

### **Part C – Decision Under Appeal**

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated May 31, 2023, that denied funding for orthodontic treatment. The ministry determined that

- no skeletal dysplasia has been observed in the appellant’s orthodontic assessment as required by section 65 – Orthodontic Supplement;
- the Schedule of Fee Allowances – Dentist does not include orthodontic treatment, nor does it include a treatment with a fee code 80002 as specified by the orthodontist; and
- the appellant was not eligible for coverage as a Life-Threatening Health Need (section 69) or as a Crisis Supplement (section 57).

The appellant is a child who is represented by the mother for this appeal.

### **Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act section 25

Employment and Assistance for Persons with Disabilities Regulation sections 57, 62, 63, 64 65 and 69, and Schedule C section 1

Schedule of Fee Allowances – Dentist

The full text of the legislation is provided after Part F – Reasons for Panel Decision.

**Part E – Summary of Facts**

The appellant's orthodontist submitted a Orthodontia Request Form dated February 6, 2023, requesting orthodontic treatment in the amount of \$ 7630. A monthly payment plan was included.

Images show various X-Rays of the appellant's teeth (dated February 3, 2023) and 3D model images (dated February 6, 2023).

A ministry-contracted orthodontist indicated in a March 17, 2023, assessment that the legislated criterion of "severe skeletal dysplasia with jaw misalignment by two or more standard deviations" had not been met because "no skeletal dysplasia observed".

A Dental Predetermination Summary dated April 13, 2023, by Pacific Blue Cross denied funding for an orthodontic treatment plan (fee code 80002) in the amount of \$7630. The panel notes that the minister may authorize any person or category of persons to take on any or all of the minister's powers, duties or functions. In the case of dental supplements, the minister's powers, duties or functions are assigned to Pacific Blue Cross (PBC).

At reconsideration (May 16, 2023) the appellant's mother wrote:

- The appellant is in desperate need of orthodontic treatment as requested by her dentist, and has had teeth pulled to get prepared for this treatment. The orthodontist advises that the treatment is urgent.
- The orthodontist told her that her child's mouth is very crowded and there is no room for teeth to come in, which will cause damage to the mouth. The jaw is too narrow, and a device needs to be placed in the roof of the mouth.
- She herself is a person with a disability. She is looking for work, but so far without success. As a single mother she is worried about the high treatment costs.
- The appellant (her child) has a disability.

In the Notice of Appeal, the appellant's mother wrote that the orthodontic treatment plan is urgent, that the crowding and narrow jaw can cause other problems, and that the appellant is a child with a disability.

At the hearing the appellant's mother repeated previous information and emphasized that the orthodontist considers the proposed treatment as urgent. The orthodontist had told

her that without the requested treatment there would be permanent damage to her child's health. She reported that teeth had already been pulled in preparation of the treatment, and that the child's father's insurance had paid for the extractions because their child had been included in this insurance policy. When she requested that the insurance pay for the orthodontic treatment, she found that the father had removed his child from the policy. When she approached Legal Aid she was told that she didn't qualify.

The appellant's mother reported that she had asked the orthodontist to provide more information, but the orthodontist said there was no additional information to provide. They told her not to waste time on an appeal. Instead, she should call the ministry and get a social worker. When she called the ministry, they told her that they do not provide social workers.

She has reached out to several service organizations and feels she has exhausted all possible resources. She is aware of the BC Disability Alliance. She mentioned that the ministry had told her that they would help her because she and her child have PWD designation.

The ministry summarized their reconsideration decision and explained that they are constrained by legislation and have no discretion in the matter. There is a specific legislated criterion, which is the misalignment of the jaw to a numerical degree. The severity of this condition is determined by the numerical degree. In the opinion of the contracted orthodontist this criterion has not been met. The ministry must accept the opinion of the medical professional.

The ministry noted that neither the Healthy Kids program nor the federal dental plan would have been able to provide coverage for the requested treatment. The ministry suggested that there may be local community service groups like the Rotary Club or the Lions Club that may provide funding. Dentists who charge lower rates can be found on the BC Dental website: <https://www.yourdentalhealth.ca/visiting-your-dentist/find-a-dentist/> . Povnet.org provides resources and advocates. In general, dentists are aware what services are funded by the ministry.

The ministry explained that the Ministry of Social Development and Poverty Reduction does not provide social workers – it is the Ministry of Children and Family Development provides that provides social workers and funding for children in care.

Admissibility of New Information

The panel finds that the information provided by the appellant and the ministry at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances of the request for orthodontic treatment. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

## Part F – Reasons for Panel Decision

### Issue on Appeal

The issue in this appeal is whether the ministry's denial of funding the appellant's orthodontic treatment was reasonably supported by the evidence or a reasonable application of the relevant legislation in the appellant's circumstances.

### Appellant's Position

The appellant's mother argues that her child is in desperate need of orthodontic treatment. Teeth have already been pulled in preparation for this treatment. She cannot afford the costs for this treatment and has reached out unsuccessfully to many organizations and resources.

### Ministry's Position

Skeletal dysplasia is the medical term for a group of about 400 conditions that affect bone development, neurological function and cartilage growth. They occur due to genetic mutations and their phenotype continues to evolve throughout life. Types of skeletal dysplasia are generally classified by which parts of the skeleton are involved. Children born with skeletal dysplasia will have abnormal differences in the size and shape of their legs, arms, trunk, or skull and may be very short in stature. A contracted orthodontist reviewed documents provided by Pacific Blue Cross and the appellant's orthodontist and determined that no skeletal dysplasia has been observed. The ministry had not received any information from a dental professional to establish otherwise and accepts the contracted orthodontist's assessment. Therefore, the appellant does not qualify for an orthodontic supplement under Section 65 of the Regulation.

The ministry is only authorized to provide coverage for basic dental services or emergency dental services "services" set out in the Schedule of Fee Allowances - Dentist. However, the requested dental treatment (orthodontic treatment, fee code 80002) is not set out in the Schedules of Fee Allowances - Dentist.

The ministry determined that section 69 only applies to medical transportation, medical equipment / devices, and some types of medical supplies as described in Schedule C, sections 2(1)(a), 2(1)(a)(f), and section 3. Dental and denture supplements are not set out in these sections.

Section 57(3) says that the ministry may not provide a crisis supplement to obtain a supplement described in Schedule C or for any other health care goods or services. The ministry argued that “dental and orthodontic treatments are health care services described in Schedule C”.

### **Panel’s Analysis**

#### Orthodontic Treatment as an Orthodontic Supplement (section 65)

Section 65 sets out that the ministry may provide orthodontic supplements for a person with “severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations”. The panel finds there is no medical evidence of a “severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations”. The contracted orthodontist reports “no skeletal dysplasia observed” and indicates that as a result the legislated criterion of “severe skeletal dysplasia with jaw misalignment by two or more standard deviations” has not been met. No additional medical information has been provided. Consequently, the panel finds that the ministry reasonably determined that it could not be established that the appellant has severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations.

#### Additional Findings

The only “dental services” (“basic” or “emergency”) the ministry is authorized to provide are listed in the Schedule of Fee Allowances - Dentist. The panel finds that the ministry reasonably determined that neither orthodontic treatment nor a fee code 80002 are included in this schedule.

The panel also finds that the ministry reasonably determined that the appellant is not eligible for orthodontic treatment as a life-threatening health need supplement. The ministry reasonably stated that section 69 only applies to medical transportation, medical equipment / devices, and some types of medical supplies. An orthodontic supplement is not set out in these sections. In addition, the panel finds there is insufficient evidence of a life-threatening health need.

In addition, the panel finds that the ministry was reasonable when it denied coverage for an orthodontic treatment as a crisis supplement. The ministry reasonably applied section 57(3) which says that the ministry may not provide a crisis supplement to obtain a supplement described in Schedule C or for any other health care goods or services. Orthodontic treatment falls into the category of “health care goods or services” and is

therefore excluded from crisis supplements. The panel notes that the ministry mistakenly wrote that “orthodontic treatments are health care services as described in Schedule C”. While orthodontic treatment falls into the category of “healthcare goods and services”, it is not described in Schedule C as noted by the ministry but set out in section 65 of the Regulation. Despite this error, the panel finds that the ministry was reasonable when it denied coverage for an orthodontic treatment as a crisis supplement.

### **Conclusion**

The panel acknowledges that there is evidence that the appellant would benefit from the requested orthodontic treatment. However, the panel finds that the ministry’s determination that the appellant is not eligible for coverage of orthodontic treatment is reasonably supported by the evidence and a reasonable application of the legislation in the appellant’s circumstances. The ministry’s reconsideration decision is confirmed and the appellant is not successful on appeal.

## **Employment and Assistance for Persons with Disabilities Act**

### **Delegation of minister's powers and duties**

**25** (1) Subject to the regulations, the minister may delegate to any person or category of persons any or all of the minister's powers, duties or functions under this Act except

- (a) the power to prescribe forms, and
- (b) the power to enter into an agreement under section 21 (2) or (2.1), unless section 21 (2.2) applies in relation to the agreement.

(2) A delegation of the powers, duties or functions of the minister must be in writing and may include any limits or conditions the minister considers advisable.

## **Employment and Assistance for Persons with Disabilities Regulation**

### **Crisis supplement**

**57** (3) A crisis supplement may not be provided for the purpose of obtaining

- (a) a supplement described in Schedule C, or
- (b) any other health care goods or services.

### **General health supplements**

**62** The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

### **Dental supplements**

**63** The minister may provide any health supplement set out in section 4 [*dental supplements*] of Schedule C to or for



- (a) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

### **Emergency dental and denture supplement**

**64** The minister may provide any health supplement set out in section 5 [*emergency dental supplements*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

### **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) under 19 years of age, 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 under 19 years of age;
  - (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** (1)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)the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, and
- (d)the requirements specified in the following provisions of Schedule C, as applicable, are met: ...

## **Schedule C - Health Supplements**

### **Definitions**

**1** In this Schedule:

**"basic dental service"** means a dental service that

- (a)if provided by a dentist,
  - (i)is set out in the Schedule of Fee Allowances — Dentist that is effective September 1, 2017 and is published on the website of the ministry of the minister, and
  - (ii)is provided at the rate set out in that Schedule for the service and the category of person receiving the service ...

**"emergency dental service"** means a dental service necessary for the immediate relief of pain that,

- (a)if provided by a dentist,

(i) is set out in the Schedule of Fee Allowances — Emergency Dental — Dentist, that is effective September 1, 2017 and is published on the website of the ministry of the minister, and  
(ii) is provided at the rate set out in that Schedule for the service and the category of the person receiving the service  
...

**Schedule of Fee Allowances - Dentist**  
**Effective September 1, 2017**

79601 Post-operative complications, subsequent to initial post surgical treatment...  
92215 General Anaesthetic and Intravenous sedation (in office) per hour or portion thereof ...

**Schedule of Fee Allowances - Emergency Dental - Dentist**  
**Effective September 1, 2017**

79601 Post-operative complications, subsequent to initial post surgical treatment...  
92215 General Anaesthetic and Intravenous sedation (in office) per hour or portion thereof ...

The panel notes that fee numbers are listed in numerical sequence, and Fee No. 79601 is immediately followed by Fee No. 92215.

APPEAL NUMBER 2023-0175

**Part G - Order**

The panel decision is: (Check one)     Unanimous     By Majority

The Panel     Confirms the Ministry Decision     Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred  
back to the Minister for a decision as to amount?    Yes     No

**Legislative Authority for the Decision:**

*Employment and Assistance Act*

Section 24(1)(a)     and Section 24(1)(b)   
Section 24(2)(a)     or Section 24(2)(b)

**Part H - Signatures**

Print Name

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2023/07/06

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2023/07/07

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2023/07/10