he was unsure about two or more standard deviations but describes the patient's condition as severe, adding that the patient did benefit from treatment provided by the dentist and that orthodontics would be the logical next step.

The appellant submitted a signed Notice of Appeal on January 16, 2014, which was received by the tribunal on January 21, 2014.

The Appellant, with the assistance of an advocate, submitted the following additional documentation, which was received by the panel prior to the hearing.

- Received on January 29, 2014, copies of two tribunal decisions rescinding ministry decisions regarding orthodontic treatment. The first decision was from July 2007 and had a portion underlined, by the appellant's advocate, "the patient's orthodontist stated that there is no standardized method of interpretation of the severity of a skeletal discrepancy that is not subjective." The second decision, from September 2009, had a portion underlined, by the appellant's advocate that highlighted that the orthodontist completed the assessment form and

proceeded with records, which the panel accepted as evidence that the orthodontist must have concluded that the patient met the required criteria.

- Received on February 11, 2014, a letter from the orthodontist, dated January 29, 2014, asking for careful reconsideration of this case and re-stated information from his previous letters, assessment and treatment plan, as well as noted that, "there is no non-subjective orthodontic standard to measure this deviation accurately," continuing, "in [the patient's] case, her cephalometric values may not indicate a severe enough dysplasia, but in my opinion, her functional issues are definitely severe," and he added, "I can confidently say that her overall condition is greater than the two standard deviations from normal."

The ministry representative did not object to the previously rescinded decisions, however; she did express concern that without knowing additional details regarding the specific circumstances of these decisions, she was unsure how this information was applicable or relevant to the appellant's current appeal.

The panel accepted the past tribunal decisions as argument.

The ministry representative did object to the admissibility of the January 29, 2014 letter from the orthodontist, as she felt that it contained new information, rather than information in support of the information and record that was before the ministry at the time of reconsideration.

The ministry representative submitted an email dated February 5, 2014 from the ministry contracted orthodontist, which clarified the clinical symptoms that may be present in order to meet the requirements of the legislated criteria, to which the appellant did not object. Specifically, it is noted, "I look for cases of severe skeletal malocclusion – usually resulting in a posterior crossbite, class III or anterior crossbite and significant class II or excess overjet. The latter two situations can be demonstrated on the lateral cephalometric analysis with measures such as ANB  $\geq 6$  degrees for a class II. In order to help an orthodontist know whether a case will qualify they should look for cephalometric analysis measures which fall  $\geq 2$  s.d. from the Norms."

The panel accepted the January 29, 2014 letter from the orthodontist and the email from the ministry as they were in support of the information and record that was before the Ministry on Reconsideration and provided further detail regarding the current status of the patient's orthodontic assessment and were therefore accepted pursuant to section 22(4) of the EAA.

The appellant's oral evidence on appeal included the following information:

- As a mother, she cannot bear to see her daughter experiencing such severe pain and missing so much school due to the ongoing problems with her jaw, noting that some days she has to give her daughter Advil and Tylenol in order to cope with the pain.
- She is frustrated that she has been working on getting approval for orthodontic care for her daughter for such a long time.
- Under the advisement of the orthodontist, the appellant has been told that without orthodontic care, her daughter's only option will be to undergo painful surgery, which will involve breaking her jaw in order to realign her teeth. She adds that multiple surgeries may have to occur and

the appellant does not feel that this is a viable option, when orthodontic care could solve the problems.

- She states that her daughter is currently wearing an orthodontic appliance, provided by the dentist and paid for by the appellant's parents, intended to be worn for four months, that she has now been wearing for well over a year.
- She states that the orthodontic care she is seeking for her daughter is not to address any cosmetic concerns, only to alleviate her ongoing pain.
- She states that she discussed the option of monthly payments with the orthodontist in order to cover the costs, but it is not a possibility that she and her family can currently afford.
- She noted that the Orthodontic Screening form, dated October 7, 2013, completed by the ministry contracted orthodontist, indicated a screening date of July 2011 by an orthodontist that had not seen the patient in a very long time.
- She clarified that the diagnostic photos taken on June 12, 2013 at the orthodontist office were taken prior to the dentist's referral letter to the orthodontist, on June 18, 2013.
- She appreciated that the ministry acknowledged in the reconsideration decision that they were sympathetic to her daughter's case.

The appellant's daughter added that she experiences frequent, sharp pain in her jaw, specifically the temporomandibular joint, and describes it as a "bone on bone" sensation whenever she bites down.

The appellant's mother (the patient's grandmother) added that she has witnessed her granddaughter's severe pain and has even taken her to the hospital due to locking of her jaw.

The ministry relied primarily on its reconsideration decision and provided the email from the ministry contracted orthodontist which further clarified the legislated criteria.

The ministry commented that the Orthodontic Screening form, dated October 7, 2013, completed by the ministry contracted orthodontist, that was questioned by the appellant was based on the most recent screening from the current orthodontist and that the screening date and incorrect orthodontist name was likely automatically populated from a previous form.

## PART F – Reasons for Panel Decision

The decision under appeal is the December 5, 2013 reconsideration decision in which the ministry determined that the appellant's daughter was not eligible for orthodontic treatment as provided in Sections 62 and 65 of the Employment and Assistance for Persons with Disabilities Regulation (the "EAPWDR"). In particular, the ministry found that the dental requirements of appellant's daughter failed to meet the criteria of Section 65 (2)(a) in that she has not been diagnosed with a severe skeletal dysplasia with jaw misalignment of two or more standard deviations.

The relevant legislation is as follows:

### EAPWDA

#### Section 5

Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

### EAPWDR

#### Section 65 – Orthodontic Supplement

65 (1) Subject to subsection (2.1), 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) a person with disabilities who is eligible for health supplements under

(i) section 62 (1) (a) or (b) (iii),

(ii) section 62 (1) (b) (i) or (f), if

(A) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(B) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(iii) if the family unit is receiving premium assistance under the *Medicare Protection Act*,

(iv) section 62 (1) (b) (ii), or

(v) section 62 (1) (g), or

(b) a dependent child of a person referred to in

(i) paragraph (a) (i),

(ii) paragraph (a) (ii), if

(A) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(B) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(iii) paragraph (a) (iii), or

(iv) paragraph (a) (iv). (B.C. Reg. 67/2010)

(2) For a person referred to in subsection (1) to be eligible for health 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, and
- (b) obtain prior authorization from the minister for the orthodontic supplements.

(2.1) A person eligible to receive orthodontic supplements under subsection (1) (a) (iii) or (b) (iii) of this section may receive the supplements

(a) while any person in the family unit is

- (i) under age 65 and receiving a pension or other payment under the Canada Pension Plan, or
- (ii) aged 65 or more and receiving the federal spouse's allowance or the federal guaranteed income supplement, and

(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only. (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

\* \* \*

Whether the patient (dependent child of the appellant) has no available resources to cover the cost of orthodontic treatment (Section 65 (2))

The appellant stated that she is currently unable to cover the cost of the orthodontic treatment, even if monthly installments were offered to her.

The ministry was satisfied that the information provided by the appellant has established that she does not have available resources to cover the costs and has met the statutory criteria for EAPWDR (Section 65 (2))

Whether the patient has a severe skeletal dysplasia with jaw misalignment by two or more standard deviations (Section 65 (2) (a))

The appellant argued that her daughter's orthodontist has stated that orthodontic treatment is required to stabilize the jaw position and without it the condition will worsen, leading to increased pain and suffering as well as a greater loss of function and eventually surgery will be the only option. She further states that the orthodontist described her daughter's condition as "severe" and that the measurements required to meet the eligibility requirements are subjective. She added that there are no ways of measuring skeletal dysplasia that are not subjective. She concludes that the orthodontist has explained that the functional issues are severe and considered to be greater than two standard deviations from normal.

The ministry's position was that, in the opinion of the minister, and the ministry contracted

orthodontist that the information provided did not establish that the patient has been diagnosed with a severe skeletal dysplasia, that the malocclusion described in the assessment was not considered 'severe' and the cephalometric analysis did not measure two or more standard deviations from the norm. The ministry added that when they contacted the patient's orthodontist in order to clarify if she met the legislated criteria, the orthodontist's response was that he was not sure about the two or more standard deviations but would describe her condition as severe. The ministry representative did encourage the appellant to reapply for the orthodontic supplement, should her daughter's condition change in a manner that meets the criteria set out in EAPWDR Section 65 (2)(a).

The panel accepts that the patient is experiencing considerable pain and discomfort and acknowledges that this pain is having a significant impact on her quality of life. However, the panel finds that although the patient's orthodontist has assessed her clinical condition as being "severe" and notes severely impaired functionality, the assessments provided do not report a severe skeletal dysplasia nor a severity on the structural and anatomic measures, specifically two or more standard deviations, as required to establish eligibility as required by the legislated criteria, specified in Section 65 (2)(a). The panel accepts the previous tribunal decision, submitted by the appellant as argument, regarding the subjectivity of orthodontic assessment of skeletal discrepancy, however in that particular decision; the patient had not undergone any cephalometric films or analysis. Further, the panel found that the information provided by the ministry contracted orthodontist which clarified the diagnostic measures considered by the ministry when assessing for severe skeletal malocclusion (posterior crossbite, class III or anterior crossbite and significant class II or excess overjet) and applied to the patient's orthodontic assessment, established evidence that the patient had a "moderate overjet (0-3mm)" rather than excess overjet and moderate (class I/II), not severe malocclusion. When considering the letter of January 29, 2014 from the orthodontist, the panel accepts that the patient's functional issues are noted as 'severe', however the letter states that the patient's cephalometric values may not indicate a severe enough dysplasia. The panel did not accept the appellant's argument that completion of the ministry orthodontic assessment form and proceeding with patient records by the orthodontist was evidence that the patient had met all legislated criteria, noting that the patient had attended the orthodontist and had a series of diagnostic photos and x-rays taken (June 12, 2013) prior to the initial contact made by the ministry to the orthodontist (June 18, 2013) stating the legislated criteria.

### Conclusion

For the reasons detailed above, the panel finds that the ministry decision was a reasonable application of the legislation in the circumstances of the appellant. Accordingly, the ministry decision is confirmed.