

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated May 17, 2012, which denied the appellant shared parenting assistance (SPA) as of February 21, 2012 for one of her children who is not a dependent child as defined in Section 1 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) but resided with the appellant for a part of the month of March 2012. The ministry determined that the child primarily resided with her father and that the appellant did not provide a Court order or agreement as described in Schedule A, Section 4(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) confirming that the appellant's daughter resided with her for not less than 40% of each month.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act – EAPWDA - section 1
Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Schedule A, section 4

PART E – Summary of Facts

The evidence before the ministry at the reconsideration decision included:

- An e-mail from the ministry to a social worker requesting information about the appellant's children's living arrangement dated March 13, 2012;
- An e-mail from a social worker to the ministry dated March 14, 2012, stating that one of the appellant's children lives full time with her father and the other lives half-time with each parent;
- A hand written note on the copy of the e-mail from the appellant requesting the ministry to e-mail the social worker again. The appellant stated that "(the father of the children) needed 2 weeks where he would not be able to look after the kids so the so-called custody never played out as outlined";
- Employment and Assistance for Persons with Disabilities Review dated March 27, 2012 stating that one of the children is residing with the appellant 100% and the second child 50% of the time;
- Request for reconsideration dated April 11, 2012.

The appellant in the request for reconsideration requested an extension due to her several health related setbacks. The appellant submitted that the father of the children was away from home during the evenings for 2 weeks beginning March 2012. The appellant said that her social worker was aware of this situation and knew that the children were with the appellant during that time. The appellant further submitted that she took the children away from their father several times as the father was unable to drive the children. The appellant stated that the ministry was not able to contact her because they were calling her on her old phone number although she had provided her new phone number to them and that her phone number was printed on her pay stub for the previous 4 months.

The appellant in the Notice of Appeal dated May 31, 2012 submitted that the ministry did not consider all the evidence, including the change in the custody order on March 17, 2012. The appellant requested that the Tribunal contact her social worker to obtain confirmation that she had sole custody of her children for the first 2 weeks of March 2012.

The appellant submitted a letter, prior to the appeal hearing, from her social worker dated June 27, 2012. The social worker, the same who wrote the e-mail dated March 14, 2012, stated that she has been working with the appellant's family and is writing the letter with regard to the custodial arrangements for the appellant's children during February 28 and March 12, 2012. The social worker stated that the appellant had the children full time during this time. The social worker further stated that as of March 15, 2012, the ministry became aware of the children's father's continued use of alcohol and drugs while caring for the children. As a result, the children were returned to the appellant's care with one staying full time with her mother and the other child staying 50% of the time with her mother.

The ministry did not object to the admission of the letter. The panel reviewed and accepted the letter from the social worker as being in support of the information before the ministry under Section 22(4) of the *Employment and Assistance Act (EAA)* and therefore, admitted the letter into evidence.

The appellant did not attend the hearing. After establishing that the appellant had been informed of the hearing and waiting for 15 minutes, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation (EAR)*.

At the hearing, the ministry stated that the issue is whether the appellant is eligible for SPA for the first two weeks of March 2012. The ministry does not dispute the information provided by the social worker in the letter dated June 27, 2012. The ministry said that the letter of the social worker dated June 27, 2012 is the same information the ministry had in March, 2012 and based on that information, the ministry updated the appellant's file to reflect the recent living arrangements. The ministry submitted that the denial for SPA for one of the children is because the appellant has not provided any court order or custody agreement filed in court verifying

the child's custodial arrangement. In response to the question that the ministry, in the reconsideration decision, relied on the evidence that the appellant had the care of one of the children for two days in a week when in fact the appellant had her children fulltime from February 28 to March 12, 2012, the ministry stated that the appellant did not provide any court orders or custody agreement filed in court and as such she was not eligible for the shared parenting for the first two weeks of March 2012.

The panel finds that:

- The appellant received SPA for one of her children for the month of February 2012;
- The ministry stopped the SPA payment on March 1, 2012 based on the information from the social worker that the children's father was their primary care provider;
- Both children were living fulltime with the appellant from February 28 to March 12, 2012;
- The appellant's file was updated on March 27, 2012 reflecting that one of the children is residing fulltime with the appellant and as a result this child has been added to the appellant's file. The other child lives 50% of the time with the appellant as of March 15 2012;
- There is no court order or custody agreement before the panel.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision dated June 4, 2012 denying the appellant the shared parenting benefit for one of her children for the first two weeks of March 2012.

The ministry is authorized to provide disability assistance to a family unit and dependent children under the legislation and as defined in Section 1 "interpretation" of the EAPWDA:

- Child means an unmarried person under 19 years of age;
- 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).;
- Dependent youth means a dependent child who has reached 16 years of age.

Pursuant to Section 4(1) of Schedule A of the EAPWDR 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 the EAPWDR.

Section 4(2) of the Schedule A of the EAPWDR deals with monthly shelter allowance and states:
 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;

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Item	Column 1	Column 2
	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375
2	2 persons	\$570
3	3 persons	\$660
4	4 persons	\$700
5	5 persons	\$750
6	6 persons	\$785
7	7 persons	\$820
8	8 persons	\$855
9	9 persons	\$890
10	10 persons	\$925

The ministry's position is that in order to receive assistance from the ministry, the parent must demonstrate that the child resides with them 50% of the time. The ministry in the reconsideration decision determined that based on the social worker's confirmation one of the children resided with her father from Monday to Friday in March 2012. The appellant had the child only for two days, thereby not satisfying the requirements of the shared parent policy for the first two weeks of March 2012. At the hearing, the ministry did not dispute the information provided by the social worker stating that both children resided with the appellant full time from February 28 to March 12, 2012; however, the ministry argued that in order for the appellant to be eligible to

receive the SPA, she must have provided a court order or shared parenting agreement filed in court showing that her child, who was not listed as dependants at the time, resided with her for no less than 40% of each month.

Section 1(1) of the EAPWDA states that the dependent child means a child who resides for more than 50% of each month with a parent. In this case, the social worker, who has been working with the family confirmed that the father of the children was not able to take care of them and as such, the ministry removed the children and that the appellant had the children full time during February 28 and March 12, 2012. The panel finds that this evidence corroborates the appellant's submission in the request for reconsideration and that the evidence of the appellant is consistent with the report of the social worker in the letter dated June 27, 2012.

The panel notes that the appellant was receiving SPA in the month of February and this was discontinued only when the ministry received confirmation from the social worker, in an e-mail on March 14, 2012, that one child was living full time with the father and the other lived two days a week with the appellant.

The panel relies on the evidence of the social worker provided in the letter dated June 27, 2012. The social worker explained, in detail, the custodial arrangements for the children. This letter is also consistent with the submission of the appellant in the request for reconsideration. Accordingly, the panel finds that the children were residing with the appellant full time for the first two weeks of March. The panel finds that based on the evidence above, the ministry's determination that in the first two weeks of March 2012, one of the children resided with her father from Monday through Friday and was in the appellant's care for two days, Saturday and Sunday, is not reasonably supported by the evidence.

The panel notes that there is no court order or shared parenting agreement filed in Court confirming that the appellant had the child for no less than 40% of each month (11 nights in the calendar month of February, or 12 nights in the other calendar months).

The panel finds that in order for the appellant to be eligible for SPA, the appellant must provide a court order or shared parenting agreement filed in court confirming that the appellant had the child for no less than 40% of each month as described in Section 4(1) of Schedule A of the EAPWDR. Accordingly, the panel finds that the ministry's reconsideration decision denying the appellant SPA based on not providing a Court order or custody agreement filed in court was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the reconsideration decision under Section 24(2)(a) of the EAA.