

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated October 20, 2016, which denied the appellant's request for a supplement to cover the cost of orthodontic treatment for her daughter. The ministry found that the requirement of Section 65(2)(a) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) was not met as the appellant's daughter does not have a 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 ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Initial Records dated August 23, 2016 for the appellant's daughter, including an x-ray of her skull, photographs of her profiles, jaw and teeth;
- 2) Certified Specialist in Orthodontics Standard Information Form dated August 31, 2016, completed by the orthodontist for the appellant's daughter;
- 3) Orthodontia Request Form dated August 31, 2016, completed by the orthodontist for the appellant's daughter;
- 4) Orthodontist's Assessment and Comments dated September 22, 2016 in which the ministry contracted orthodontist wrote: "No severe skeletal dysplasia evident on records;"
- 5) Predetermination Response by Pacific Blue Cross (PBC) dated October 5, 2016;
- 6) Certified Specialist in Orthodontics Standard Information Form dated November 8, 2016, completed by the orthodontist for the appellant's daughter;
- 7) Print out of the ministry Policy & Procedure for Dental and Orthodontic Services last modified October 12, 2016;
- 8) Orthodontist's Assessment and Comments dated December 7, 2016 in which the ministry contracted orthodontist wrote: "This patient does not have skeletal dysplasia BUT they do have obvious dental-based malocclusion that warrants treatment. If possible to approve based on these dental needs, then please do so as this is a deserving case;" and,
- 9) Request for Reconsideration dated November 8, 2016.

In the Request for Reconsideration, the orthodontist for the appellant's daughter wrote that:

- The appellant's daughter has a severe dental malocclusion with ankyloses of #46 causing a three-dimensional distortion to the occlusion.
- Tooth #23, #24 are transposed and #12 and #22 are congenitally missing.
- The upper midline is deviated to the left, and there is a large midline diastema.
- Prosthetic treatment to replace #12 and #22 is not possible with the present tooth position.
- In general, this is a severe malocclusion which is further complicated with a skeletal CI III and a tendency for long lower anterior face height.

### ***Additional information***

In the Notice of Appeal dated December 23, 2016, the appellant's mother wrote that:

- This is not a cosmetic issue, it is a functional problem and the dentist office can be contacted by telephone.
- [Her daughter's] bite is not right and she has a tooth stuck in her bone, plus two of her teeth are switched.
- She feels like this is going to cause future pain for her daughter.

At the hearing, the appellant stated that:

- She feels badly because it is not her daughter's fault that she is on disability and she cannot afford to have the orthodontic work done for her.
- The work required is not cosmetic, but it is a functional thing. Her daughter gets bad headaches and jaw pain. She had to take her daughter to the emergency department at the hospital because of her headaches but no one seems to be able to figure it out.

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- Her daughter has a long lower face. She has teeth fused into her bone and other teeth that are out of place.
  - Even the ministry orthodontist wrote in the Assessment that although her daughter does not have skeletal dysplasia, she does have obvious malocclusion and that “this is a deserving case.”
  - Her daughter meets all the requirements except for the severe skeletal dysplasia and she hopes something can be done for her.

The ministry relied on the reconsideration decision.

***Admissibility of Additional Information***

The panel reviewed the Notice of Appeal and the appellant’s oral testimony and finds that most of the information relates to the orthodontic procedures required by the appellant’s daughter and corroborates or supports the information and records before the ministry at reconsideration and is, therefore, admissible on the appeal pursuant to Section 22(4) of the *Employment and Assistance Act (EAA)*.

The panel finds that the information about the appellant’s daughter being in pain, experiencing headaches and jaw pain that required immediate medical attention, was not before the ministry at reconsideration and is not admissible on the appeal under Section 22(4) of the EAA as it is an issue that the ministry has not yet had an opportunity to consider.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the cost of orthodontic treatment for her daughter, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances. The ministry found that the requirement of Section 65(2)(a) of the EAPWDR was not met as the appellant's daughter does not have a severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations.

The EAPWDR provides as follows:

### **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.
- (2.1) and (2.2) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 5 (b).]
- (3) Repealed. [B.C. Reg. 313/2007, s. 2 (e).]

### *Ministry's position*

The ministry has determined that the appellant is a Person With Disabilities (PWD) and her dependent daughter is, therefore, eligible to receive the health supplements set out in the EAPWDR, Section 65; however, the ministry's position is that the services requested do not meet the requirements of Section 65(2)(a) of the EAPWDR, as the appellant's daughter does not have a severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations. The ministry wrote in the reconsideration decision that the information submitted by the orthodontist for the appellant's daughter does not establish that the appellant's daughter has severe skeletal dysplasia with a jaw misalignment by 2 or more standard deviations. The ministry wrote that the ministry's contracted orthodontist reviewed the documents submitted by the orthodontist for the appellant's daughter and provided an opinion that there is no evidence of severe skeletal dysplasia.

### *Appellant's position*

The appellant's position is that her daughter's need for orthodontic treatment is not a cosmetic issue, it is a functional problem since her daughter's bite is not right and she has a tooth stuck in her bone, plus two of her teeth are switched. The appellant argued that even the ministry orthodontist wrote in the Assessment that although her daughter does not have skeletal dysplasia, she does have obvious malocclusion and that "...this is a deserving case."

### *Panel's decision*

The appellant is in receipt of disability assistance and Section 65 of the EAPWDR allows the ministry

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to provide orthodontic supplements to her dependent daughter if all the requirements in the Section are met, including that the person 'have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations' [Section 65(2)(a)]. The panel finds that the orthodontist for the appellant's daughter had an opportunity to provide information regarding the daughter's particular condition and her need for specific orthodontic treatment, and this information was reviewed by the ministry contracted orthodontist.

The ministry contracted orthodontist reviewed the Certified Specialist in Orthodontics Standard Information Form dated August 31, 2016 completed by the orthodontist for the appellant's daughter and the Orthodontia Request Form dated August 31, 2016 completed by the orthodontist for the appellant's daughter, and the ministry contracted orthodontist subsequently provided an Assessment dated September 22, 2016 that there is: "No severe skeletal dysplasia evident on records."

The ministry contracted orthodontist also reviewed the Certified Specialist in Orthodontics Standard Information Form dated November 8, 2016 completed by the orthodontist for the appellant's daughter, the Initial Records dated August 23, 2016 for the appellant's daughter, including an x-ray of her skull, photographs of her profiles, jaw and teeth, and also the Request for Reconsideration dated November 8, 2016 completed by the orthodontist for the appellant's daughter. The ministry contracted orthodontist subsequently provided a second Assessment dated December 7, 2016 that: "This patient does not have skeletal dysplasia BUT they do have obvious dental-based malocclusion that warrants treatment. If possible to approve based on these dental needs, then please do so as this is a deserving case." There was no additional information from the orthodontist for the appellant's daughter provided on the appeal.

At the hearing, the appellant acknowledged that the ministry contracted orthodontist provided an assessment that her daughter does not have skeletal dysplasia, but she argued that the orthodontist also wrote that her daughter has malocclusion that warrants treatment and "...this is a deserving case." However, Section 65(2)(a) states that the person "must" have a 'severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations', and the use of mandatory language indicates that the ministry has no discretion to provide orthodontic supplements under this Section where this very specific requirement is not met. The panel finds that the ministry reasonably determined the appellant's daughter does not have a severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations and, therefore, that the requirement of Section 65(2)(a) of the EAPWDR was not met.

### *Conclusion*

In conclusion, the panel finds that the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the cost of orthodontic treatment for her daughter, was a reasonable application of the applicable enactment in the appellant's circumstances, and the panel confirms the decision. The appellant's appeal, therefore, is not successful.