

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated March 29, 2016 which denied the appellant's request for coverage for technical services associated with orthognathic surgery in excess of the rates set out in "Dental Technical Procedures, Schedule E, Ministry of Health, Medical Beneficiaries Branch" (DTP). The ministry also determined that the appellant was not eligible for coverage under section 69 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), which provides supplements to meet a life-threatening health need, because section 69 does not cover dental, denture and orthodontia supplements.

PART D – Relevant Legislation

EAPWDR, sections 65 and 69

PART E – Summary of Facts

Information before the ministry at reconsideration

The appellant is a recipient of disability assistance who received ministry approval for coverage for pre-orthognathic jaw surgery services set out in the DTP. The coverage was approved at the rates set out in the DTP, plus an additional 10% specialist surcharge. The difference between the approved coverage and the oral surgeon's fees is \$3015. In support of her request, the appellant had submitted documentation which included letters from her oral surgeon (May 2, 2015), orthodontist (December 9, 2015), physician (February 23, 2016), and her dentist (February 24, 2016), attesting to the appellant's need for a combination of braces and orthognathic surgery to address pain and loss of function resulting from jaw malformation. In the oral surgeon's May 2, 2015 letter, he explains that the particular surgery the appellant is to undergo is required because the oral surgeon is not willing to perform upper-jaw surgery on the appellant with the knowledge that she would refuse to receive blood due to her religious beliefs, "even if it was a life-saving measure."

At reconsideration, the appellant submitted a letter from her advocate dated March 8, 2015 comprised of argument as to why the appellant is eligible for the requested coverage. The argument is set out in Part F of this decision.

Information provided on appeal

Prior to the hearing, the appellant submitted a letter dated April 14, 2016 from her oral surgeon. The surgeon describes that the standard of care for patients like the appellant has become virtual surgical planning, which includes preoperative cone beam scans, transfer of the data to the United States, as well as skeletal suspension following the surgery. The current ministry fee schedule lags behind technological advancements and does not consider virtual surgical planning.

At the hearing, the appellant provided a health authority "Consent for Transfusion of Blood Products" form dated April 26, 2016 and signed by the appellant and her oral surgeon, and witnessed by one of her advocates.

At the hearing, the appellant and her advocates described the gravity of the appellant's situation, noting the terrible pain, jaw locking, and eating difficulties and resulting weight loss. The appellant stated that if she does not have the corrective surgery, in 10 years she will need to be fed from a tube. The appellant explained that it was very hard for her to sign the transfusion consent form due to her beliefs but that she did so for her quality of life. One of the appellant's advocates stated that the appellant's orthodontist stated that he had a ministry client who received full coverage for the same treatment that the appellant requires.

The ministry did not introduce additional evidence and relied on the reconsideration decision.

The ministry did not object to the admission of the April 14, 2016 oral surgeon's letter or the transfusion consent form into evidence. As the oral surgeon's letter provided a more detailed description of the services required as part of the appellant's treatment plan, it was admitted under



section 22(4) of the Employment and Assistance Act as being in support of the information and records before the ministry at reconsideration. While the panel appreciates the dilemma the appellant faced when deciding to sign the transfusion consent form, it was not admitted into evidence as it is contrary to, rather than in support of, the information available to the ministry at reconsideration and raises the question as to whether the oral surgeon recommends the same treatment procedures given that the appellant has now consented to possible transfusion.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision which held that the appellant is not eligible for coverage for services associated with orthognathic surgery in excess of the rates set out in the DTP is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. That is, was the ministry reasonable when concluding that it has no legislative authority to provide such coverage and because section 69 of the EAPWDR does not cover dental, denture and orthodontia supplements?

Relevant Legislation – sections 65 and 69 of the EAPWDR

Orthodontic supplement

65 (1) Subject to subsection (2), the minister may provide orthodontic supplements to or for

(a) a family unit in receipt of disability assistance, if the orthodontic supplements are provided to or for a person in the family unit who is

(i) a dependent child, or

(ii) a person with disabilities, or

(b) a family unit, if the orthodontic supplements are provided to or for a person in the family unit who

(i) is a continued person, and

(ii) meets any of the following criteria:

(A) the person is a dependent child;

(B) the person was, on the person's continuation date, a person with disabilities.

(2) For a person referred to in subsection (1) 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, and

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

Health supplement for persons facing direct and imminent life threatening health need

69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [general health supplements] and 3 [medical equipment and devices] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) a person in the family unit is eligible to receive premium assistance under the [Medicare Protection Act](#), and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

Appellant's position

The appellant's position is that based on the overwhelming evidence attesting to the need for the surgery, as a PWD client who is without the financial means to pay for the required pre-surgical services, she is caught between pain and an inadequate Schedule of Fee Allowance, and should be provided with the funding in this extreme case. The appellant's weight loss and other health problems related to her jaw malformation are so serious that they put her life at risk. The seriousness of her medical condition is reflected by the difficult decision to consent to a blood transfusion, if needed. Given the gravity of her situation, the ministry should provide full coverage under section 69 of the EAPWDR or other means.

Ministry's position

The ministry's position is that the appellant has received the maximum amount of coverage that may be provided. The ministry notes that the requested services are not set out in any of the ministry's Schedule of Fee Allowances – Dentist, Emergency Dental – Dentist, or Crown and Bridgework. Rather, they are set out in the DTP, which is governed by the Ministry of Health. Consequently, there is nothing in the ministry's legislation which speaks to the ministry's authority to provide funding for services associated with orthognathic surgery. The decision of the ministry to provide funding was based on a desire to assist ministry clients who were approved for orthodontia under section 65 of the EAPWDR and also require orthognathic surgery. Recognizing that pre and post-operative

orthognathic surgery costs are only covered by MSP if a client is being treated under the cleft lip/palate program through the Ministry of Health, the ministry agreed to cover those costs as set out in the Ministry of Health DTP. As such, the ministry's role is limited to providing coverage for the services set out in the DTP at the rate set out therein (which includes a 10% surcharge for specialist fees).

The ministry also argues that the appellant is not eligible for coverage for the services at the rates charged by the oral surgeon under section 69 of the EAPWDR, as this section only allows for the provision of medical supplies, medical transportation and medical equipment and devices, if the supplement is required to meet a life-threatening health need. Dental and orthodontia supplements are not set out in section 69.

Panel Decision

The ministry's authority to provide health supplements to meet a life-threatening need is set out in section 69 of the EAPWDR. Section 69 is clearly limited to the provision of certain health supplements, namely those set out in sections 2(1)(a) and (f) and 3 of Schedule C which are medical and surgical supplies, medical transportation, and medical equipment and devices. As the pre-orthognathic surgery services for which the appellant requests full coverage are not any of those supplements, the panel finds that the ministry has reasonably determined that the appellant is not eligible for the requested coverage under section 69 of the EAPWDR.

The ministry's only legislative authority respecting the provision of orthodontic supplements is section 65 of the EAPWDR, and ministry policy references services provided by an "orthodontist." There is no definition of "orthodontic supplements" in the legislation but the common understanding or plain meaning of orthodontics is the treatment, or realignment, of teeth by various means including braces and retainers. Orthognathic surgery, more plainly referenced as jaw surgery, is clearly not an orthodontic service provided by an orthodontist. Both the pre-orthognathic surgery services and the surgery itself are under the purview of the Ministry of Health, with the surgery covered by the Medical Services Plan (MSP) and the pre-operative services listed in the Ministry of Health DPT. That the ministry decided to provide coverage for the pre-operative services set out in the DPT for its orthodontia clients who do not meet the criteria for coverage under the MSP, notwithstanding the legislated limits of the EAPWDR, does not create an obligation to provide that coverage at rates in excess of those set out in the DPT, and the panel finds that there is no basis to find the reconsideration decision unreasonable.

Conclusion

While the panel sympathizes with the appellant's situation, the panel finds that the reconsideration decision reflects a reasonable application of the legislation in the appellant's circumstance and confirms the decision.