

Part C – Decision Under Appeal

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated October 27, 2023, that denied funding for the appellant's orthodontic treatment plan. 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 ministry also denied paying examination and diagnosis fees in excess of ministry rates.

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 Regulation (the Regulation) sections 57, 62, 63, 64, 65 and 69, and Schedule C section 1

Schedule of Fee Allowances – Dentist

(Relevant legislation is provided After Part F – Reasons for Panel Decision)

Part E – Summary of Facts**Information Before the Minister at Reconsideration:**

As the appellant is a minor child and the mother is her representative, all submissions from the mother will be referred to as “the representative”.

- Claim forms and receipts from a dental clinic for two children. Relevant to the appellant as follows:
 - January 19, 2023 claim form for \$300, ortho records, and receipt showing -\$300
 - March 2, 2023 claim form for \$900, initial placement, and receipt showing -\$900
 - Standard dental claim form (orthodontics) showing proposed plan of treatment and financial arrangements. Date of commencement of treatment is March 2023 with \$300 charge for orthodontic records, \$900 preliminary or appliance fee and 15 monthly payments of \$200 for total fee of \$4200
 - Payment Plan Contract dated March 2, 2023 shows total payment plan of \$3,000 with first payment of \$200 due April 15, 2023 and \$200 monthly through to June 15, 2024
- Two receipts from an optometrist dated June 13, 2023
- The same dental claim forms as noted above, with the notation that they are for “pre-determination” (no date of submission is recorded)
- Orthodontia request form completed by the dental clinic April 3, 2023 shows as description of orthodontic problem:
 - Profile: Maxilla (straight); Mandibular (retrusive)
 - Occlusion: Molar (left)(right); Cuspid (left)(right)
 - Crossbite: none
 - Mid-lines: Upper (1mm) to right; Lower (1.5mm) to right
 - Overjet: 2.2mm; Overbite 90%
 - Over crowding: Upper (mild); Lower (mild)
 - Are there any significant medical or functional implications? None
 - Proposed plan of treatment: angle class I, Deep OB, Retained #83 & ectopic eruption (lingual) of #43, non-coincident midlines, mild upper/lower crowding. U/L FEA, open coil at #43
- X-Rays
- Letter from Pacific Blue Cross dated April 24, 2023 shows claim code 80002 for \$3,900 was not approved because “The information submitted indicates treatment has already commenced prior to obtaining approval, therefore we are unable to allow further review. Please note the Ministry does not allow post approvals.”
- Request for Reconsideration form completed by the ministry on August 1, 2023, with June 2023 as the month the decision is effective, and August 30, 2023, as the day the form must

be submitted by. The representative signed the form on September 19, 2023, citing the following as the reasons for requesting a reconsideration:

- She didn't have enough time to work with the reconsideration package as she was working with an advocacy group, and they asked for the denial letter.
- She was given wrong information when she went to the ministry office.
- She sent in a request for an extension but didn't hear back, she called three times with no response.
- She was dealing with eviction, a family matter with court, police, MCFD and a protection order for herself and children so it was hard for her to do it before the deadline date.

Information Received after Reconsideration

The representative submitted the following statement (summarized) with the Notice of Appeal form dated November 4, 2023:

- The decision was an injustice for me and my family. The upcoming monthly treatment installments were not approved yet or taken into consideration.
- She is a single mom with three children and is unemployed because of health issues.
- The appellant is a child, a Canadian citizen, in very bad pain so they had to take her to the dentist, and it appears she needs urgent surgery.
- Her second child also is in pain and the dentist has recommended urgent surgery as well.
- She had gone to a different clinic first and they were asking for a large amount of money for the treatment, which she cannot afford.
- She went to a different clinic to make sure the treatment is necessary and seeking a lower cost. This dentist assures the same situation and warns of the health consequences of waiting.
- Because she has no savings to pay, she went to the ministry seeking assistance, and to understand the procedures because it was the first time, and she did not know what to do.
- She wanted to follow the right steps to ask for help and knowledge, so she personally visited the ministry.
- She showed the ministry all the clinical reports and they said, (appellant's words: "will be a waiting but because it's urgent you can pay first and then will get reimbursed"). She followed exactly all the steps she was told to take.

- Before they started the treatment, she revisited the ministry to confirm the right steps and to find out how to get reimbursed for the dental treatment. The ministry told her the same process procedure as they had explained before.
- The ministry recommended she contact Pacific Blue Cross. She asked the ministry what would happen if she got denied, and what should she do. The employee assured her that

even if she got denied she could come back, bring the denial letter and they will process for reimbursement.

- She had no money and no choice but to borrow money from a family friend, with the promise to return it when she received reimbursement.
- She explained this all to the dental clinic and they contacted Pacific Blue Cross and they got denied for reimbursement directly.
- It has been two months of going through this process with dental clinic visits, ministry office visits, phone calls and papers which has caused stress for the family.
- She took all the necessary steps, and she was misled, causing her to borrow money that she is not able to pay back.

At the hearing, the representative spoke to the points raised in her written statements. She reiterated that two of her children urgently required dental work so she approached the local ministry office to find out what she should do. The ministry gave her the number to call Pacific Blue Cross directly and informed her that if she was denied, to come back and they would help her through it. When she called Pacific Blue Cross, she was informed that they deal directly with dental clinics and that they pay the clinic directly, not the appellant. Pacific Blue Cross provided her with their contact information to give to the dental clinic.

The representative questioned why she wasn't informed, when she first contacted the ministry, that no treatment should be done prior to receiving Pacific Blue Cross approval. If she had that information, she would not have paid the money up front as the clinic told her. The clinic informed her that she needed to pay the initial costs, that they would submit the forms and when the reimbursement came in, she would be reimbursed.

The representative argued that the ongoing \$200 monthly payments had not yet been approved so why can't they be considered.

The representative stated she felt she has been done injustice because her children needed urgent dental care and she was given misinformation as to how to proceed or what her rights were.

At the hearing, the ministry relied on the reconsideration decision and emphasized the two main reasons for the denial of orthodontic work were because it was determined the appellant did not have skeletal dysplasia as required by legislation nor was prior approval given by the ministry before treatment began. The ministry added that the exam fee authorized by Pacific Blue Cross is set at \$200, and the \$300 amount charged by the dental clinic is more than the rate set in the Dental Fee Schedule.

The panel asked for clarification about the Orthodontia Request Form completed by the dentist, about Part 1 – General Information. The form states the ministry will only consider funding orthodontic services where there is severe skeletal dysplasia with jaw misalignment of two or more standard deviations. It goes on to ask the question “Does the patient meet this criteria? If no, do not proceed with records. If yes, submit the form with all supporting records.” The dentist completed the form and provided the records. Does completing the form and providing the records not confirm that the dentist considered the appellant has severe skeletal dysplasia? The ministry responded that Pacific Blue Cross had determined that this criterion had not been met and informed the dental clinic of this on March 22, 2023.

The panel asked where in the Fee Schedule fee code 01901 for exam/diagnostic fee is found, to confirm the rate set for this code is \$200. The ministry was not able to find it in the Fee Schedule. The ministry stated the amount of \$200 authorized by Pacific Blue Cross would have been paid directly to the clinic, so the representative should contact the clinic to review whether it was received.

The ministry stated they had reviewed the file history and there is no record of the representative contacting them to enquire about orthodontic work for her children, prior to them receiving the actual claim forms.

The ministry added that this hearing was regarding one of the children, the appellant, not both children. The representative added that both of her children needed urgent dental care, and surgery, and she had to borrow money to start the process, anticipating the money would be reimbursed as she had been informed.

Admissibility of Additional Information

The panel admits the representative’s Notice of Appeal statement, along with the oral evidence given at the hearing under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's denial of funding the appellant's orthodontic treatment plan and paying an examination/diagnosis fee in excess of ministry rates, 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 position, as submitted by the representative, is that she had been given misinformation by the ministry when they told her to contact Pacific Blue Cross directly, because of the urgency of the request, and to return to them if she were denied. She did not know she wouldn't get reimbursed because the clinic had informed her to pay up front, and Pacific Blue Cross would send them reimbursement, which they would pass on to her.

Ministry's Position

The ministry's position is that the appellant does not have severe skeletal dysplasia and that no prior approval had been given, prior to starting treatment, which are requirements of legislation. The ministry could not consider orthodontia as a life-threatening health supplement because only medical transportation, medical equipment and devices, and some medical supplies may be provided as this type of supplement. The ministry could not consider orthodontia as a crisis supplement, which cannot be approved if it is to obtain a supplement described in Schedule C or any other health care good or service. In addition, the rates set for exam or diagnostic fees are set at \$200 for the appellant's type of exam. The ministry approved this rate, not the \$300 the dentist requested.

Panel's Analysis

Requests for various types of dental assistance requests can be found in several different sections of the Regulation. Section 63 refers to dental services. Section 64 refers to emergency dental services. Section 65 refers to orthodontic supplements.

In the appellant's circumstance, there are two issues under review. The panel will review them separately.

- 1)** Is the appellant eligible for the orthodontic treatment plan as an orthodontic supplement; as basic or emergency dental services; as a life-threatening health need; or as a crisis supplement?
- 2)** Is the appellant eligible for a higher rate than the approved examination/diagnostic fee of \$200?

1) Orthodontic treatment as an orthodontic supplement

The Regulation section 65(1) allows the minister to provide an orthodontic supplement to a child under 19 years of age, or to a recipient of disability assistance providing the criteria of subsection (2) are met. The appellant is a child under 19 years of age and the family is also in receipt of disability assistance.

The Regulation section 65(2) says that to be eligible for orthodontic supplements the person must have no resources available to cover the costs and **must** a) have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations **and** b) obtain prior authorization from the minister.

The ministry argues that skeletal dysplasia is a medical term for a group of conditions that affect bone development, neurological function, and cartilage growth. They determined that, based on the information provided by the appellant and PBC, there is no evidence to specifically indicate that skeletal dysplasia was observed during her orthodontic assessment. The panel found no evidence in the record of appeal to support this finding of the ministry. The Pacific Blue Cross denial of claim, dated, April 24, 2023, cited the reason for denial was due to not having prior approval. Nothing was mentioned about not meeting the severe skeletal criteria. What process did the ministry and Pacific Blue Cross utilize to decide whether there is severe skeletal dysplasia? Who completed the orthodontic assessment referred to in the reconsideration decision? How is the jaw misalignment of 2 or more deviations determined? None of this information is provided in the Appeal Record. For the panel to determine whether the ministry was reasonable in their decision more detail should have provided as to specifically how Pacific Blue Cross determined that the appellant did not meet this criterion.

The panel notes that the Orthodontia Request Form asks the dentist to only complete the form if the patient has severe skeletal dysplasia with jaw misalignment of two or more standard deviations, and to provide all supporting records and the treatment plan. Because the dentist completed the form, which was only to have been completed if the dentist determined the appellant **had** severe skeletal dysplasia, the panel considers that the dentist made the determination. The Orthodontia Request Form mentions several of what can be considered defect anomalies even to a "lay" person regarding the patient's orthodontic problem. The dentist followed the form up with the supporting records, radiographs and the treatment plan as required. Absent any documentation from Pacific Blue Cross on the findings of severe skeletal dysplasia, the panel suggests the Orthodontia Request Form of April 3 outweighs vague descriptions by the ministry regarding severe skeletal dysplasia. The Ministry did not provide evidence to support their determination that the appellant had not met this criterion. Therefore,

the panel considers the evidence provided by the dentist meets the severe skeletal dysplasia requirement. The panel finds the ministry was not reasonable to determine that the appellant did not have severe skeletal dysplasia with two or more standard deviations.

The Regulation section 65(2)(b) requires that the person must obtain prior authorization from the minister for the orthodontic supplement. The initial dental claim form shows the appellant first saw the dentist for consultation on January 19, 2023, with a note that the \$300 dentist fee is to be "paid to the patient". The second claim form shows the date of service as March 2, 2023, with a note that this was for initial placement, at a cost of \$900, with a comment to "please pay dentist". The payment plan contract is dated March 2, 2023, and indicates future monthly payments of \$200 are to be made from April 15, 2023, through to May 15, 2024. The claim forms do not show what date they were submitted to Pacific Blue Cross.

The reconsideration decision noted that on March 14, 2023, the orthodontist submitted a claim for orthodontic treatment plan and examination fees to Pacific Blue Cross, and that Pacific Blue Cross reviewed the claim and authorized payment for the examination and diagnosis. The Pacific Blue Cross form indicating this initial claim had been received and denied was not included in the record of appeal.

The appellant argues that she sought clarification from the ministry prior to proceeding with the dental procedures but was given misinformation. When she made direct contact with Pacific Blue Cross, she was informed that they do not deal directly with the patient, and she was given the information about how the clinic must contact Pacific Blue Cross directly. The panel finds there is confusion around who may have given the appellant the information that she should pay for treatment up front and then get reimbursed after the fact. There is some indication this advice may have come from the clinic themselves because the one claim form for the \$300 exam fee indicates that Pacific Blue Cross should pay the patient directly.

The instructions provided on the Orthodontia Request Form instruct the dental clinic that "The ministry will only consider funding orthodontic services if...". The form does not specifically state that if services were provided before they have been approved, no payment would be made. However, the legislation says prior authorization is needed for a person to be eligible for a supplement (ie. Payment).

The Pacific Blue Cross denial of fee code 80002 for \$3,900 is dated April 24, 2023. The reason provided for the denial is because "the information submitted indicates treatment has already commenced prior to obtaining approval, therefore we are unable to allow further review. Please note the Ministry does not allow post approvals." This is the date that a decision was made by Pacific Blue Cross and the treatment had already commenced. Therefore, the panel finds the

ministry was reasonable to determine the appellant did not have prior approval of the orthodontic treatment plan.

1) Orthodontic treatment as basic or emergency dental services

The Regulation Section 63 allows the ministry to provide any health supplement set out in sections 1 (*definitions*) and 4 (*dental supplements*) of Schedule C. Section 1 of Schedule C provides that the definition of "basic dental service" means a dental service that, if provided by a dentist, is set out in the Schedule of Fee Allowances – Dentist. Section 4 of Schedule C sets limits on those services authorized as a basic dental service.

The panel reviewed the Schedule of Fee Allowances and found that orthodontic services, fee code 80002, are not listed. The record of appeal did not include any information as to what fee code 80002 means, or what Fee Schedule does include the limits set for orthodontic treatment. However, the legislation requires that to provide basic dental services, it must be listed in the Schedule of Fee Allowances – Dentist, and orthodontic treatment is not listed. Therefore, the panel finds the ministry was reasonable to determine the appellant was not eligible for orthodontic treatment as a basic dental service.

The Regulation section 64 allows the ministry to provide any health supplement set out in sections 1 (*definitions*) and 5 (*emergency dental supplements*) of Schedule C. Section 1 of Schedule C provides that the definition of "emergency dental service" means a dental service necessary for the immediately relief of pain, if provided by a dentist, (i) is set out in the Schedule of Fee Allowances – Emergency Dental and (ii) is provided at the rate set out in that Schedule. Section 5 of Schedule C states that the supplements that may be paid are for emergency dental services.

The appellant argues that emergency surgery and orthodontic treatment was required to avoid pain and future problems. The panel appreciates the urgency, however, is required to decide based on the legislative requirements. As with basic dental services, emergency dental services must also be for a service listed in the Schedule of Fee Allowances – Dentist and the panel has found orthodontic treatment is not listed. Therefore, the panel finds the ministry was reasonable to determine the appellant was not eligible for orthodontic treatment as emergency dental service.

1) Orthodontic treatment as a crisis supplement or as a life-threatening health need

The Regulation section 57(3) states a crisis supplement may not be provided for the purpose of obtaining a supplement described in Schedule C, or any other health care goods or services. Orthodontic treatment is not described in Schedule C; however, the panel finds it is a health care

good or service. Therefore, the ministry was reasonable to determine orthodontic treatment cannot be funded as a crisis supplement.

The Regulation section 69 allows the ministry to provide a family unit a health supplement set out in Schedule C if it is provided to a person in the family unit who is otherwise not eligible for health supplements. The appellant is a person eligible for health supplements. In addition, orthodontic treatment is also not set out in Schedule C. Therefore, the panel finds the ministry was reasonable to determine orthodontic treatment cannot be funded as a life-threatening health need.

2) Exam/diagnostic fee in excess of ministry rates

In its reconsideration decision, the ministry determined that the appellant is not eligible for coverage of an examination and diagnosis, orthodontic, General (fee code 01901) in excess of the ministry rates set out in the Schedule of Fee Allowances – Dentist. However, this fee code is not listed in this Schedule. At the hearing, when asked to confirm this, the ministry also reviewed the Schedule and found it was not listed. As mentioned earlier in this decision, the panel notes there must be a different Schedule specific to orthodontic treatment to explain what is, or is not, permitted.

However, on the Blue Cross Orthodontia Request Form the instructions to the dental clinic instruct the dentist to “submit a standard claim billing fee item 01901 (records fee) in the amount of \$200 to the Pacific Blue Cross address listed”. The claim form shows the clinic claimed \$300 for their fee, and \$200 was approved. It is not clear whether \$200 was paid to the clinic, or whether this is the amount approved. The panel accepts that the ministry has set a fee for this type of claim, and the claim was accepted and paid at the rate set out in the instructions on the form. Although the ministry cited in their decision that they can only authorize payment at the rate set out in the Schedule of Fee Allowances – Dentist, the panel finds there are rates set in the instructions. Therefore, the ministry was reasonable to determine they could not pay more than the rates set out.

Conclusion

The Panel finds that the ministry’s reconsideration decision, which determined that the appellant is not eligible for orthodontic treatment and paying an examination/diagnosis fee in excess of ministry rates, was a reasonable application of the legislation in the appellant’s circumstances and therefore confirms the decision. The appellant is not successful on appeal.

RELEVANT LEGISLATION**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 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.

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:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

Schedule C Health Supplements

Definitions

1

"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, if provided by a dentist, is set out in the Schedule of Fee Allowances – Emergency Dental - Dentist

Dental Supplements

4 (1) In this section, "period" means

- (a) in respect of a person under 19 years of age, a 2 year period beginning on January 1, 2017, and on each subsequent January 1 in an odd numbered year, and
- (b) in respect of a person not referred to in paragraph (a), a 2 year period beginning on January 1, 2003 and on each subsequent January 1 in an odd numbered year.

(1.1) The health supplements that may be paid under section 63 [*dental supplements*] of this regulation are basic dental services to a maximum of

- (a) \$2 000 each period, if provided to a person under 19 years of age, and
- (b) \$1 000 each period, if provided to a person not referred to in paragraph (a).

Emergency dental supplements

5. The health supplements that may be paid for under section 64 [emergency dental and denture supplements] of this regulation are emergency dental services.

APPEAL NUMBER 2023-0347

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

Part H – Signatures

Print Name
Janet Ward

Signature of Chair

Date (Year/Month/Day)
2023 December 1

Print Name
Rick Bizarro

Signature of Member

Date (Year/Month/Day)

Print Name
John Pickford

Signature of Member

Date (Year/Month/Day)
2023/12/02