APPEAL #

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision of February 10th, 2012 wherein the ministry determined that the appellant cannot be approved for shared parenting assistance as the appellant's daughter does not meet the definition of a family unit as stated in Schedule A, section 4(1) Employment and Assistance For Persons with Disabilities Regulation (EAPWDR) because she is not residing with the appellant for not less than 40% of each month under the terms of a court order or shared parenting agreement filed in court.

The ministry also determined that the appellant's daughter was not a dependent child as defined in section 1(2) of the EAPWDR because the appellant's daughter is not residing with the appellant 50% of the time under a custody agreement and there are no plans to file a shared custody agreement or for the appellant's daughter to return to the appellant's home in the near future.

Additionally, within the reconsideration decision of February 10th, 2012, is the ministry's decision to deny the appellant a Child in Care Top up because the policy allows for the shelter allowance to be maintained only when a *dependent child* is temporarily cared for under the Child, Family, and Community Service Act (CFCSA) and the parent is actively working on the return of the child. The appellant's daughter was not a dependent child when she went into care.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Interpretation - section 1(1) - "dependent child", 3
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Definitions – section 1(2), Schedule A, section 4(1)

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PART E – Summary of Facts

The information before the Ministry at the time of reconsideration:

- Request for Reconsideration dated February 7th, 2012

The ministry conducted a review and determined that the appellant has continued to be in receipt of a shared parenting supplement after the appellant's daughter was taken into the custody of the Ministry of Children and Family Development (MCFD). The appellant and the appellant's ex-spouse reside in the same residence, a split level; one occupying a room on the upper floor and the other a room on the lower floor. Although there are no separate kitchen facilities in this residence, appellant's landlord writes that the appellant's suite has its own separate entrance, 2 bedrooms, a living room, a bathroom, laundry facilities and there is a door between the upper and lower floors. The appellant's son also occupies a room on the lower floor. In the reconsideration decision the ministry indicated there are no plans by the parties to file for a shared custody agreement. However, an Order was issued by the Provincial Court of BC in July 2010. The Order provides the appellant and the appellant's ex-spouse with shared joint custody of the daughter and that the daughter's primary residence being with the mother with the appellant having reasonable and generous access. The appellant's daughter came under the full care of the MCFD in August 2011 and the ministry's file indicated the MCFD has no plans in the near future to return the daughter to the appellant.

Before the Hearing commenced the ministry submitted a letter to the EAAT on March 23rd, 2012. The ministry stated the ministry submission will be the reconsideration summary provided in the Appeal Record and this letter.

The ministry's letter of March 23rd, 2012 contained the following information:

- that in August 2010 it was determined the appellant's daughter was not his dependent as defined in Section 1 of Employment and Assistance Regulation (EAR);
- that in September 2010 the appellant began receiving "shared parenting assistance" pursuant to section 4 of Schedule A EAR;
- that the appellant acknowledged his daughter is no longer in his care;
- that attached to the letter is a copy of the Ministry's policy on Children Cared for Under the Child, Family, and Community Service Act (CFCSA) dated February 15th, 2012.

The policy states:

- Support and shelter allowance amounts are based on the number of recipients in the family unit.
- When one or more dependent children leave a family unit, the support and shelter allowances provided must normally be decreased. The change in support takes effect as soon as the dependent child leaves the home.
- When a dependent child is temporarily cared for under the CFCSA, the shelter allowance may be maintained. A Ministry of Children and Family Development (MCFD) social worker must confirm that the child is being cared for under CFCSA and that the parent is actively working on the return of the child.

Temporary shelter allowance may continue until one of the following occurs:

- The child will not return to the parent's home
  - For example, a continuing custody order may be granted meaning the Director of Child Welfare becomes the sole guardian of the child. A social worker must provide confirmation.
- MCFD social worker determines that the parent is no longer actively working on the return of the child.
- The child returns to the child's home.

The panel finds that the March 23rd, 2012 letter and policy document both contain information or evidence that

was in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as new evidence under section 22(4) of the Employment and Assistance Act (EAA).

The appellant submitted the following documents for consideration:

1. 7 page submission by the appellant's advocate containing argument to support the appellant's position.

   This document is a submission prepared by the advocate; it does not contain new evidence but provides an overview of the facts in this matter that were before the ministry at the time the reconsideration decision was made. The document also contains the arguments to be made by the advocate on behalf of the appellant.

2. 2 pages - Provincial Court of BC Order between appellant and appellant's ex-spouse regarding shared joint custody and guardianship of the appellant's daughter.
3. 3 pages - Province of BC Living Arrangements policy outlining CFCSA ministry policy effective February 15th, 2012 and Shared Parenting Assistance policy effective December 1st, 2003.
4. Letter from a Youth and Family Services Society (FSS) dated April 30th, 2012 stating the agency is in the process of opening a Family Service file with MCFD to work with the appellant and his ex-spouse and a counselor is presently working on goals and plans for the family.
5. Letter from appellant's landlord dated April 27th, 2012.

   The panel finds these documents, numbered 2 to #5 inclusive, do contain information or evidence that was in support of the information and record that was before the ministry at the time of the reconsideration decision was made and therefore are admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

6. 4 pages - outlining the BC Poverty Reduction Coalition a complaint filed to amend Shelter Allowance reductions.
7. 2 pages outlining a news release from West Coast Women's Legal Education and Action Fund

The panel finds these documents, numbered 6 and 7, do not contain information or evidence specific to the reconsideration decision under appeal. They are accepted as argument.

The panel make the following finding of fact:

1) As of September 2010 the appellant's daughter has not resided with the appellant for more than 50% of each month;
2) In October 2010 the appellant began receiving "shared parenting assistance";
3) The appellant's daughter was taken into the care of MCFD in August 2011;
4) The appellant continued to receive "shared parenting assistance" after his daughter was taken into the care of MCFD;
5) The appellant's daughter has not been returned to the appellant's home.

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PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of ministry's reconsideration decision of February 10th, 2012 wherein the ministry determined that the appellant cannot be approved for shared parenting assistance as the appellant's daughter does not meet the definition of a family unit as stated in Schedule A, section 4(1) Employment and Assistance For Persons with Disabilities Regulation (EAPWDR) because she is not residing with the appellant for not less than 40% of each month under the terms of a court order or shared parenting agreement filed in court.

Also in issue is the reasonableness of the ministry's determination that the appellant's daughter was not a dependent child as defined in section 1(2) of the EAPWDR because the appellant's daughter is not residing with the appellant 50% of the time under a custody agreement and there are no plans to file a shared custody agreement or for the appellant's daughter to return to the appellant's home in the near future.

Additionally, in issue is the reasonableness of ministry's decision to deny the appellant a Child in Care Top up because the policy allows for the shelter allowance to be maintained only when a *dependent child* is temporarily cared for under the Child, Family, and Community Service Act (CFCSA) and the parent is actively working on the return of the child. The appellant's daughter was not a dependent child when she went into care.

The legislation considered:
EAPWDA
Interpretation
Section 1(1) In this Act:
Applicant - means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit, and includes
(a) the person's spouse, if the spouse is a dependant, and
(b) the person's adult dependents

Dependant - in relation to a person, means anyone who resides with the person and who
(a) is the spouse of the person,
(b) is a dependent child of the person, or
(c) indicates a parental responsibility for the person's dependent child;

Dependent child - with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

Family unit - means an applicant or a recipient and his or her dependents

Eligibility of family unit
Section 3 - For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if
(a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act and the regulations, and
(b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act or the regulations.

EAPWDR
Definitions
Interpretation:
Section 1 (2) For the purposes of the Act and this regulation, if a child resides with each parent for 50% of each month under
(a) an order of a court in British Columbia,
(b) an order that is recognized by and deemed to be an order of a court in British Columbia, or
(c) an agreement filed in a court in British Columbia,
the child is a dependent child of the parent who is designated in writing by both parents.

Monthly shelter allowance
Schedule A, Section 4 (1) For the purposes of this section:
family unit includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

In the reconsideration decision the ministry argued that the appellant does not meet the legislated criteria to receive income assistance for shared parenting. The ministry argued Schedule A, section 4(1) EAPWDR states a "family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% or each month, under the terms of an Order or agreement referred to in section 1(2) EAPWDR which is recognized by or filed in court in British Columbia. The ministry argued the ministry has no information that such an Order exists or that either party (the appellant or his ex-spouse) have plans to file for a shared custody agreement with the court. The ministry argued that the appellant's daughter is in the full care of the ministry; that the appellant has not complied with the ministry's conditions for her return; and the ministry has no plans, in the near future, to return the daughter to the appellant's care until the ministry's conditions are met [appellant's and ex-spouse cannot reside in same residence or be with the child(ren)] at the same time.

The appellant argued that he needs the shared parenting income assistance in order to continue living in an adequate living environment (his current residence) so that when his daughter is returned to his care she will have this environment to live in. The appellant argued that without the assistance all he could afford is a rooming house and the ministry will not permit his daughter to live with him in that kind of environment. The appellant argued that he does have his own separate residence; the upper and lower floors are separated by a locked door, the appellant's suite has its own entrance and except for kitchen facilities it is totally separate from the living space of his ex-spouse. The appellant argued the ministry erred in the reconsideration decision when it stated that there was no Shared Parenting agreement; an agreement was issued by Provincial Court of BC in August 2010 giving him joint guardianship of his daughter.

The appellant's position is that his daughter is only under the temporary care of MCFD and that he is actively working on having her returned to him and the ministry's position is that there is no shared custody agreement in place, that the appellant's daughter does not reside with him at least 40% of each month and that the ministry has no plans, in the near future, for her return to the appellant. The panel finds that not only must the child reside with the appellant for not less than 40% of each month but this arrangement must be set out in a court order or shared parenting agreement filed in court.

The panel finds the appellant's daughter does not reside with him at all and therefore, the panel finds the appellant does not meet the definition of a "family unit" (that the appellant's daughter is to reside with the appellant for not less than 40% of each month) under Schedule A, section 4(1) EAPWDR. The panel finds that the Court Order offered into evidence on appeal does not state that the appellant's daughter is to reside with the appellant for 50% each month and therefore the appellant's daughter does meet the criteria of a dependent

child as set out in section 1(2) EAPWDR.

Therefore, the panel finds that since the appellant does not meet the criteria of a family unit set out in Schedule A, section 4(1) and that the appellant's daughter was not his dependant as defined in section 1(2) EAPWDR that the ministry's decision to deny the appellant a monthly shared shelter allowance was reasonable.

The ministry's CFCSA policy, effective February 15th, 2012, states that if a "dependent child" is temporarily cared for under CFCSA the shelter allowance may be maintained if the applicant (appellant) is actively working to have the child returned. The letter from FSS society dated April 30th, 2012 stated the agency is in the process of opening a Family Service File with MCFD to work with the appellant and his ex-spouse; that a counselor is working on goals and plans for the parents and children. The appellant's position is that he is actively working to have his daughter returned and that he did not qualify for the shared income assistance; that needed the Child Care Top-up to assist him in making his rent payment so that he could maintain his present accommodations. The appellant argued that he does meet the criteria and that he is working with the ministry to have his daughter home and that the letter from YFF supports his position.

The ministry argued that the appellant's daughter is temporarily under the full-time care of MCFD; that the ex-spouse has the primary responsibility of the day-to-day care of the daughter and that the daughter is not considered, by definition, as a dependent of the appellant.

The panel finds that the letter does not provide specific information that the appellant is actively seeking the return of his daughter. The panel finds the appellant does not meet the CFCSA policy as the appellant's daughter was not his dependant.

The panel finds the appellant's daughter is, at present, temporarily in the full-time care of the MCFD and that the ministry is not planning to return the daughter to his care in the near future. The panel finds the appellant's daughter was not his dependant and therefore does not meet the CFCSA policy guideline to be eligible for Child in Care top-up allowance.

The Panel finds the evidence supports that the appellant did not meet the criteria in the CFCSA policy guideline to be eligible for a Child in Care Top and therefore the ministry's decision to deny the appellant a Child in Care Top-up was reasonable.

The panel finds that the ministry's reconsideration decision is supported by the evidence and confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the *Employment and Assistance Act.*