

### PART C – Decision under Appeal

In a reconsideration decision dated 11 April 2013, the Ministry determined the Appellant is not eligible for income assistance (IA) as a single recipient with 1 dependent child as per the Employment and Assistance Act, Section 1(1). Furthermore the Ministry determined the Appellant is not eligible for shared parenting shelter allowance as per the Employment and Assistance Regulation, Schedule A, Section 4(1).

### PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 1  
Employment and Assistance Regulation (EAR) Section 1(2), Section 5  
Employment and Assistance Regulation (EAR) Schedule A, Section 4(1)

## PART E – Summary of Facts

Preliminary Matter: The Advocate submitted to the Tribunal on May 6, 2013 an undated consent order and a note stating that the attached order “went to judge”. The Advocate submitted to the Tribunal on May 8, 2013 the same consent order, signed by both the Appellant and the child’s mother, and signed and filed at provincial court as of May 8, 2013. Also included was a submission by the Advocate dated May 8, 2013. The Ministry had received and reviewed the May 8, 2013 consent order and submission and had no objection to it. Information before the Ministry included evidence that the Appellant was working towards an order that better reflected the access and living arrangements of the child, therefore the Panel finds the consent order is in support of the information before the Ministry at the time of the reconsideration decision and admits it as evidence under the Employment and Assistance Act, Section 22(4)(b).

The Panel accepts the Advocate’s submission dated May 8, 2013 as argument only.

The evidence before the Ministry at the time of the reconsideration decision included:

- A Consent to Disclosure of Information form for an Advocate dated March 14, 2013.
- A note from the Advocate requesting appeal benefits on behalf of the Appellant.
- A note from the Appellant’s child’s (the child) mother that confirms that the child resides weekly with him from after school Friday through to Monday morning as well as winter break, spring break and summer holidays.
- A court order filed May 7, 2012 that gives the mother custody of the child and the Appellant access to the child as follows:
  - From Friday after school to Sunday at 6:00 p.m. or such other times as agreed by the parties,
  - Alternating access to the child on Christmas.
- A handwritten note from the mother stating that she shares custody of the child with the Appellant and the child stayed with the Appellant 18 days in December 2010.

The consent order admitted and filed May 8, 2013 with the provincial court rescinds the mother’s custody of the child and his child support specified in the previous order and directs the Appellant and the child’s mother to “discuss and agree upon how to equally share parenting time”. It details parenting time with the Appellant to be Friday, 3:00 pm to Monday 8:00 am, all school holidays, including Christmas break, spring break and summer holidays unless as otherwise agreed upon.

At the hearing the Advocate referred to her submission dated May 8, 2013 and stated the new consent order gives the Appellant access to his child Friday, 3:00 pm to Monday 8:00 am, all school holidays, including Christmas break, spring break and summer holidays. She concluded the shared parenting policy that provides shelter allowance would seem to be created to ensure an adequate housing provision for children.

The Appellant stated the consent order reflects the living arrangements that have been going on since late 2010. He confirmed that he began the process to obtain the consent order after receiving the Request for Reconsideration where it specified in section 2 that his child has been removed from

his file until he provides written proof of child residing with him 50% of the month and also a court order proving he has custody of the child.

The Appellant also stated that he has recently been approved for disability assistance due to a recently diagnosed medical condition. He said his income is minimal and without the additional support he could not afford suitable housing for him and his child. He concluded that the current living arrangement with his child is amicable with the mother and they are making the best out of a bad situation.

At the hearing the Ministry stated the Appellant's access in both the original court order and the new consent order does not meet the required legislative directive of a dependent child residing more than 50% of the time. She stated that Appellant had been receiving benefits as a single recipient with a dependent child from February 2012 through March 2013 but through an investigation the child was removed from the Appellant's file. She also stated that as per ministry policy, a shared parenting allowance is only applied if both parents are on IA.

The Ministry confirmed that there were errors in the Reconsideration Decision regarding the applicable legislation. EAR, Schedule A, Section 4(1) is not listed under Applicable Legislation although it is referenced under the section titled "Eligibility for Shared Parenting". Furthermore Section 1.1 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and Section 2 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) are referenced in error in the section titled "Eligibility for adding dependent child to your income assistance file". The correct legislation is EAA, Section 1(1) and EAR, Section 1(2).

## PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry's decision to determine the Appellant was not eligible for IA as a single recipient with 1 dependent child and not eligible for shared parenting shelter allowance as per the EAA, Section 1(1) and the EAR, Schedule A, Section 4(1). The pertinent legislation in this case is as follows:

**EAA, Section 1(1) "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 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**

**EAR 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;

A submission by the Advocate dated April 8, 2013 argues the notes from the mother confirm the Appellant has additional access than that outlined in the court order and that the Appellant is working towards a new court order that better reflects the access and living arrangement of his child.

The Appellant argues the child lives with him more than the time that is defined within the court order, that this fact is confirmed by the mother, and that the consent order of May 8, 2013 establishes the child resides with him over 40% of the time.

In the Reconsideration Decision the Ministry states the court order dated May 7, 2012 gives the Appellant access to his child for 30% of the time (51 hours a week) and argues the legislation under EAA, Section 1.1 defines a dependent child as one residing with the parent more than 50% of the time. The Ministry also argues that under EAR, Schedule A, Section 4 additional shelter assistance may only be provided when parents have a shared custody court order or shared parenting agreement filed in court that specifies a nondependent child resides with the parent for no less than 40 % of the time and the court order dated May 7, 2012 gives the Appellant access to his child for

30% of the time. Furthermore the Ministry argues the consent order does not establish the appellant is responsible for his child more than 50% of the time and that policy has been established for shared parenting allowance only if both parents are on IA.

The Panel finds that the Appellant has had access to the child more than the 30% defined in the court order through an informal arrangement with the mother. However the definition for a dependent child in the EAA, Section 1(2) specifies the arrangement must be filed before a court. The May 8, 2013 consent order directs the Appellant and the child's mother to equally share parenting time, implying the child will reside with each parent for 50% of the time and EAR, Section 1(2) becomes applicable. It states the child is defined as the dependent child of the parent who is designated in writing by both parents. In this case the Panel finds no document signed by both parents and specifying the child as the dependent child of the Appellant.

The Panel finds the Ministry's decision determining the Appellant ineligible for IA as a single recipient with a dependent child is a reasonable application of the applicable enactment in the circumstances of the Appellant and confirms this issue addressed in the Reconsideration Decision.

The Appellant and the child's mother have given evidence that the Appellant has access to the child Friday, 3:00 pm to Monday 8:00 am, all school holidays, including Christmas break, spring break and summer holidays unless as otherwise agreed upon which is 40 % of the time during normal school months and a higher percentage during other months. This previous informal agreement is reflected in the consent order of May 8, 2013.

The Panel finds the Ministry has not submitted or sufficiently explained how the ministry policy for additional shelter assistance only if both parents are on IA under the shared parenting allowance is a reflection of the intent of the legislation in the EAR, Schedule A.

The Panel finds the Ministry's decision determining the Appellant ineligible for shared parenting shelter allowance is a not a reasonable application of the applicable enactment in the circumstances of the Appellant as defined in the EAR, Schedule A, Section 4(1). This issue addressed in the Reconsideration Decision is rescinded.