

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry") reconsideration decision dated May 8, 2013 which denied the appellant backdated assistance for February and March 2013 for her dependent child because she failed to confirm that her granddaughter resided with her for more than 50 per cent of each month and did not meet the legislated criteria of section 1(1) of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and section 1(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 1 (1)
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 1 (1)

PART E – Summary of Facts

Procedural Matters

The appellant was not in attendance at the hearing. After confirming that the appellant had been notified of the hearing, then panel proceed with the hearing under section 86(b) of the *Employment and Assistance Regulation*.

The Ministry representative stated at the hearing that she may have had a conflict of interest with the appellant because she did receive documents from the appellant, scan these documents and then place them in the appellant's file, that she had no involvement in the reconsideration decision, and that she has no kind of personal relationship with the appellant. The panel agreed that the Ministry representative did not have an actual or a perceived conflict of interest with the appellant.

Evidence

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

- January 31, 2013 letter from the Ministry of Children and Family Development representative to the great grandfather of the child regarding the cancellation of the May 2012 Voluntary Care Agreement as of January 26, 2013.
- Birth certificate of the child which outlines her date of birth and the names of the mother and the father.
- March 4, 2013 letter from the child's school head teacher outlining that the child lives with her grandmother who is the appellant.
- Variation Agreement dated September 2004 between the great grandfather of the child, the mother, the father and the grandmother who is the appellant which outlines that while in 2004 the great grandparents were given custody of the child, that upon the death of the great grandmother the great grandfather is no longer able to exercise custody of the child, that the appellant is the grandmother of the child, that the child has been in her custody since 2009, and that all parties wish to vary the custody agreement such that the appellant shall have sole custody of the child.
- March 4, 2013 Service Request to the Ministry from the appellant which outlines that she has included the documents requested that are required to add her granddaughter as a dependant, that she included copies of pending custody agreement and a copy of her birth certificate, that the child's great grandfather does not wish nor is capable of caring for her, and that the custody agreement is currently being filed with the Supreme Court of Canada. She also outlines that she has been in extreme financial hardship in providing the necessities for life for the child and would like to have this matter prioritized as urgent.
- Notice of Application Court Registry Form 31c from the appellant to the child's great grandfather, mother and father dated April 8, 2013 which outlines her request a variance agreement to a custody order which outlines the facts and legal basis for the appellant to have sole custody of the child.
- Supreme Court of British Columbia Registry Form 35 order amendment to agreement to read that the appellant shall have sole custody of the child dated April 8, 2013.
- Letter from the appellant to the Ministry dated April 30, 2013 which outlines the following related to Employment and Assistance Request for Decision Section 3:
 - that on February 18, 2013 the appellant opened a service request to add her granddaughter as a dependant to her person with disabilities record, that the appellant was told by a ministry worker that she would be topped-up to a two dependant support level starting February 2013 and including March 2013, that her granddaughter has been in her full time care since January 14, 2013 and officially released from the Ministry care on January 26, 2013, that she brought all required documents to the Ministry verifying that the child was in the appellant's full time care, and provided the custody court documents to the Ministry from the onset to the final court order for sole custody of the child issued April 8, 2013; and
 - that during the month of March the appellant attended the Ministry office on numerous

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occasions and spoke with Ministry representatives almost daily on the central phone number, that the decision to top-up February and March had suddenly been denied and that the appellant had incurred considerable financial burden as a result of the additional costs of medication, food and clothing the child needed, that the appellant was not able to afford rent and had accumulated a debt of just over \$1000.00, that when she was informed she would receive the top-up for February and March the appellant then informed her land lord that she would pay him the money owed. Also that the decision has caused the appellant immeasurable hardship on their lives that has escalated to them losing their home and destroying hope of a reference from her landlord for future rentals.

- April 22, 2013 Employment and Assistance Request for Reconsideration Form Section 2 Ministry comments as follows:
 - the appellant was denied a top-up for the months of February and March;
- April 22, 2013 Employment and Assistance Reconsideration Decision background section in which the Ministry outlines information from the files as follows:
 - the appellant is a sole recipient of disability assistance;
 - effective April 2013 the appellant's granddaughter was added as a dependent child to her disability assistance file and that the child is 15 years old;
 - the appellant requests back dated assistance for February and March because she provided the Ministry with the necessary paperwork to confirm that the child was in the appellant's care on January 26, 2013;
 - the appellant's file confirms that her initial contact with the Ministry was February 8, 2013, that the Ministry left a voice mail message on February 28 for the appellant to provide the documentation, that on March 4 the appellant submitted documents to the Ministry, that she included the pending custody agreement (unsigned), the child's birth certificate, a letter from the child's school stating that the child lives with the appellant, and a letter from the Ministry of Children and Family Development to the great grandfather of the child indicating his Voluntary Care agreement was canceled as of January 26, 2013, that the appellant indicated that the father wants nothing to do with the child and no longer wishes to nor is capable of caring for her and that the custody amendment is currently being filed in the Supreme Court;
 - on March 18, 2013 the appellant filed a Notice of Application to vary the custody agreement of the appellant's granddaughter, that the application states that as of September 3, 2004 the great grandmother and grandfather were given sole custody of the child, that the great grandmother died in February 2009 and that the great grandfather was no longer able to exercise custody, since October 2008 the granddaughter has been in the appellant's care part time and full time and that the appellant now requests sole custody of the child;
 - on March 21, 2013 the appellant was provided with a crisis supplement for utilities due to the unexpected delay in the assistance of the child;
 - on April 9, 2013 a new custody order was received by the Ministry and the appellant's granddaughter was added to her file and the appellant was provided with a top-up of disability assistance (support and shelter) for April; and
 - on April 22, 2013 the appellant was provided with a Family Bonus top-up for April after confirmation was received that she had applied for FB/CTB for the child and the appellant was denied backdated assistance for February and March.

Additional Evidence

In the Notice of Appeal dated May 15, 2013 the appellant did not provide any additional evidence.

The Ministry representative provided additional oral evidence that it is standard Ministry procedures to request the required documentation of a birth certificate, evidence about the living situation and a custody order, that the appellant did provide sufficient information related to the birth certificate and evidence about the living situation and that the custody order was the required information that was not provided to the Ministry until April 2013. Further the Ministry representative stated that the rationale for the decision should have been

insufficient custody order information and that there was sufficient information in her opinion to satisfy that the child resides in the appellant's place of residence for more than 50 per cent of each month and relies on that parent for the necessities of life.

The panel determined that the additional oral evidence from the Ministry representative was admissible under section 22 (4) of the Employment and Assistance Act (EAA) as it is in support of the information that was before the Ministry at the time of its reconsideration decision.

PART F – Reasons for Panel Decision

Issue to be Decided

The issue under appeal is whether the Ministry's reconsideration decision, which denied the appellant backdated assistance for February and March 2013 for her dependent child because she failed to confirm that her granddaughter resided with her for more than 50 per cent of each month and did not meet the legislated criteria of section 1(1) of the EAPWDA and section 1(1) of the EAPWDR is reasonably supported by the evidence or whether it is reasonable application of the applicable enactment in the circumstances of the appellant.

Legislation

The applicable EAPWDA legislation is as follows:

Interpretation

1 (1) In this Act:

"**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 role 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);

The applicable EAPWDR legislation is as follows:

Definitions

1 (1) In this regulation:

"**parent**", in relation to a dependent child, includes the following other than for the purposes of section 17 [*categories of persons who must assign maintenance rights*] of this regulation and section 6 [*people receiving room and board*] of Schedule A of this regulation:

- (a) a guardian of the person of the child, other than
 - (i) a director under the *Child, Family and Community Service Act*, or
 - (ii) an administrator or director under the *Adoption Act*;
- (b) a person legally entitled to custody of a child, other than an official referred to in paragraph (a) (i) or (ii);
- (c) if the child is a dependent child of a parenting dependent child, a person who is the parent of the parenting dependent child;

Ministry Position

The Ministry argues that the appellant's request for backdated assistance for February and March 2013 was denied because she did not have custody of the child until April 8, 2013. The Ministry acknowledges that while the information provided by the appellant confirms that the Voluntary Care Agreement the child had with the great grandfather ended January 26, 2013 the appellant did not have legal custody until April and did not qualify as her parent in February and March 2013 for the purposes of determining the child's eligibility as the appellant's dependent child. The Ministry explains that the appellant gained sole custody as of April 2013 and as a result she meets the definition of parent effective April 2013. The initial request on February 8, 2013 and subsequent paperwork provided March 4, 2013 was not sufficient to add the child to her file as a dependant.

At the hearing, the Ministry representative provided additional oral evidence that it is standard Ministry procedures to request the required documentation of a birth certificate, evidence about the living situation and

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a custody order, that the appellant did provide sufficient information related to the birth certificate and evidence about the living situation and that the custody order was the required information that was not provided to the Ministry until April 2013. Further the Ministry representative stated that the rationale for the decision should have been insufficient custody order information and that there was sufficient information in her opinion to satisfy that the child resides in the appellant's place of residence for more than 50 per cent of each month and relies on that parent for the necessities of life.

Appellant Position

The appellant argued in the Notice of Appeal that she provided all documents of proof of her granddaughter living with her full time since January 14, 2013 and that the legislation clearly defines dependent child by a person in a parental responsibility (BC Reg 193-2006)

Panel Findings

To be considered a dependant and added to the appellant's file, the appellant's granddaughter would need to meet the criteria set out in the definition of "dependant" in section 1(1) of the EAPWDA which provides three categories of persons who are considered dependants within the meaning of the legislation. The appellant's granddaughter does not fall within the first category (a) as she is not the spouse of the appellant. The appellant argues that her granddaughter falls within the third defined category of dependent persons (c) - "indicates a parental role for the person's dependent child" - because she, the appellant, has assumed a parental role for the granddaughter. However, this definition of "dependant" refers to circumstances where another person resides with an applicant, in this case the appellant, and that other person indicates a parental role for the applicant's dependent child.

The only basis upon which the appellant's granddaughter falls within the second defined category of persons as a "dependent child" of the appellant. In considering the definition of "dependent child", the panel finds that the appellant did provide the required information to the ministry to establish that her granddaughter resided with her in February and March for more than 50 per cent and that she provided the necessities for life. However, the definition of "dependent child" relates to residing with a "parent" which is defined in section 1(1) of the EAPWDR.

The panel finds that the appellant did not provide the required evidence to the Ministry that confirms that the appellant has legal custody of the child in February and March 2013 and did not meet the legislated criteria of the EAPWDR section 1(1) "parent" (c) because the appellant did not provide a custody order showing her legal custody of the child until April 8, 2013.

Panel Decision

The panel finds that the Ministry decision which denied the appellant backdated assistance for February and March 2013 for her dependent child because she failed to confirm that her granddaughter resided with her for more than 50 per cent of each month and did not meet all of the legislated criteria of section 1(1) of the EAPWDA and section 1(1) of the EAPWDR is a reasonable application of the applicable enactment in the circumstances of the appellant.

Therefore, the panel confirm the reconsideration decision.