

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation (“the ministry”) dated September 23, 2016 which held that the appellant was not eligible for an orthodontic supplement for her dependent child because the legislative requirements as set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 65 were not met. Specifically, the ministry determined that there is no severe skeletal dysplasia with jaw misalignment of two (2) or more standard deviations.

The ministry determined that the appellant as a recipient of disability assistance was eligible for orthodontic supplements for her dependent child.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

Information before the ministry at reconsideration:

- A letter dated May 25, 2016 from the appellant's orthodontist containing a brief summary of the findings of the orthodontic evaluation of the appellant's dependent child.
- A letter dated June 2, 2016 from the appellant's orthodontist with a brief outline of the anticipated treatment plan for the appellant's dependent child.
- A pre-determination information form dated June 15, 2016 from the appellant's orthodontist.
- An Orthodontic Assessment dated June 14, 2016 describing the orthodontic problem and treatment plan. A Treatment Fee document, undated for a total of \$6,450. (\$350 for diagnostic records and treatment- braces fee of \$6,100).
- A pre-determination statement dated July 25, 2016 from the appellant's insurer indicating that the request has been denied.
- A sheet containing photograph's of the appellant's dependent child's teeth.
- A contracted orthodontists assessment and comments dated July 18, 2016 which informs the ministry that the patient does not meet the criteria because "No evidence of severe skeletal dysplasia."
- A Request For Reconsideration dated September 7, 2016 which states that they are on disability and that her dependent child's orthodontic needs and recommendations are attached. The appellant further states that she has no other resources available at this time.

Clinical Findings and Diagnostic Summary:

- The upper job appears to be in a normal position and the lower jaw appears to be in a slightly retrognathic position
- Oral hygiene appears to be good
- The gingival tissues are inflamed
- There is thin gingiva associated with teeth #'s 31,33 and 43
- The upper and lower midlines are centered
- The lower teeth are slight-moderately behind the upper teeth with a normal overbite (10-30%)
- There is mild to moderate crowding of the upper teeth with moderate crowding of the lower teeth
- Additional comments or concerns – the upper incisors are proclined

Treatment Recommendations:

- Full orthodontic treatment
- Band and Bond both the upper and lower arches to correct the malocclusion
- Full banding to both arches
- Upper and lower removable Essix retainers
- Orthodontic treatment to begin at this time
- Treatment time estimated to be 21-24 months
- Treatment will not require tooth removal

Treatment Goals:

- Straighten all teeth
- Correct bite relationship
- Establish correct overbite
- Normalize axial inclination associated with the upper incisors

Information provided on appeal and admissibility

In a Notice of Appeal dated September 28, 2016, the appellant states that her dependent child does meet the criteria based on the dentist- orthodontist recommendation and that she has no other ability or resources to pay. The appellant further states that it is in the child's best interest.

Prior to the hearing the appellant submitted the following documents:

- A copy of a Family Maintenance Enforcement Program - Statement of Payments Disbursed indicating that the appellant received \$39,549.95 for the period March 18, 2008 to October 27, 2016.
- A copy of Treatment/Progress Notes dated July 7, 2011 by the appellant's dentist indicating a consultation with Mom. (difficult to read).
- A Patient Ledger for the appellant's son indicating a consultation on July 7, 2016 and a zero balance as of October 26, 2016.
- A Patient Ledger for the appellant's son indicating a consultation on July 7, 2016 and a zero balance as of October 25, 2016.
- A 2 page Patient Receipt Ledger for the appellant, her son and another person dated October 20, 2016 indicating a new account balance of \$534.64.
- A copy of Treatment Notes dated Jan 26, 2007 - May 25, 2011 for the appellant's son by the appellant's hygienist/dentist. (no personal identifiers, difficult to read)

The ministry did not provide additional evidence on appeal, relying on its reconsideration decision.

Pursuant to section 22(4) of the Employment and Assistance Act, the panel admits the information provided on appeal from the appellant as being demonstrative of the dental care efforts , the appellant has made in regards to her dependent child and in support of evidence that was before the ministry at the time of reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision which held that the appellant was not eligible for an orthodontic supplement for her dependent child because the criteria were not met. Specifically, the ministry determined that there is no severe skeletal dysplasia with jaw misalignment of two (2) or more standard deviations as set out in Employment and Assistance for Persons with Disabilities Regulation.

Relevant Legislation

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.

Ministry's Position

The ministry found that the information submitted by the appellant's orthodontist does not establish that her dependent child has severe skeletal dysplasia with a jaw misalignment by 2 or more standard deviations. Upon review of the documents submitted by the appellant's orthodontist, the ministry's contracted orthodontist confirms there is no evidence of severe skeletal dysplasia. As a result there is no evidence of severe skeletal dysplasia and the criteria set out in the EAPWD legislation Section 65(2)(a) has not been met.

Appellant's Position

The appellant's position is that her dependent child does meet the criteria based on her orthodontist's recommendation and that she has no other ability or resources to pay. The appellant further argues that it is in the child's best interest.

Panel Decision

The panel notes that the ministry has no discretion in applying the above-noted legislation and that there are no exceptions in policy. The panel finds that the evidence has not established that the appellant's dependent child has severe skeletal dysplasia with a jaw misalignment by 2 or more standard deviations and the criteria set out in the EAPWD legislation Section 65 has not been met.



Therefore, the panel finds that the ministry decision was a reasonable application of the legislation in the circumstances of the appellant and confirms the reconsideration decision. The appellant is not successful in her appeal.