

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 7, 2011 which denied the appellant's request for supplements to cover the cost of orthodontic treatment for her son because he did not meet the legislative criteria, under Section 65 of the Employment and Assistance for Persons With Disabilities Regulation, of having severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 62 and 65

PART C – Decision under Appeal

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PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 62 and 65

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Request for Orthodontic Care, dated March 4, 2010, which includes a statement by the dentist that the appellant's son does meet the orthodontia criteria in that there is severe skeletal dysplasia with jaw misalignment of two (2) or more standard deviations;
- 2) Letter from the ministry to the orthodontist, dated March 12, 2010, stating in part that the dentist had referred the appellant's son for an orthodontic exam and that, if the patient meets the criteria of having severe skeletal dysplasia with jaw misalignment by two or more standard deviations, the enclosed assessment form should be completed and returned and if the patient does not meet the criteria, then only a partial records fee would be paid by the ministry;
- 3) Orthodontic Assessment form dated March 12, 2010 which includes a description of the orthodontic problem suffered by the appellant's son, quoting the sum of \$7,500 as a total orthodontic fee, including records and retention, but not dated or signed by the orthodontist;
- 4) Orthodontic Screening form dated June 24, 2010 which indicates in response to the question whether the appellant's son meets the criteria of having severe skeletal dysplasia with jaw misalignment by two or more standard deviations, the contracted orthodontist has indicated "no", with the handwritten comment, "...severe skeletal dysplasia not evident";
- 5) Letter from the ministry to the appellant dated July 16, 2010 denying her request for orthodontic supplements for her son and enclosing a copy of the Orthodontia Decision Summary;
- 6) Letter from the ministry to the orthodontist dated July 16, 2010 advising that the request for orthodontic supplements for the appellant's son has been denied;
- 7) Request for Reconsideration- Reasons; and,
- 8) Telephone Conversation/ Log between the ministry and the orthodontist, dated January 6, 2011, describing the point of clarification that the dentist had indicated on the Request for Orthodontic Care that the appellant's son does meet the criteria of having severe skeletal dysplasia with jaw misalignment by two or more standard deviations while the Orthodontic Screening Committee reviewed the records and found that he did not. The Log includes a handwritten comment from the orthodontist that "...the skeletal dysplasia is not severe, however there are 2 impacted maxillary permanent cuspids (#13 & 23) along with retained primary cuspids (#53 & 63) which are both in x-bite."

Prior to the hearing, the appellant provided a Release of Information form dated January 8, 2011 designating a representative to assist with the appeal, however no further written submissions were received on behalf of the appellant other than the statements contained in the Notice of Appeal dated January 12, 2011.

In the Notice of Appeal, the appellant states that there are many reasons that the appellant's son requires orthodontic treatment, and the orthodontist has explained the reasons. Further, the appellant states that it is difficult to pay the fee for orthodontic treatment and that it will take more than one year to pay. In the Request for Reconsideration, the appellant states that her son needs braces for many reasons, including: (1) his teeth cannot be cleaned properly if they are crooked and overlapping, leading to the possibility of gum disease and further health complications; (2) orthodontics will bring her son's teeth, lips, and face into proper proportion and this will contribute to his self-esteem and overall psychological health; and, (3) aligning her son's bite properly will prevent unnecessary wear on his teeth and pain/stress in his jaw joints. It will also help him bite and chew comfortably.

In the Request for Orthodontic Care form completed on March 4, 2010, the dentist for the appellant's son indicates "Yes" to the question asking whether the appellant's son meets the orthodontia criteria, of having severe skeletal dysplasia with jaw misalignment of two (2) or more standard deviations. In the Orthodontic Assessment form completed on March 12, 2010, the orthodontist details the orthodontic problems of the appellant's son. After reviewing the provided information, the orthodontist contracted by the ministry indicates in the Orthodontic Screening form completed on June 24, 2010 that the criteria for the orthodontic treatment

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has not been met, with the comment "...severe skeletal dysplasia not evident." The ministry contacted the appellant's orthodontist to clarify whether the appellant's son has severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations. The orthodontist responded that the skeletal dysplasia is not severe.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant was not eligible for supplements to cover the cost of orthodontic treatment for her son because he did not meet the legislative criteria, under Section 65 of the Employment and Assistance for Persons With Disabilities Regulation, of having severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations.

Section 65 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sets out the eligibility requirements for orthodontic supplement benefits. In order to qualify, the orthodontic supplements must be provided to or for a person in the family unit who meets the conditions under subsection (2) and who is a person with disabilities who is eligible for specified health supplements under Section 62 of the EAPWDR or a dependent child of the person with disabilities.

Subsection (2) of Section 65 of the EAPWDR provides that:

- (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.

The ministry did not dispute that the appellant is a person who is eligible for specified health supplements and that her son is her dependent child. The ministry's position is that the appellant's son, as the person for whom the orthodontic supplements are requested, does not meet the condition under subsection (2) of Section 65 of the EAPWDR of having severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations. The ministry argues that both the orthodontist for the appellant's son and the ministry's orthodontic consultant indicate that there is no severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations.

The appellant points out that there are many reasons that her son requires orthodontic treatment, and the orthodontist has explained the reasons. The appellant argues that her son needs braces for many reasons, including: (1) his teeth cannot be cleaned properly if they are crooked and overlapping, leading to the possibility of gum disease and further health complications; (2) orthodontics will bring her son's teeth, lips, and face into proper proportion and this will contribute to his self-esteem and overall psychological health; and, (3) aligning her son's bite properly will prevent unnecessary wear on his teeth and pain/stress in his jaw joints. It will also help him bite and chew comfortably. Further, the appellant states that it is difficult to pay the fee for orthodontic treatment and that it will take more than one year for her to pay.

The panel finds that both orthodontists consulted with respect to the orthodontic problems suffered by the appellant's son have confirmed that he does not have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations. The panel recognizes that the appellant's son has a number of orthodontic problems which require correction, as detailed by the orthodontist on the Orthodontic Assessment form dated March 12, 2010, and that there are good reasons for the appellant's son to have braces, as set out by the appellant in her Request for Reconsideration. However, when contacted by the ministry and specifically asked whether the appellant's son has severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations, the appellant's orthodontist responded that the skeletal dysplasia is not severe and confirmed this opinion with his written notation on the Telephone Log dated January 6, 2011. The panel finds that the ministry reasonably concluded that there is not sufficient evidence to satisfy the condition set out in subsection (2) of Section 65 of the EAPWDR. The panel acknowledges that the appellant has stated it will be difficult for her to pay the \$7,500 fee for the orthodontic treatment required by the appellant's son, however the ministry did not dispute that the family unit has no resources available to cover the cost of the orthodontic supplements and that this requirement of the Section had been met.

The panel finds that the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.