

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision dated January 29, 2013 which found that the appellant is not eligible to include his 19 year daughter as part of the family unit for the purpose of establishing his rate of assistance in accordance with the definition of "dependent child" in section 1 of the Employment and Assistance Act (EAA). The ministry also determined the appellant's daughter was not part of his family unit under section 2(5) of Schedule A of the Employment and Assistance Regulation (EAR) because no information was provided to indicate the appellant's daughter was attending secondary school when she turned 19 years of age on January 14, 2013.

**PART D – Relevant Legislation**

Employment and Assistance Act (EAA), Section 1 and 4

Employment and Assistance Regulation (EAR), Section 28 and Schedule A, Sections 1,2,4

## PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation

The evidence before the ministry at the time of reconsideration included the following:

- The appellant is receiving income assistance as a single person. His file opened February 2012
- July 25, 2012 the appellant advised the ministry that his daughter was in summer school. The appellant advised the ministry that he was aware of the school start up supplement should his daughter continue school in September 2012, but indicated he was hopeful she would graduate upon completion of summer school.
- September 14, 2012 he ministry notes that the appellant had not contacted the ministry regarding the school start up supplement for his daughter.
- January 22, 2013 the appellant was advised that his 19 year old daughter cannot be included in his family unit for the purpose of establishing his rate of assistance.
- January 22, 2013 the appellant submits a Request for Reconsideration in which he states "I am still responsible for rent and food for my daughter. Don't have the finances to pay.. my daughter turned 19 this month."

At the hearing, the ministry outlined that when the appellant's daughter turned 19 years of age she is no longer considered a child and is automatically under the legislation removed as a dependent child when calculating the appellant's rate of support allowance. As the appellant did not confirm that his daughter would be continuing in school until the end of the school year, the ministry has no legislative discretion or authority allowing it to continue treating the appellant's daughter as a dependant, and part of his family unit, after reaching the age of 19.

The ministry noted that the appellant had the opportunity to confirm that his daughter would have remained in school during the school year despite turning 19 years of age in order to be eligible for the increase in monthly support allowance. Such confirmation was not received.

Insofar as the appellant did not attend the hearing the panel relies on the record concerning the appellant's written testimony.

## PART F – Reasons for Panel Decision

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The issue on appeal is whether the ministry's decision was reasonable which found that the appellant is not eligible to include his 19 year daughter as part of the family unit for the purpose of establishing his rate of assistance in accordance with the definition of "dependent child" in section 1 of the Employment and Assistance Act (EAA). The ministry also determined the appellant's daughter was not part of his family unit under section 2(5) of Schedule A of the Employment and Assistance Regulation (EAR) because no information was provided to indicate the appellant's daughter was attending secondary school when she turned 19 years of age on January 14, 2013.

The relevant provisions of the EAA are set out below:

### Interpretation

1 (1) In this Act:

"**child**" means an unmarried person under 19 years of age;

"**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);

"**dependent youth**" means a dependent child who has reached 16 years of age;

### Part 2 — Assistance

#### Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

The relevant provisions of the EAR are set out below:

### **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.

### **Schedule A**

#### ***Income Assistance Rates - (section 28 (a) )***

#### ***Maximum amount of income assistance before deduction of net income***

**1** (1) Subject to this section and section 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income assistance*] of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

(2) Despite subsection (1) but subject to subsection (3), income assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

(3) If

(a) an application is made by a parenting dependent child under section 5 (4) [*application by parent who is dependent youth*] of this regulation,

(b) the family unit is found eligible for income assistance, and

(c) support is provided for the parenting dependent child or his or her dependent child, or for both, under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*,

the restriction in subsection (2) does not apply, but the amount of income assistance that may otherwise be provided to the family unit is to be reduced by the amount of that support.

## Monthly support allowance

2 (0.1) For the purposes of this section:

"**deemed dependent children**", in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

"**maximum adjustment**", in relation to a family unit, means the amount the family unit would receive for a calendar month as the national child benefit supplement if

(a) the family unit were entitled to receive the national child benefit supplement for the calendar month,

b) the income of the family unit, for the purposes of calculating the national child benefit supplement, were zero, and

(c) all dependent children and all deemed dependent children in the family unit were qualified dependants within the meaning of the *Income Tax Act* (Canada);

"warrant" has the meaning of a warrant in section 15.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Family unit composition	Age or status of applicant or recipient	Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00

(2) If the family unit includes one or more dependent children or deemed dependent children, the support allowance under subsection (1) for a calendar month is increased by an amount equal to

(a) the maximum adjustment, minus

(b) the sum of

(i) the family bonus, if any, paid to the family unit for the preceding calendar month, and

(ii) the amount of the supplement, if any, provided to or for the family unit under section 61 [supplement for delayed, suspended or cancelled family bonus] of this regulation for the current calendar month.

(B.C. Reg. 286/2003) (B.C. Reg. 197/2012)

(3) In calculating the adjustment under subsection (2), an amount that, under the *Income Tax Act* (British Columbia) or the *Income Tax Act* (Canada), is deducted or set off from the family bonus must be treated as if it were paid to a person

in the family unit.

(4) The support allowance under subsection (1) for a calendar month is not increased under subsection (2) if a person in the family unit refuses to

- (a) apply for the family bonus for the preceding calendar month, or
- (b) accept the family bonus for the preceding calendar month

in respect of a dependent child in the family unit who is, or may be, a qualified dependant within the meaning of the *Income Tax Act* (Canada).

(5) If a family unit includes a person who

- (a) immediately before reaching 19 years of age was a dependent child in the family unit, and
  - (b) reached that age while attending secondary school,
- the person is deemed to be a dependent child, for the purposes of this section, until the earlier of
- (c) the end of the school year in which the person reaches the age of 19 years, and
  - (d) the date the person stops attending secondary school.

### 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;

“**warrant**” has the meaning of a warrant in section 15.2 [consequences in relation to outstanding arrest warrants] of the Act.

(2) The monthly shelter allowance for a family unit to which section 15 (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	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375

The appellant argues that he still has a daughter who lives with him and is dependent on him for rent and food.

The ministry argues that Section 1 of the EAA defines "family unit" to include a recipient and his or her dependants and the definition of dependant includes a "dependent child" and that as the appellant's daughter turned 19 years of age on January 14, 2013 she is no longer considered a "child". Additionally, the ministry argues that the appellant's daughter is not part of his family unit under section 2(5) of Schedule A of the EAR because she was not attending secondary school when she turned 19 years of age.

The panel finds that as result of the appellant's daughter turning 19 years of age the ministry reasonably determined that cannot be considered part of the appellant's family unit as a "dependent child" under section 1 of the EAA. The further panel finds that no evidence has been provided to support that the appellant's daughter is attending secondary school when she reached 19 years of age on January 14, 2013, or that she is still in attendance at secondary school, as required by Section 2(5) of Schedule A of the EAR. Therefore, the panel finds that the ministry reasonably determined that the appellant's family unit is not eligible for the increase in monthly support allowance.

The panel confirms the ministry's decision as a reasonable application of the legislation in the circumstances of the appellant which is reasonably supported by the evidence