

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision of February 1, 2011, to deny orthodontic treatment for the daughter of the appellant.

The reason for the Ministry's decision to deny orthodontic treatment is that the legislative criterion set out in the EAPWD Regulation subsection 65(2)(a) has not been met. There has been no evidence to state the dependent of the appellant has severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation Sections 62 and 65

PART E – Summary of Facts

The evidence before the Ministry at the time of reconsideration included the appellant's request for reconsideration and:

- Request for orthodontic care form dated March 11, 2009 completed by the dentist
- Orthodontic assessment forms completed April 24, 2009, and March 30, 2010
- Orthodontic screening forms completed by Ministry's contracted orthodontist dated June 24, 2010 and October 6, 2010
- Orthodontia decision summaries completed July 16, 2010 and October 26, 2010
- Estimates from Orthodontist dated March 25, 2010 and August 17, 2010
- Denial letters from Ministry dated July 16, 2010 and October 26, 2010

The appeal package included the reconsideration decision, the appellant's notice of appeal, clarification log dated January 25, 2010 forwarded to the orthodontist, and a letter from the orthodontist dated January 20, 2011.

In the request for orthodontic care, the dentist has indicated the appellant's daughter has met the Ministry Orthodontia criteria, and as a result has forwarded the request to the Ministry.

In his orthodontic assessment dated April 24, 2009, the orthodontist has submitted a claim for examination only.

In his orthodontic assessment dated March 30, 2010, the orthodontist has given a description of the orthodontic problem with an estimate of cost and treatment time period.

The Ministry's contracted orthodontist June 24, 2010 states no skeletal dysplasia is apparent, however, with the traumatic loss of 11 (tooth) the 12 and 13 have drifted and would benefit from correction at some point.

The March 30, 2010 orthodontic assessment was resubmitted August 23, 2010.

The Ministry's contracted orthodontist October 6, 2010 states no evidence of skeletal dysplasia. It also states that for appropriate replacement of the missing upper incisor, other teeth will have to be orthodontically repositioned. .

The appellant states in her request for reconsideration her daughter is a child with mental health disabilities; there has been continuous intervention and support in the school and community to assist her with her social skills and emotional regulation. The appellant states that a childhood injury resulted in her losing her permanent front tooth; she had a temporary fix but it broke after six months and the appellant was unable to replace the appliance.

The Ministry at reconsideration requested the orthodontist clarify the request for orthodontic care as the dentist indicated that the appellant's daughter met the criterion, that is, she must have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations. The orthodontic screening committee reviewed the records and found there is no severe skeletal dysplasia with jaw misalignment of 2 or more standard deviations. The orthodontist letter of January 20, 2011 states that

the appellant's daughter, subjectively, does not have a skeletal discrepancy of greater than 2 standard deviations from the mean and questioned what percentage of the population does. He stated that in his opinion this is a very restrictive criterion. The orthodontist stated that orthodontic treatment primarily involves the correction of tooth alignment and malocclusion with and without skeletal discrepancy. He stated that in the appellant's daughter's case orthodontic treatment will have a lifelong effect of greater than 2 standard deviations from the average orthodontic treatment effect. He stated that the girl is missing her upper right central incisor and is entering her pubertal years, further disadvantaged with an anxiety disorder. Correcting her space loss and providing her with a normal smile with appropriate number of upper incisors will have lifelong advantages for her and society.

The appellant did not attend the hearing. The orthodontist, the appellant's advocate, attended the hearing on her behalf. He stated it would be difficult to make an objective assessment about skeletal discrepancy. He stated anyone who would qualify under such a restrictive criterion would require jaw surgery. The appellant's daughter's skeletal pattern is normal; she requires routine orthodontia, not surgery. When asked a question about the missing tooth, the orthodontist stated that is a secondary issue. There is space lost and the location of the missing tooth—the adjacent incisors and other teeth have drifted forward. The girl has a deep bite, the upper teeth overlap the bottom teeth. The orthodontic treatment sets up the environment for initially a temporary appliance and later a more definitive repair.

At the hearing the Ministry stated the eligibility criteria for orthodontia has been set out in the Employment and Assistance Regulation to focus limited resources on individuals with the most severe needs. When reviewing orthodontic requests, the Ministry has to view the request with the legislative criterion.

The panel finds: (1) the appellant's daughter, now a pre teen, lost a permanent front tooth in a childhood injury; a temporary fix broke after 6 months and the appellant was unable to replace the appliance (2) the dentist made a request for the orthodontic care, indicating the child has met the Ministry's orthodontia criteria (3) the orthodontist submitted orthodontic assessments twice to the Ministry (4) the Ministry screening and decision summary twice indicated no evidence of skeletal dysplasia but acknowledged the need for orthodontics/correction (5) the orthodontist states the missing tooth cannot be replaced until orthodontic work is done due to the space loss over time. (6) the orthodontist confirms the girl does not have skeletal dysplasia.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision to deny orthodontic treatment to the daughter of the appellant is reasonably supported by the evidence or a reasonable application of the legislation.

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation

General health supplements

62 (1) Subject to subsections (1.1) and (1.2), 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 family unit if the health supplement is provided to or for a person in the family unit who is (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(a) a recipient of disability assistance,

(b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for a disability assistance because of

(i) employment income earned by the person or the person's spouse, if either the person or the person's spouse

(A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(B.C.Reg. 67/2010) (B.C. Reg. 114/2010)

(ii) a pension or other payment under the *Canada Pension Plan* (Canada), or

(iii) money received by the person or the person's spouse under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry. (B.C. Reg. 92/2005)

(c) a person who was a recipient of disability assistance on the day he or she became 65 years of age and a dependant of that person, if the dependant was a dependant of the person on that day and remains a dependant of that person,

(d) a dependant of a person referred to in paragraph (a) or (b) (iii),

(d.1) a dependant of a person referred to in paragraph (b) (i), if any person in the family unit

(i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(B.C.Reg. 67/2010) (B.C. Reg. 114/2010)

(d.2) a dependant of a person referred to in paragraph (b) (ii),

(d.3) a dependant of a person referred to in paragraph (b) (i), if any person in the family unit

(i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(B.C.Reg. 67/2010) (B.C. Reg. 114/2010)

(e) a dependent child of a recipient of hardship assistance,

(f) a person with disabilities who has ceased to be eligible for disability assistance because of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or the person's spouse, if

(i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, or

(B.C. Reg. 170/2008) (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(g) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, during the term of the agreement. (B.C. Reg. 67/2010)

(1.1) A person eligible to receive a health supplement under subsection (1) (b) (ii) or (d.2) may receive the supplement

(a) while any person in the family unit is

(i) under age 65 and receiving a pension or other payment under the Canada Pension Plan, or

(ii) aged 65 or more and receiving the federal spouse's allowance or the federal guaranteed income supplement, and

(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(1.2) A person eligible to receive a health supplement under subsection (1) (c) may receive the supplement

(a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, and

(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(1.3) A person who was eligible to receive a health supplement under subsection (1) (b) (i), (d.1), (d.3) or (f) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(B.C. Reg. 114/2010)

(2) A person referred to in subsection (1) (b) or (f) and his or her dependants and a person referred to in subsection (1) (c) cease to be eligible for any supplement under this division if the person's family unit takes up residence outside British Columbia. (B.C. Reg. 170/2008)

65 (1) Subject to subsection (2.1), 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 person with disabilities who is eligible for health supplements under

(i) section 62 (1) (a) or (b) (iii),

(ii) section 62 (1) (b) (i) or (f), if

(A) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(B) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(iii) section 62 (1) (b) (ii), or

(iv) section 62 (1) (g), or

(b) a dependent child of a person referred to in

(i) paragraph (a) (i),

(ii) paragraph (a) (ii), if

(A) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(B) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(iii) paragraph (a) (iii), or

(iv) paragraph (a) (iv).

(B.C. Reg. 67/2010)

(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) A person eligible to receive orthodontic supplements under subsection (1) (a) (iii) or (b) (iii) of this section may receive the supplements

(a) while any person in the family unit is

(i) under age 65 and receiving a pension or other payment under the Canada Pension Plan, or

(ii) aged 65 or more and receiving the federal spouse's allowance or the federal guaranteed income supplement, and

(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(2.2) A person who was eligible to receive orthodontic supplements under subsection (1) (a) (ii) or (b) (ii), but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(B.C. Reg. 114/2010)

(3) Repealed (B.C. Reg. 313/2007)

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 of 2 or more standard deviations, and
- (b) obtain prior authorization from the Minister for the orthodontic treatment

The Ministry's position is that the evidence does not establish the appellant's daughter has a severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations; the legislative criteria set out in Regulation has not been met. The Ministry's orthodontic decision summary dated July 16, 2010 states the requested proposed orthodontic treatment has been denied as the client's needs do not meet the criteria as per the Employment and Assistance Regulation. The Ministry's orthodontic decision summary dated October 26, 2010 states the requested proposed orthodontic treatment has been denied as the client's needs do not meet the criteria as per the EA Regulation.

The appellant's position is that her daughter requires orthodontia treatment to correct the space loss created by the loss of a permanent tooth when her daughter was a young child. The advocate/orthodontist states that the girl does not have skeletal dysplasia of greater than 2 standard deviations from the mean, but treatment will have a lifelong effect of greater than 2 standard deviations from the average orthodontic treatment effect. The advocate states he specifically knows the distress for this family; monies spent now will well save society later.

The panel finds that although it is clearly evident from the orthodontist and from the Ministry contracted orthodontist, the appellant's daughter definitely requires orthodontic treatment, the Ministry reasonably determined she does not have the required criterion to be eligible for orthodontic supplement from the Ministry. The orthodontist and contracted orthodontist confirm the girl does not have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations, a criterion that must be met in order to be eligible for orthodontic supplement. The panel finds that, based on the evidence provided, the Ministry reasonably determined that the appellant's daughter is not eligible for orthodontic supplement.

The panel finds that the Ministry's decision to deny orthodontic supplement is a reasonable application of the legislation and the panel confirms the Ministry's decision.