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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry)'s Reconsideration Decision dated July 10, 2012 which found the appellant ineligible for the shared parenting allowance. In particular, the Ministry found that as the appellant's child did not reside with him for more than 50% of each month, she could not be considered to be part of the appellant's family unit as required by section 1 of the EAA. In addition, the Ministry found that as the appellant's child did not reside with him at least 40% of the time, as required by the *Employment and Assistance Regulation* (EAR), Schedule A, section 4, the appellant was ineligible for the increased monthly shelter allowance.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 1
Employment and Assistance Regulation (EAR), Section 28 & Schedule A, sections 2(1) and 4(1)(2)

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PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

1) Request for Reconsideration dated July 4, 2012;

2) Provincial Court Order dated August 17, 2011 (the "Order") which states that the appellant has daily access to his daughter from 2:00 pm to 4:00 pm each day and such further and other access as the parties may agree; and

3) Agreement Made in Mediation dated February 19, 2012 (the "Agreement") which provides that the appellant and his daughter's mother will share joint custody and guardianship of their daughter; that they will share the responsibility of day to day care of their daughter, that the appellant has access to his daughter of four hours per day (Monday to Friday from 12:30 pm – 4:30 pm, or as otherwise agreed) and overnight every week from 5:00 pm Saturday until 11:00 am Sunday, and such other access as mutually agreed and arranged by the parties.

On his Notice of Appeal dated July 13, 2012, the appellant did not complete the box "Reasons for Appeal" stating why he disagreed with the Ministry's decision. However, the appellant later provided written submissions dated August 21, 2012 (the "Submissions") in which he states that after he and his child's mother separated, the Order provided for access every day for two hours. The appellant states that at mediation, the Agreement provides that he and his child's mother will have shared custody and plans were made to integrate him to become a 50/50 shared parent. The Submissions indicate that the appellant's current access is between 11:30 am and 4:30 pm and overnight on weekends. The appellant states that his daughter's mother is currently on methadone treatment and that as his daughter is weaned from her brother's breast milk, he will be integrated further into her life.

The appellant states that he has been parenting his daughter every day for the past year and is very bonded to her and that his income of $590 is not sufficient to pay for diapers, milk and food for his daughter when she is in his care, as his rent is $575 and hydro is $15. The appellant also states that he is experiencing stress and anxiety due to the experience of parenting his child but struggling with the financial resources to do properly. The appellant states that he is seeking a designation of a person with a disability and is in need of medication to deal with his stress.

The appellant states that he expects to be either a 50/50 or 60/40 parent but on an income of $590 per month, he cannot find a suitable home for him and his daughter. The appellant states that his daughter needs his care and will not fall asleep for her afternoon nap without him lying next to her.

The appellant states that he has noticed animosity to him from the Ministry representative and he feels like they are trying to obstruct his ability to parent his child. The appellant states that one Ministry worker caused friction between him and his daughter's mother by sharing information that the appellant had provided to the Ministry on a confidential basis.

The appellant states that he and his daughter's mother were planning on returning to mediation in April 2012 but she now refuses to attend mediation and all diplomatic efforts have failed. The appellant states that "*...I do not believe females are the only ones God gave to our children to care, nurture and protect them. What happens when a father must step forward and provide care for his*

child? Does the Ministry obstruct a fathers God given duty by providence to care, nurture and protect his child? Surely I am not being set up to fail my child who needs and depends on me".

The Ministry relied on its Reconsideration Decision and did not provide any submissions. In the Reconsideration Decision, the Ministry states that Section 28 of the EAR explains that the minister may only issue assistance as calculated under Schedule A, which is based on the size of the appellant's family unit. For a child to be considered part of the appellant's family unit, section 1 of the EAR requires that the child reside in the appellant's place of residence for more than 50% of each month and rely on the appellant for the necessities of life.

The Reconsideration Decision states that as per the Agreement, the appellant's daughter stays with him for five hours per day and overnight once per week but that does not equal more than 50% of each month, so the appellant's daughter is not considered part of his family unit for the purpose of the appellant's income assistance file.

The Reconsideration Decision states that to qualify for the shared parenting allowance, EAR Schedule A, section 4 states that a child is part of the family unit if they reside with the parent for no less than 40% of each month but that as per the Agreement, the appellant's daughter does not reside with him for at least 40% of each month, so they cannot consider his daughter to be part of this family unit for the purpose of administering the shared parenting allowance.

Based on the evidence, the panel's finding of facts are as follows:

- The appellant is a single receipt of income assistance; and

- The appellant has one daughter who he sees daily from 11:30 am to 4:30 pm each day and overnight on weekends.

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PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's Reconsideration Decision dated July 10, 2012 which found the appellant ineligible to have his daughter added to his income assistance file and to receive the shared parenting allowance as he did not meet the criteria of EAA section 1 and EAR section 28 in that his daughter does not reside with him at least 40% of the time or reside with him more than 50% of each month was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant sections of the legislation are as follows:

EAA Section 1

(A) Interpretation

1. (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income 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 dependants;

"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;

(B.C. Reg. 193/2006)

"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);

EAR

Amount of income assistance

28 Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

(a) the amount determined under Schedule A, minus

(b) the family unit's net income determined under Schedule B.

EAR Schedule A

(A) Monthly shelter allowance

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;

EAA Section 1 – dependant requires 50% residency requirement

In the Submissions, the appellant argues that his daughter needs him, that he spends time with her every day and that he will become, for the long term, at least a 50/50 or 60/40 parental caregiver and that he will have primary residence of his daughter.

The Ministry's position is that the appellant's current daily access of five hours per day and an overnight each weekend does not establish that the appellant's daughter resides with him for more than 50% each month.

The Agreement states that the appellant's current access is five hours per day, an overnight each weekend, and such other access as mutually agreed and arranged by the parties. While the appellant's evidence is that the plan is for him to become the primary caregiver and that he will be a caregiver at least 50% of the time in the future and for the long term, the evidence does not establish that further access has been agreed upon or that his access has increased at this time.

Five hours per day and overnight each weekend does not establish that the appellant's daughter resides with him at least 50% of the time, so the panel finds that the Ministry's decision was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant

EAR Schedule A, section4 – family unit includes child residing not less than 40%

In the Submissions, the appellant argues that he spends time with his daughter each day, that she needs him and that he does not have sufficient income to purchase her diapers, milk and food. The appellant argues that his current access is five hours per day and overnight each weekend but that this will increase and he will become a long term parent with at least 50/50 shared access.

The Ministry's position is that the appellant's current access of five hours per day and overnight each weekend does not establish that the appellant's daughter resides with him at least 40% of the time, so the appellant is not eligible to have his daughter considered to be part of his family unit such that he is eligible for the increased monthly shared parenting allowance.

While the appellant's evidence is that his time caring for his daughter will increase in the future such that he will be at least a 50/50 caregiver, his own evidence and the terms of the Agreement do not establish that his daughter resides with him at least 40% of the time as required by EAR Schedule A, section 4, so the panel finds that the Ministry's decision was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant

Other issues

In the Submissions, the appellant argues that if the tribunal decides against him that they will be erring in law because where a law, statute, or piece of legislation is found to be unjust then it is not considered to be a just law at all. Pursuant to section 19.1 of the EAA and sections 44 and 46.3 of the Administrative Tribunals Act, the panel does not have the jurisdiction to consider whether the legislation in issue is unjust. The panel's decision is limited to whether the Ministry's Reconsideration Decision was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

In conclusion, the panel finds that the Ministry's decision was a reasonable application of the legislation in the circumstances of the appellant and was reasonably supported by the evidence. Therefore, the panel confirms the Ministry's decision.