

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (the "Ministry"), dated April 16, 2024, which denied the Appellant's request for orthodontic treatments for one of the Appellant's children (the "Child").

Specifically, the Ministry determined that the Appellant is not eligible for coverage of the orthodontic treatments as a basic dental service under the Schedule of Fee Allowances – Dentist, Emergency Dental – Dentist, effective September 1, 2017:

- As an orthodontic supplement;
- As a dental supplement;
- As a basic dental service;
- As an emergency dental service;
- As a direct and imminent life threatening health need; or,
- As a crisis supplement.

Part D – Relevant Legislation

Employment and Assistance Act for Persons with Disabilities Act (the "Act"), Section 25(1)

Employment and Assistance for Persons with Disabilities Regulation (the "Regulation"), Sections 57(1), 57(2), 57(3), 62, 63, 64, 65 and 69, and Schedule C, Sections 1, 4(1), 4(1.1) and 5

Dentist Fee Schedule – Part B - Schedule of Fee Allowances – Dentist, and Part D - Emergency Dental - Dentist, February 18, 2020 (the "Fee Schedule")

The relevant legislation is provided in the Appendix

Part E – Summary of Facts

The hearing took place on May 27, 2024, as an in-person hearing.

The Appellant's family unit is receiving disability assistance.

The evidence before the Ministry at reconsideration included:

- The Appellant's original Request for Reconsideration, dated March 15, 2024, which provides the reasons why the Appellant is asking for additional time to complete her request;
- The Appellant's second Request for Reconsideration, dated April 6, 2024, in which she writes:

"(I) cannot find anything online (and) in documents about dental skeletal dysplasia ... also where do I find out more info on 2 more deviations as I want to know more but (I am) unable to find info ... P.S. Please see documents for reason for reconsideration";
- An undated, two-page letter addressed "to whom it may concern" and signed by the Appellant (the "Appellant's Letter"). The Appellant's Letter says that the Child has Attention Deficit/Hyperactivity Disorder (ADHD) and Anxiety Disorder, and that the Appellant is a designated Person With Disabilities (PWD) "that impacts (the Appellant's) daily living and creates its own struggles and barriers". The Appellant also says that she feels the Child should be approved for the following reasons:
 - The Appellant's family unit receives disability assistance, the Child is under 19 years of age, and the family unit does not have the financial resources available to cover the cost of orthodontics;
 - The Child's impacted teeth will cause problems that she has been told by the family dentist that if the problem is not fixed it might require oral surgery, which might potentially be more expensive than braces and might cause the Child additional anxiety;
 - Impacted teeth can affect a child's health and development;
 - Ignoring an impacted tooth can have an adverse affect on mouth function, result in swelling and pain in the jaw, contribute to difficulty biting and chewing food, and cause sinus cavity problems;
 - Impacted teeth can be difficult or impossible to fix once a child reaches adulthood; and,
 - The Child has been getting headaches and experiencing pain, tenderness and sensitivity of the gums and jawbone at times.
- A one-page Canadian Association of Orthodontists Standard Information Form, dated December 22, 2023 (the "Information Form"). The Information Form identifies the

Child as the patient and is signed by an orthodontist (the "Orthodontist"). The Information Form also provides a description of the Child's condition, indicating that it is a "full treatment case", and provides a total cost of \$6,750, comprising \$500 for the diagnostic phase and \$3,250 for treatment procedures, to be paid periodically by installment over a period of 20 months. The Information Form also refers to an attached claim form;

- A Pacific Blue Cross (PBC) Dental Predetermination Summary (the "PBC Summary"), addressed to the Orthodontist and dated February 15, 2024, showing a total submitted amount of \$6,250. The PBC Summary says, in part "*Your predetermination request has been reviewed. Please refer to the details page to confirm the approved or denied amount of the request*". A "details page" is not included in the appeal materials;
- A copy of a single page Ministry form dated February 7, 2024 and bearing the initial of a "Contracted Orthodontist" (the Ministry Form). In its Reconsideration Decision, the Ministry says that this form was sent by PBC to the Orthodontist, who completed it. The Ministry Form includes the name and other details identifying the Child, the name of the Orthodontist, and the treatment plan fee (\$6,250) and duration (20 months). The Ministry Form also provides the wording in Section 65(2)(a) and (b) of the Regulation (as set out in the Appendix) and indicated that the Child does not meet the Section 65(2)(a) and (b) criteria because "*No skeletal dysplasia observed*";
- A one-page PBC Orthodontia Request Form, dated December 21, 2023, identifying the Child as the patient and signed by the Orthodontist, providing a description of the orthopedic problem (the "Request Form"). In response to the question "Are there any significant medical or functional implications?", the Orthodontist has written "*Overbite causing discomfort, masseters quite tense due to lingualization of maxillary incisors, ↓ envelope of function*"; and,
- Four pages of photographs and X-rays of the Child and the Child's teeth.

Evidence Presented at the Hearing

At the hearing, the Appellant said that she was unable to afford the necessary orthodontic treatment for the Child, and she wasn't initially aware of the possibility that some of the costs might be covered by the Ministry. She explained that her dentist had referred her to the Orthodontist who determined that the braces were necessary to address a medical need and were not cosmetic. She also confirmed that the \$500 cost of the diagnostic phase of the assessment had been paid by the Ministry.

The Appellant said that all of the Child's adult teeth were in, and that two of them were problematic. She said she had been told that treatment of the problem was time sensitive: the longer the Child has to wait for treatment, the more difficult it will be to fix the problem,

because more damage will be done. If treatment is delayed beyond the age of 14 or 15, other medical options might have to be considered. These additional options include a medical operation, "chaining" of the teeth, or even tooth removal.

The Appellant also said she understood that the Ministry had "*guidelines*" that had to be followed, but she met all of the requirements for an Orthodontic Supplement except, apparently, for the one that says the Child had to have severe skeletal dysplasia with jaw misalignment by two or more standard deviations. She said she had no idea what that means.

In response to a question from the panel, the Appellant said she did try to contact the Orthodontist for an explanation as to what skeletal dysplasia is and what two standard deviation are. She said she spoke to an assistant in the Orthodontist's office, who "*read back the reasons given by PBC*" for denial of the application to her, but didn't otherwise explain them. She said regardless of whether skeletal dysplasia was present, her Child had a "*medical need*" for the orthodontic treatment.

The Appellant also said that the Ministry made some mistakes when she tried to get approval for the dental work, and told her initially that she hadn't asked for approval in advance. Because of the mistakes, the Appellant was forced to apply twice.

In response to a question from the panel, the Appellant said she was not aware that the University of British Columbia dental school might be able to provide the required dental work at a discount, or whether the Child might qualify for coverage under the new interim Canadian Dental Benefit plan.

At the hearing, the Ministry relied on its Reconsideration Decision, stressing that the Appellant had satisfied the requirement that the Appellant contact the Ministry in advance of having anything done to see if she qualified (as required under Section 65(2)(b) of the Regulation). The Ministry confirmed that the only criterion set out in Section 65 of the Regulation that had not been met was the one that required a severe skeletal dysplasia with jaw misalignment by two or more standard deviations.

Referring to the Request Form, the Ministry also said that if the Orthodontist had given more information about the severity of the Child's condition and its impact on her health or future medical needs, the Ministry might have made a different decision.

In response to a question from the panel, the Ministry said that the Appellant could get additional information from the Dentist or an orthodontist and apply for coverage again.

Additional Information Submitted After Reconsideration and Admissibility

Section 22(4) of the *Employment and Assistance Act* says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined if any additional evidence is admitted under the same section, instead of asking whether the

decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based the requirements set out in the legislation and on all admissible evidence.

In the Notice of Appeal, dated April 29, 2024, the Appellant wrote "*I disagree on the limited reasons why (the Ministry) denied me and for why (the Child) doesn't meet the requirements. Even if (the Child) doesn't meet the requirements it is a medical need.*"

The panel finds that the information in the Notice of Appeal is argument and contains no new evidence.

No new written evidence was provided by the Appellant before or at the hearing. Additional verbal evidence provided at the hearing by the Appellant was with respect to further detail regarding the implications of not receiving the orthodontic treatments. The panel admits the additional evidence, as it might be required for a full disclosure of all matters relating to the appeal. However, the panel assigns this new information little weight as it has not been substantiated by a dental professional.

The Ministry did not provide any new evidence after it made it Reconsideration Decision.

Part F – Reasons for panel Decision

The issue under appeal is whether the Ministry's Reconsideration Decision dated April 16, 2024, which denied the Appellant's request for orthodontic treatments for the Child, was a reasonable interpretation of the legislation or was supported by the evidence. In other words, was it reasonable for the Ministry to deny the additional coverage because the request did not meet the requirements as set out in the legislation.

Position of the Parties

The Appellant's position is that her Child needs braces and the only criterion for an orthodontic supplement she has been told that is not satisfied is the requirement that the Child have a severe skeletal dysplasia with jaw misalignment by two or more standard deviations. In addition, if the problem is not fixed it might require oral surgery, which might potentially be more expensive than braces and might cause the Child additional anxiety.

The Ministry's position is that the Appellant does not qualify for an orthodontic supplement because the Child does not have a severe skeletal dysplasia with jaw misalignment by two or more standard deviations. In addition, the Ministry's position is that there are no other supplements or allowances that would make the Child eligible for assistance.

Panel Decision

Section 25(1) of the *Act* permits the Ministry to delegate any of the Minister's powers, duties or functions under the *Act* to any person. At the hearing, the Ministry said that the review of insurance claims on behalf of the Ministry to determine the amount of coverage for dental services, if any, has been delegated to PBC by the Ministry. While PBC manages the review of claims for payment, it is the legislation that sets the limits to the types and rates of reimbursement for dental services.

Eligibility for Coverage of the Orthodontic Treatment Plan as an Orthodontic Supplement

Section 65.1 of the Regulation says that the Ministry may provide an orthodontic supplement to a member of a family unit receiving disability assistance who is under the age of 19, if the person's family unit has no resources available to cover the cost of the orthodontic supplements. In addition, the person must have a severe skeletal dysplasia with jaw misalignment by two or more standard deviations, and must have obtained prior authorization from the Ministry in order to qualify for this supplement.

The panel notes that all of the requirements set out in Section 65(1) of the Regulation must be met. The panel finds that Ministry has reasonably determined that the Appellant has met four of the five requirements (specifically, the family unit is receiving disability assistance, the Child is under 19 years of age, the family unit has no resources available to cover the cost, and the application for assistance was made in advance of treatment). However, the panel notes that

the Orthodontist has confirmed that the fifth criterion (the person must have a severe skeletal dysplasia with jaw misalignment by two or more standard deviations) has not been met. Therefore, the panel finds that the Ministry reasonably determined that the Appellant did not qualify for an Orthodontic Supplement.

Eligibility for Coverage as a Basic Dental Service

Section 4 of Schedule C of the Regulation says that "*basic dental services*", as defined in Section 1 of Schedule C may be paid as a dental supplement. Section 1 defines basic dental services to be services provided by a dentist that are listed in the Fee Schedule. The Ministry did not provide a copy of the Fee Schedule in the appeal materials. However, a copy of the Fee Schedule is available online.

Having reviewed the Fee Schedule, the panel notes that the eligible dental services associated with the Ministry's dental supplements and the provision of basic dental services are comprised of the following types of services: diagnostic, preventative, restorative, endodontic, periodontic, removable prosthodontic, oral surgery, and a miscellaneous category. A further review of these categories based on the fee codes listed in the fee schedule confirms that fee code 80002 (orthodontic treatment plan) is not included. Therefore, the panel finds that the Ministry reasonably determined that the Child was not eligible for the required orthodontic treatment as a basic dental service.

Eligibility for Coverage as an Emergency Dental Service

Section 64 of the Regulation says that the Ministry may provide any emergency dental supplements included in Section 5 of Schedule C of the Regulation to anyone in a family unit in receipt of disability assistance. Section 1 of the Regulation defines "*emergency dental service*" as a dental service necessary for the immediate relief of pain that, if provided by a dentist, is listed in the Fee Schedule, up to a prescribed maximum amount.

The "*Emergency Dental – Dentist*" section of the Fee Schedule lists the eligible services and fees associated with emergency dental supplements, including the rules, frequency, and financial limits associated with each service. The Fee Schedule also says that "*Children covered under the Healthy Kids program are also eligible for Emergency Dental Supplements*", and "*Emergency Dental allows for treatment of an eligible person who needs immediate attention to relieve pain, or to control infection or bleeding or if a person's health or welfare is otherwise immediately jeopardized*".

The panel notes that, while orthodontic treatments are not listed, there are references to allowances for certain oral surgery procedures, including tooth removal. The panel further notes that there does not appear to have been any reference to any dental procedure other than orthodontic treatments with respect to the Child's current needs. In addition, no evidence has been presented to indicate that the Child is covered under the "*Healthy Kids program*", or that

the Child " *needs immediate attention to relieve pain, or to control infection or bleeding or if a person's health or welfare is otherwise immediately jeopardized*".

Therefore, the panel finds that the Ministry reasonably determined that that the Child was not eligible for the required orthodontic treatment as an emergency dental service.

Eligibility for Coverage as a Life-Threatening Health Need

Section 69 of the Regulation says that the Ministry may provide to a family unit any health supplement listed in Sections 2 and 3 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 and if other prescribed conditions have been met.

In the Reconsideration Decision, the Ministry determined that Section 69 of the Regulation only applies to medical transportation, medical equipment or devices, and some types of medical supplies, as described in Schedule C, Subsections 2(1)(a), 2(1)(a)(f), and Section 3 of the Regulation. The Ministry further determined that dental supplements are not included in these sections.

Having reviewed Section 69 of the Regulation, the panel finds that the Ministry reasonably determined that the Appellant is not eligible for coverage of any dental supplements, including an orthodontic supplement, as a life threatening need because dental supplements are not considered medical transportation, medical equipment, or a type of medical supply.

Eligibility for Coverage as a Crisis Supplement

Section 57 of the Regulation permits the Ministry to provide a crisis supplement if prescribed conditions are met. In the Reconsideration Decision, the Ministry determined that the Appellant was not eligible for the prescribed orthodontic treatment because " *orthodontic treatments are health care services as described in Schedule C*" of the regulation.

The panel notes that Subsection 57(3)(a) of the Regulation says that a crisis supplement may not be provided for the purpose of obtaining any " *supplement described in Schedule C*" of the Regulation. While "basic dental services" is a defined term and is a supplement described in Schedule C, orthodontic services are *not* included in the definition of basic dental services in the Fee Schedule. As a result, the panel finds that the Ministry's determination that it could not provide the orthodontic supplement because it was a basic dental service included in Schedule C was not reasonable.

Nevertheless, Subsection 57(3)(b) of the Regulation also prohibits the Ministry from providing a crisis supplement for any other health care goods or services, and restricts the Ministry's ability to provide a crisis supplement to costs incurred in the calendar month in which the application or request for the supplement is made. As the orthodontic services would be provided over the course of 20 months, the amount provided by the Ministry as a crisis supplement would be limited to any costs incurred in the month that the Appellant applied for assistance (in this case,

February 2024), and only to the extent that the other requirements for a crisis supplement as set out in Section 57 of the Regulation had been met. The panel notes that none of the costs associate with the cost of the treatment procedures were incurred in February 2024.

Despite unreasonably denying the Appellant a crisis supplement for the reasons given in the Reconsideration Decision, the panel finds that the Appellant was not entitled to a crisis supplement for the required orthodontic treatment due to other conditions set out in Section 57 that had not been met.

Conclusion

Having considered all the evidence, the panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and was a reasonable application of the legislation in her circumstances. Accordingly, the panel confirms the Ministry's decision, and the Appellant is not successful in her appeal.

The panel sympathizes with the Appellant in this appeal, as the evidence provided by the Orthodontist indicates that the Child would experience less pain and discomfort if the braces were provided. However, the legislation does not provide the Ministry with the option of providing assistance in the form of an orthodontic supplement because the severe skeletal dysplasia with jaw misalignment by two or more standard deviations criterion has not been met. As the emergency dental service provisions allow for treatment of an eligible person who needs immediate attention to relieve pain, a future review of eligibility for an emergency dental supplement might be warranted.

APPENDIX - LEGISLATION

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 ...

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Crisis supplement

57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if

- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
- (b) the minister considers that failure to meet the expense or obtain the item will result in
 - (i) imminent danger to the physical health of any person in the family unit, or
 - (ii) removal of a child under the *Child, Family and Community Service Act*.

(2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

(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 ...

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 ...

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 ...

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 ...

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

(2) For the purposes of subsection (1) (c),

- (a) "**adjusted net income**" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and
- (b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit, other than a dependent child.

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 ...

"dentist" means a dentist registered with the College of Dental Surgeons of British Columbia continued under the *Health Professions Act* ...

"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 ...

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 ...

(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 2024-0156

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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2024/05/27

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2024/05/27

Print Name

David Handelman

Signature of Member

Date (Year/Month/Day)

2024/05/27