

PART C – Decision under Appeal

The decision under appeal is the November 26, 2014 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 Section 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 by 2 or more standard deviations.

PART D – Relevant Legislation

EAPWDA Section 5
EAPWDR Section 65

PART E – Summary of Facts

The ministry did not attend the hearing. The ministry was notified and the hearing proceeded pursuant to section 86(b) of the Employment and Assistance Regulation.

The appellant is designated as a person with disabilities, and is a recipient of disability assistance. The appellant submitted a Request for Orthodontic Care form for her daughter to the ministry on March 6, 2014 which was completed by the daughter's dentist on June 18, 2013 which described the patient's orthodontic problems.

On October 10, 2014 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.
- A copy of a 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.
- Copies of two tribunal decisions rescinding ministry decisions regarding orthodontic treatment. The first decision was from July 2007 and had a portion underlined, "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, 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.
- A copy of an original Reconsideration Decision related to this above noted documentation, dated December 5, 2013, denying the appellant's request for orthodontic treatment for her daughter.

- A copy of the Employment and Assistance Appeal Tribunal Decision from a hearing held in February 2014 in which the panel confirmed that the ministry was reasonable in their decision to deny the appellant's request for orthodontic treatment for her daughter.
- A letter, received by the Appeal Tribunal on February 11, 2014, from the orthodontist, dated January 29, 2014, asking for careful reconsideration of this case and re-stating information from his previous letters, assessment and treatment plan, as well as noting 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."
- A Request for Orthodontic Care form, signed by the appellant on March 6, 2014 and the appellant's daughter's dentist on June 18, 2013.
- A copy of an email exchange between the ministry contracted orthodontist and the Supervisor of the Health Assistance Branch, dated September 30, 2014, in which the ministry contracted orthodontist explains that "No, class I moderate crowding is fairly specific and would indicate very little skeletal dysplasia in fact. That is not to say that she does not have severe orthodontic needs – only that they are not related to "skeletal dysplasia" as required by the legislated criteria."
- The Request for Reconsideration Form, signed by the appellant on November 12, 2014. In Section 3 she writes that her daughter's law misalignment causes severe pain and functional problems, severe enough that she will have to have braces to correct it, otherwise she will require surgery to correct the problem. The appellant states that the problem with surgery is that one surgery is usually not sufficient and multiple surgeries may be required which would greatly disrupt her daughter's life. She concludes that the orthodontist has stated that her daughter's "overall condition is greater than the two standard deviations from normal." To this she has re-attached the orthodontist's letter from January 29, 2014.

The appellant submitted a signed Notice of Appeal on December 2, 2014, in which she stated that she disagrees with the ministry decision because her "daughter is in a lot of pain! She has more than two or more standard deviations with jaw misalignment according to [the orthodontist]. The only other action to take is surgery!"

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

- The appellant stated that her daughter's orthodontist has clearly outlined, in his letter of January 29, 2014, that her daughter's overall condition is greater than two standard deviations from normal.

- The appellant explained that her daughter is in a tremendous amount of pain and as a mother she needs to do whatever she can to make her daughter more comfortable.
- The appellant stated that she is unable to afford new x-rays, but has taken her daughter back to the orthodontist two times since he wrote the January 29, 2014 letter and he has fit her with an appliance that has been worn to help with chewing and assist with pain, but this is temporary and only providing mild relief for short periods.
- The appellant stated that her daughter's orthodontist would be happy to discuss this case with the ministry contracted orthodontist in hopes that a solution could be found and provide her daughter with the braces she needs to alleviate some of her pain.

PART F – Reasons for Panel Decision

The decision under appeal is the November 26, 2014 reconsideration decision in which the ministry determined that the appellant's daughter was not eligible for orthodontic treatment as provided in Section 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 by 2 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 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 described in his letter of January 29, 2014 her daughter's case as, "overall condition is greater than the two standard deviations from normal."

The ministry's position was that it relies on the evidence of the ministry contracted orthodontist who on September 30, 2014 explained that "No, class I moderate crowding is fairly specific and would indicate very little skeletal dysplasia in fact. That is not to say that she does not have severe orthodontic needs – only that they are not related to "skeletal dysplasia" as required by the legislated criteria." Additionally, the ministry's position was that no new information from a health professional had been submitted with the Request for Orthodontic Care form.

The panel accepts that the appellant is very concerned with the amount of pain her daughter is enduring. The panel finds that although the patient's orthodontist has assessed her clinical condition as being "greater than the two standard deviations from normal", the assessments provided do not report a severe skeletal dysplasia by 2 or more standard deviations as is required to establish eligibility by the legislated criteria, specified in Section 65 (2)(a) and this was confirmed by the ministry contracted orthodontist, stating, "No, class I moderate crowding is fairly specific and would indicate very little skeletal dysplasia in fact. That is not to say that she does not have severe orthodontic needs – only that they are not related to "skeletal dysplasia" as required by 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.