

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development (the ministry) dated 21 March 2013 that denied the appellant's request for a top-up of disability assistance, under section 1 of the Employment and Assistance for Persons with Disabilities Act and sections 2 and/or 4 of Schedule A of the Employment and Assistance for Persons with Disabilities Regulation, for December 2011 for his children residing with him for 22 days that month. The ministry held that no evidence has been provided to support the appellant's request.

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 1*  
*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule A,*  
*sections 2 and 4*

## PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at reconsideration consisted of:

1. A Final Order of the Provincial Court of British Columbia dated 20 October 2010, ("court order") granting the appellant's ex-spouse sole custody and guardianship over their two children, with the appellant having access every other weekend during the school year and access on all holidays to be shared equally between the parents.
2. Another Final Order of the Provincial Court of British Columbia dated 03 August 2011 stating that the appellant shall have summer access to his children commencing 04 August 2011 to 01 September 2011 and that the mother of the children will notify the appellant in writing what month he will have the children in 2012 on or before May 31, 2012.
3. A hand-written note from the children's mother, dated 22 May 2012 where she states that the children will spend one month with the appellant starting 01 July 2012 until 31 July 2012.
4. The appellant's Request for Reconsideration, dated 06 March 2013. Under Reasons, the appellant writes that he submitted the court order to the ministry in October 2010. The ministry knew he had his children and had the court order as evidence. In December 2011 he was to have his children for approximately 14 days, but the mother refused to take the children for her holiday week so instead he ended up having the children for 22 days of that month. In a separate hand-written note dated 07 March 2013 attached to the Request for Reconsideration, he further states that he has his children for December, March and a summer month every year since the order was made. He says that in those months he notifies the ministry and shows up with the children.
5. From the ministry's files, as set out in the section of the Request for Reconsideration completed by the ministry:
  - The appellant is a single recipient of disability assistance.
6. From the ministry's files, as set out in the reconsideration decision:
  - On December 18, 2012 the appellant advised the ministry that he had the children for the December 2012 holidays, submitting a copy of custody papers; he was issued a top up based on the time the children were with him during that period. On February 27, 2013 a top-up for December 2011 was requested, the same top up that he received for December 2012, stating that he made the request in December 2011 but was denied. The ministry states that there is no record of that request on file.

In the appellant's Notice of Appeal dated 27 March 2013, he states that he notifies the ministry when he has his children and they make a note of it on file and claims that someone at the ministry did not make a note of it when he had his children for 3 weeks in December 2011.

The appellant did not submit any further information for the hearing.

In an email dated 25 April 2013, the ministry stated that there will be no submission from the ministry as it is relying on the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision to deny the appellant's request for a top-up of disability assistance, under section 1 of the EAPWDA and sections 2 and/or 4 of Schedule A of the EAPWDR, for December 2011, for his children residing with him for 22 days that month, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from the EAPWDA:

### 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);

And from the EAPWDR, Schedule A:

- Section 2, which sets out the amount of monthly support allowance, depending on family unit composition (including the number of dependent children) and
- Section 4, which begins with :

### 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;

and sets out the monthly shelter allowance depending on the size of the family unit.

While not referred to in the reconsideration decision, the following are also relevant:

From the EAPWDA:

### Reporting obligations

11 (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
  - (i) is in the form prescribed by the minister, and
  - (ii) contains the prescribed information, and

- (b) notify the minister of any change in circumstances or information that
- (i) may affect the eligibility of the family unit, and
  - (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

And from the EAPWDR:

#### Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

- (a) the report must be submitted by the 5th day of the calendar month following the calendar month in which there is a change that is listed in paragraph (b), and
- (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:
  - (i) change in the family unit's assets;
  - (ii) change in income received by the family unit and the source of that income;
  - (iii) change in the employment and educational circumstances of recipients in the family unit;
  - (iv) change in family unit membership or the marital status of a recipient.
  - (v) any warrants as described in section 14.2 (1) of the Act.

The panel understands the term "top-up" in this appeal to mean :

- The amount of shelter allowance provided to a family unit, family unit size 3 persons, minus the amount provided to a family unit of one person -- if the children resided with the appellant for not less than 40% of the month,
- or
- The above amount of shelter allowance plus the difference between the amount of support allowance provided to a sole recipient of disability assistance with two dependent children and the amount provided to a sole recipient – if the children resided with the appellant for more than 50% of the month.

Regarding the latter case, in the reconsideration decision the ministry does not indicate whether the appellant's children would be considered his "dependent children" during a stay of 50% or more of the month, and thus whether the appellant would be eligible the second amount.

In the reconsideration decision, the ministry notes that: "The court order states that custody shall be shared equally between the parents." [The panel notes that this is not correct: the court order granted the mother sole custody and guardianship of the children; it is access on all holidays that is to be shared equally.] The ministry points out that this does not necessarily mean the holidays are each equally divided in half: the parents could, by agreement, share the children equally by alternating custody with holidays – i.e. one parent has the children for two weeks at Christmas and the other parent has the children for spring break. The ministry indicates that there are a few ways to interpret the language of the court order, so verification would be required for each request for a top- up as the number of days is not explicit in the custody agreement.

The position of the ministry is that there was no documentation submitted in December 2011 to establish that the children resided with the appellant for at least 40% of the month under the terms of an agreement, or that the children resided with him for more than 50% of the month. While the appellant states that he had the children for 22 days, there is no documentation on file to indicate that 22 days in December 2011 would be a possibility. According to the court order, 22 days would be exceptional in a month, but there is no verification available for that time. The ministry found that the evidence does not support the appellant's claim that he requested the children be added to his file making him eligible for a top-up for having them over the December 2011 holidays.

The position of the appellant is that he had his children for 22 days in December 2011. He argues that he notifies the ministry when he has his children and they make a note of it on his file and claims that someone at the ministry did not make a note of it when he had his children for 3 weeks in December 2011.

In assessing the arguments and evidence of both parties, the panel is guided by the general principle that it is the responsibility of the applicant for a public benefit (in this case, the appellant requesting the top-up) to provide the information necessary to substantiate eligibility for the benefit. In the present appeal, the appellant has not provided any information to verify the children's stay at his residence during December 2011, either to establish that the children resided with the appellant for at least 40% of the month to qualify for a top-up of shelter allowance or for more than 50% of the month to qualify for top-ups of both support and shelter allowances. The panel notes that timeliness is of the essence for a request of this kind so that the ministry has an opportunity to verify the information. In this case, the request was made more than a year after the fact. The panel also notes that under section 11 of the EAPWDA, eligibility for disability assistance – i.e. monthly support and shelter allowances that may vary depending on circumstances -- requires the recipient to meet prescribed reporting obligations. There is no record of the appellant submitting the information on the prescribed form in December 2011 or soon thereafter as required under section 29 of the EAPWDR.

Accordingly, the panel finds that the ministry's decision to deny the appellant's request for a top-up for December 2011, for his children residing with him for 22 days that month, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.