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## **PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The Decision under Appeal is the Ministry's Reconsideration Decision dated September 24<sup>th</sup>, 2009 in which the Ministry denied the Appellant's request for Orthodontia Supplements for her daughter.

## **PART D – RELEVANT LEGISLATION**

(State the relevant Legislation considered)

Employment and Assistance Regulation (EAR) – Section 71

## PART E – SUMMARY OF FACTS

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision was being made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

The Ministry did not attend, and upon confirming that the Ministry was notified the Panel proceeded with the Hearing under the provisions under Section 86 (b) of the Employment and Assistance Regulation (EAR).

The evidence before the Panel was provided in part in the Appeal Record and in part through the oral testimony of the Appellant and her witness, which was admitted pursuant to Section 22 (4) of the EAA.

In the Appeal Record as part of the evidence were copies of the following documents:

1. Document entitled "Orthodontic Screening" dated May 24<sup>th</sup>, 2009
2. Orthodontic Assessment dated December 16<sup>th</sup>, 2008
3. Form EIA100 – Appellant's Employment and Assistance Request for Reconsideration
4. Letter to the Appellant dated May 28<sup>th</sup>, 2009 from the Health Assistance Branch of the Ministry
5. Document entitled "Orthodontia Decision Summary" of the Ministry
6. Letter dated August 5<sup>th</sup>, 2004 from the Orthodontist treating the Appellant's daughter
7. Letter dated September 24<sup>th</sup>, 2009 to the Appellant from the Reconsideration Officer of the Ministry

The Orthodontist doing the assessment and setting up the treatment program for the Appellant's daughter completed the Orthodontic Assessment form dated December 16<sup>th</sup>, 2008. This form states in a box in the top half of the page in bold letters "**MHSD Orthodontia Criteria**": The Ministry will only consider funding orthodontic services where there is severe skeletal dysplasia with jaw misalignment of two (2) or more standard deviations. If the patient does not meet these criteria, "**DO NOT PROCEED WITH RECORDS**". The Orthodontist should submit a claim for examination only using Code 89998 up to a maximum of amount of \$50.00 (HAB). The form then goes on to the practitioner's assessment to be completed, the description of orthodontic problem is completed by checking or completing spaces on the form and there are seven (7) questions on the description of the orthodontic problem. Under the description of the orthodontic problem the Orthodontist has completed or checked the following:

1. Profile maxillia (straight) and mandibular(retrusive) have been checked off.
2. Occlusion molar (L), (R), Cuspid (L) and (R) the Orthodontist has noted end to end.
3. Crossbite (Anterior) he has made some illegible comment with respect to Anterior and Posterior.
4. Mid-lines (Upper) and (Lower) there are check marks in both the upper and lower but it is illegible as to determine what the marking means
5. Overjet is marked as 1 mm, overbite 100% and Palatal impingement he has identified as yes
6. Overcrowding Upper he has marked as moderate and overcrowding lower he has marked as severe
7. Are there any significant medical or functional implications? Describe. The Orthodontist has described as follows: a) retro inclined and palatal impingement will cause recession. Retro inclined will cause facial wear with respect to 2 of 2, congenitally missing 45 will not need further tooth replacement with orthodontic treatment. A treatment plan is then spelled out.

There is evidence in the record, on the Orthodontic Screening form which appears to be a form completed by an Orthodontist contracted by the Ministry to review the application. It contains the notation "mild CL II missing 45 moderate crowding". Under the Section "Does the Patient meet the Criteria of "have severe skeletal dysplasia with jaw misalignment by two (2) or more standard deviations, and obtained prior authorization from the Ministry for this orthodontic supplement", this contracted Orthodontist has checked "no". In the section that

ATTACH EXTRA PAGES IF NECESSARY

says If the Patient does not meet the criteria, please state why: The information provided is "no severe skeletal dysplasia demonstrated. No CEPH analysis provided.

In the letter of August 5<sup>th</sup>, 2004 by the Appellant's Orthodontist to the Appellant, in assessing her daughter's orthodontic situation in the clinical findings section sets out the following five (5) points:

1. The upper jaw appears to be slightly recessive and the lower jaw appears to be slightly recessive.
2. Oral hygiene was good at this visit.
3. The lower jaw is too far behind the upper jaw with the upper front teeth tipped back. The upper teeth overlap the lower teeth significantly.
4. Moderate crowding present in upper teeth. Moderate crowding present in lower teeth.
5. Additional concerns regarding teeth, teeth #12 and #22 have erupted labially. There will be crowding associated with the 33 and 43 regions. Tooth #45 is congenitally missing.

In the Appellant's Form EIA100 on the Request for Reconsideration, the Appellant in describing her daughter states the following:

1. Her daughter does have severe skeletal jaw misalignment.
2. She has pain in her mouth because of her teeth whether she is eating or not.
3. She has already had three teeth pulled to fit room and they are still severely crowded.
4. She is on disability, unable to work and afford braces.
5. Bad teeth affect your overall health/organs if not corrected
6. No child is to be left behind by Government policy

The Appellant provided the following evidence that her daughter had two (2) teeth on her upper jaw pulled and one (1) on her lower jaw pulled. She stated and had her daughter demonstrate by showing us, the Panel, that the two (2) top middle teeth bend inwards and the top second tooth, upper right bends outward significantly. When the Appellant's daughter is chewing the top teeth put pressure on the bottom jaw causing the bottom teeth to hurt. The bottom teeth are severely crowded and two (2) are turned completely sideways.

## PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue on appeal is whether the Ministry's decision to deny the Appellant Orthodontia Supplements for her daughter was reasonable.

Section 71 of the Employment and Assistance Regulation (EAR) states that:

- (1) The Minister may provide orthodontic supplements to or for a family unit if the orthodontic supplements are provided to or for a person in the family unit who meets the conditions under subsection (2) and who is:
  - (a) a dependent child of a recipient of income assistance, or
  - (b) a child in the home of a relative
- (2) For a child referred to in subsection (1) to be eligible for orthodontic supplements, the child's family unit must have no resources available to cover the cost of the orthodontic supplements and the child 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.

The Ministry has found that the Appellant's daughter meets the criteria in Section 71 (1) (a) as she is the dependent child of a recipient of income assistance. Also the Ministry agrees that the Appellant's daughter meets the criteria in Section 71 (2) of the EAR in that there are no resources available to the family unit to cover the costs of the orthodontic supplements. Also the Appellant's daughter meets the criteria in Employment and Assistance Regulation, Section 71 (2) (b), as treatment has not started without the prior authorization of the Ministry.

The Ministry takes the position however that the information provided does not establish that the criteria set out in Section 71 (2) (a) has been met, as on the Orthodontic Screening form dated May 24<sup>th</sup>, 2009 the Orthodontist contracted by the Ministry recognizes that the Appellant's daughter has moderate crowding but reports that there is "no severe skeletal dysplasia demonstrated". The Ministry takes the position as well that the information provided by the Appellant on the Request for Reconsideration does not establish that the criteria set out in the legislation (i.e. that the Appellant's daughter has severe skeletal dysplasia with jaw misalignment by two (2) or more standard deviations) has been met. The Ministry concludes that the Appellant's daughter does not meet the criteria to qualify her for the Orthodontic Supplements.

The position of the Appellant is that her daughter's Orthodontist reviewed the Ministry form entitled "Orthodontic Assessment" and he completed this form fully and properly. Her daughter's Orthodontist has been treating her daughter for almost seven (7) years and he knows the situation and knows the treatment required. She states that her daughter does have severe skeletal/jaw misalignment and has pain in her mouth because of her teeth positioning whether she is eating or not. She stated that when you look at her daughter's teeth it is obvious that her teeth are not aligned properly, that her upper teeth bend in and that her lower teeth bend in as well. She stated it is also obvious that her teeth are severely crowded and she does not have the money to pay for this and her daughter needs this supplement.

The Panel, on reviewing the evidence, as well as having seen the misalignment of the teeth in the Appellant's daughter's mouth notes that the teeth are over crowded and that the jaw and teeth are

misaligned. The Panel notes from the evidence that the Orthodontist contracted by the Ministry noted only moderate overcrowding, whereas the Appellant's Orthodontist had indicated that there was moderate overcrowding of the upper teeth and severe overcrowding of the lower teeth.

The Panel, on reviewing the Orthodontic Assessment form provided by the Ministry for the Orthodontist to complete notes that there is no check box on this form or place on this form for the Orthodontist to have completed the measurements required and to note the measurements required to determine whether the skeletal dysplasia with jaw misalignment was two (2) or more standard deviations. The Panel notes that this form states in black, bold lettering on its face that the Ministry will only consider funding orthodontic services where a severe skeletal dysplasia with jaw misalignment of two (2) or more standard deviations. If the patient does not meet these criteria the form goes on to state in bold, capital black letters, DO NOT PROCEED WITH RECORDS. The Orthodontist should submit a claim for examination only. The Orthodontist having read this on the form has gone ahead and proceeded to complete the form and proceeded with the records. The Panel finds as a fact, based on the fact that the Orthodontist completed this form, when he was directed not to complete it unless there is two (2) or more standard deviations in the jaw misalignment, that the Appellant's daughter in fact does have a severe skeletal dysplasia with jaw misalignment of two (2) or more standard deviations. The Panel notes that on the Orthodontic Screening form completed by the Orthodontist contracted by the Ministry that Orthodontist did not provide any measurements to indicate how many standard deviations the Appellant's daughter's jaw was misaligned.

The Panel chooses to rely on the evidence provided on the form entitled "Orthodontic Assessment" completed by the Appellant's daughter's Orthodontist, and concludes from the fact that he did complete this form that he had to have concluded that there was severe skeletal dysplasia with jaw misalignment of two (2) or more standard deviations, otherwise a patient would not have met the criteria required and he would not have gone on to complete the form.

The Panel, on reviewing the evidence, finds that the decision of the Ministry is not reasonably supported by the evidence and that there has not been a reasonable application of the Act and Regulation in the circumstance of the Appellant. The Panel therefore rescinds the decision of the Ministry pursuant to Section 24 (2) (b) of the EAA.