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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated October 22, 2012 which found that the appellant is not eligible for a supplement for the cost of school start up for her daughter under Section 62.1 of the Employment and Assistance Regulation (EAR). The ministry found that the appellant's family unit does not include a "dependent child" as defined in Section 1 of the Employment and Assistance Act (EAA).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 62.1

Employment and Assistance Act (EAA), Section 1

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PART E – Summary of Facts

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

1) Note dated April 18, 2011 from the appellant's ex-spouse, signed by him on April 27, 2011, stating in part that he shares custody of his daughter with the appellant for 3.5 days a week. Generally, their daughter is with the appellant on Fridays, Saturdays and Sundays and a half day on Wednesdays or Mondays. The daughter will be with the appellant up to 12 days a month with him remaining the primary care giver; and,
2) Request for Reconsideration- Reasons.

In her Notice of Appeal, the appellant stated that she shares custody of her daughter with her ex-spouse and she has received the allowance for school supplies each year that she has been on social assistance. The appellant stated that for some reason this year her request was denied. The ministry told her that her daughter does not appear on her file but this is a contradiction. The appellant stated that she gets a cheque every month for $785.00 and this is not for a single person. The appellant stated that in a way her daughter is recognized to be with her, and she is with her for more than 50% of the time.

In her Request for Reconsideration, the appellant stated that according to the letter written and signed by her ex-spouse, they share custody of their daughter. Their daughter is with the appellant on Fridays, Saturday, and Sundays plus a half day on Wednesdays or Mondays. If the year 2012 is evaluated, from January until December included, the appellant has their daughter with her for more than 50% of the year, more precisely 185.5 days. The appellant stated that, therefore, she should be eligible for $100 allocated for her daughter's school supplies.

At the hearing, the appellant stated that every year the ministry requests that she attend a one-on-one meeting and she is asked to provide documents, including rent receipts and letters from her ex-spouse to update her file and then she has then been approved for the school start-up allowance for her daughter. The appellant stated that this year was different because she was not asked by the ministry to meet. The appellant stated that she gets more income assistance than that payable to a single person, so her daughter is partially recognized on her file with the ministry, but not completely. The appellant stated that her ex-spouse was trying to re-finance his mortgage and they were in a panic situation and he asked her to agree to give him sole custody of their daughter and that she would be given reasonable access, and she agreed on the condition that he would never hold this against her. The appellant admitted that the terms of the last court Order are for her ex-spouse to have sole custody of their daughter but she intends to go back to court to have that Order changed because the reality is that they share custody of their daughter. The appellant stated that she does not have a date set to go back to court, and that she will need help to get the process started. The appellant stated that what is on paper is not important. In response to a question, the appellant stated that she is not sure why her ex-spouse stated in his April 18, 2011 note that he remains the primary care giver of their daughter. The appellant stated that looking at the calendar for 2012, since there are more weekends, her daughter resides with her for more than 50% of the year. The appellant stated that she receives the family bonus and the child tax credit for their daughter.

The ministry relies on the reconsideration decision which sets out as follows: The appellant's file opened in June 2009 and she is currently receiving income assistance as a sole recipient with no dependent children. On September 6, 2012, the appellant requested a school start-up supplement for her daughter. The letter dated April 18, 2011 signed by the appellant's ex-spouse states that the appellant has their daughter 3.5 days a week but that he remains her primary care giver. The ministry is not satisfied that the appellant has their daughter with her for more than 50% of each month. At the hearing, the ministry added that the last court Order in the appellant's file is dated 2009 and it awards sole custody of the appellant's daughter to her ex-spouse, with reasonable access to the appellant. The ministry stated that it would need an update from the court to change the determination of the residence of the child. The ministry explained that there is no dependent child on the appellant's file but she receives a shared parenting allowance so the amount she receives each month is more than a single person would receive.

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PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for a supplement for the cost of school start-up for her daughter under Section 62.1 of the Employment and Assistance Regulation (EAR) because the appellant's family unit does not include a "dependent child" as defined in Section 1 of the Employment and Assistance Act (EAA), was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 62.1 of the EAR provides as follows:

School start-up supplement

62.1 (1) The minister may provide an annual school start-up supplement to or for a family unit that is eligible for income assistance or hard ship assistance if the family unit includes a dependent child who is attending school full time.

(2) The minister may specify

(a) the amount to be provided as a school start-up supplement, which may be different for children of different age groups, and

(b) the time when the supplement is to be provided.

Section 1(1) of the EAA sets out the following definition:

"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).

Section 1(2) of the EAA sets out that:

The Lieutenant Governor in Council may prescribe other circumstances in which a child is a dependent child of a parent for the purposes of this Act.

Section 1(2) of the EAR provides that:

(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.

The appellant argues that she shares custody of her daughter with her ex-spouse, as set out in his letter, and she has received the allowance for school supplies each year that she has been on social assistance. The appellant argues that the ministry told her that her daughter does not appear on her file but this is a contradiction, since she gets an amount each month which is in addition to that for a single person. The appellant argues that her daughter is recognized to be with her and she is with her for more than 50% of the time. The appellant argues that their daughter is with the appellant on Fridays, Saturday, and Sundays plus a half day on Wednesdays or Mondays and, for 2012, the appellant will have their daughter with her for more than 50% of the year, more precisely 185.5 days

The ministry argues that Section 62.1 of the EAR provides that a school start-up supplement may be issued to recipients with a dependent child and Section 1 of the EAA defines a dependent child as a child who lives with the parent for more than 50% of the month and relies on the parent for the necessities of life. The ministry points out that the appellant stated that she has her daughter on Fridays, Saturdays, and Sundays and for half

a day during the week and the letter dated April 18, 2011 signed by the appellant's ex-spouse supports the appellant's statement. The ministry argues that the appellant's ex-spouse stated that the appellant has their daughter 3.5 days a week but that he remains her primary care giver. The ministry argues that the information provided does not establish that the appellant has her daughter for more than 50% of each month and does not establish that her daughter relies on the appellant for the necessities of life.

Under Section 62.1 of the EAR, an annual school start-up supplement may be provided to or for a family unit if the family unit includes a dependent child who is attending school full time. Section 1(1) of the EAA defines dependent child to be a child 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 also includes a child in circumstances prescribed under subsection (2). The panel finds that it is not disputed that the appellant's daughter resides with her for Fridays, Saturdays, Sundays and for half a day during the week, which is 3.5 days a week, as confirmed in the letter from the appellant's ex-spouse dated April 18, 2011. Although the appellant argues that this results in her having their daughter with her for more than 50% of the year, the panel finds that the relevant time period, as set out in the legislation, is one month and that the appellant has their daughter residing in her place of residence for 50% of each month. The appellant does not dispute that the most recent court Order awards her ex-spouse with sole custody of their daughter, with reasonable access to the appellant. Although the appellant argued that she and her ex-spouse have verbally agreed to shared custody, the appellant's ex-spouse stated in his letter dated April 18, 2011 that he remains the primary care giver for their daughter. Therefore, the panel finds that the ministry reasonably determined that the appellant's daughter does not reside in the appellant's place of residence for more than 50% of each month and does not rely on the appellant for the necessities of life and, therefore, the appellant's daughter does not meet this definition of "dependent child" as set out in Section 1 of the EAA.

Section 1(1) of the EAA also defines "dependent child" to include a child in circumstances prescribed under subsection (2). Sub-section (2) of Section 1 of the EAA allows for other circumstances to be prescribed in which a child is a dependent child for the purposes of the Act. Section 1(2) of the EAR provides that for the purposes of the EAA and the EAR, if a child resides with each parent for 50% of each month under an Order of a court in B.C. (or deemed to be a B.C. Order), or an agreement filed in a court in B.C., the child is a dependent child of the parent who is designated in writing by both parents. Although the panel finds that the appellant's daughter resides with her for 50% of each month, the appellant admits that this is currently according to an informal verbal agreement between her and her ex-spouse. The appellant does not claim that the agreement she has with her ex-spouse has been filed in a court in B.C. or that their daughter has been designated in writing by both her and her ex-spouse to be her dependent child, as provided for in the legislation.

The panel finds that the ministry reasonably concluded that that the appellant is not eligible for a supplement for the cost of school start-up for her daughter under Section 62.1 of the EAR because the appellant's family unit does not include a "dependent child" as defined in Section 1 of the EAA. The Panel finds that the ministry decision was reasonably supported by the evidence and confirms the decision.