APPEAL #

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 08 October 2013 that denied the appellant's request to add his adult son to his file as a caregiver. The ministry determined that, pursuant to the provisions of the *Employment and Assistance for Persons with Disabilities Act*, sections 1 and 1.1, the appellant's son is no longer a dependant on the appellant's file as he is 20 years of age. Thus he is no longer considered a dependent child as he is over 19 years of age, nor is he the appellant's spouse; therefore he cannot be added as a dependant to the appellant's family unit for the purposes of disability assistance. The ministry held that the legislation does not have any provisions to provide additional assistance for caregiver.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 1 and 1.1

PART E – Summary of Facts

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

The evidence before the ministry at reconsideration included the following:

1. From the ministry's files:
   - The appellant is a recipient of disability assistance as a sole recipient with no dependants.
   - The appellant's son has reached the age of 20 years; he was removed from the appellant's file shortly after he turned 19 years.
2. An email dated 03 September 2013 from the appellant's third-party liaison to the ministry requesting the ministry have a supervisor look at his file to determine if the appellant's son can be added to his file as a caregiver, indicating that the appellant has lung cancer and attaching a note from the physician.
3. In the note, dated 18 June 2013, the physician writes: "[the appellant] provides ongoing care re; his father's medical problems (lung cancer) and declining health. This will be an ongoing arrangement."
4. Also attached to the above email is another email dated 29 August 2013 in which the third-party liaison asks, on behalf of the appellant, whether his son, who is his caregiver, can be added to his camping and fishing passes. The third-party liaison adds that the appellant is also wondering if there is anything else that his son can apply for regarding being a caregiver. The appellant doesn't want his son to get on assistance, because he is afraid that he will never get off. The appellant is wondering if he can put his son on this file or anything like that.
5. In his Request for Reconsideration dated 30 September 2013 the appellant writes that neither he nor his son was aware he was cut off MPS [sic]. He states that his son has and will be his caregiver until the end of his role here on earth. He indicates that there is a 25% chance he makes it for 18 months after treatment and a 25% chance he will live five years or more.

In his Notice of Appeal, dated 17 October 2013, the appellant writes that BC housing and [the health authority] agree that his son is and has been his caregiver since June 5/11. He again refers to his limited life expectancy.

After reconsideration and before the hearing, the Tribunal received a submission from the appellant on 04 November 2013. The submission consisted of the following:

- A note from the appellant asking "What is a caregiver? Is it not someone who cares for a deathly ill person (me)?"
- A letter dated 23 August 2013 from the physician referred to above. In the letter the physician writes that the appellant has been a patient of a community healthcare center for over 12 years. He was diagnosed with lung cancer in April 2012. It was recommended that he undergo concurrent chemotherapy and radiation treatment for a period of 6 weeks followed by another 6 weeks of chemotherapy. The physician notes that the average survival rate with this treatment is 15 months, with 25% of patients surviving 5 years. The treatment regime was initiated in June 2012 but the appellant was unable to continue the chemotherapy component due to his difficulty coping. During treatment he experienced numerous side effects including fatigue, nausea, pain, anxiety, and a further compromised immune system. The GP writes:

  > " [the appellant] has relied upon his son [....] for continuing support since his lung cancer diagnosis. [His son] has been assisting [the appellant] with attending medical

appointments and providing much-needed daily support as well as emotional support during his treatment and for the months immediately following. As [the appellant] and [his son] live together, [the appellant] has relied on [his son] for basic and daily care. While [the appellant's] health has improved overall his need for care has decreased; however with periodic illness related to his medical condition he has required varying levels of support throughout this time period. [The appellant's] cancer is currently stable and he is capable of returning to work for light duties."

- A Wikipedia article on the meaning of "caregiver."

At the hearing, the ministry stood by its position at reconsideration. The ministry representative noted that the appellant's son does not need to be on the appellant's file in order to obtain benefits from other provincial agencies formerly available to him when he was on the appellant's file. For instance, the son can apply for Medical Services Plan (MSP) premium assistance on his own behalf, and the agency responsible for camping passes will give passes to both a person with disabilities and the person who accompanies that person on a camping trip.

The panel finds that the information provided by the physician in his letter attached to the appellant's submission before the hearing is in support of the information before the ministry at the time of the reconsideration decision. This information clarifies and elaborates upon the information provided by the physician in his note. The panel therefore admits the appellant's submission pursuant to Section 22(4)(b) of the *Employment and Assistance Act.*

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision to deny the appellant's request to add his adult son to his file as a caregiver is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is set out in the *EAPWDA*:

Interpretation

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit, and includes

(a) the person's spouse, if the spouse is a dependant, and

(b) the person's adult dependants;

"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 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);

"family unit" means an applicant or a recipient and his or her dependants;

"recipient" means the person in a family unit to or for whom disability assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

(a) the person's spouse, if the spouse is a dependant, and

(b) the person's adult dependants;

"spouse" has the meaning in section 1.1;

Meaning of "spouse"

1.1 (1) Two persons, including persons of the same gender, are spouses of each other for the purposes of this Act if

(a) they are married to each other, or

(b) they acknowledge to the minister that they are residing together in a marriage-like relationship.

(2) Two persons who reside together, including persons of the same gender, are spouses of each other for the purposes of this Act if

(a) they have resided together for at least

(i) the previous 3 consecutive months, or

(ii) 9 of the previous 12 months, and

(b) the minister is satisfied that the relationship demonstrates

(i) financial dependence or interdependence, and

(ii) social and familial interdependence,

consistent with a marriage-like relationship.

The ministry does not dispute that the appellant's son is a caregiver for his father. However, the position of the ministry is that the legislation governing who can be included in the recipient's family unit for the purpose of disability assistance benefits is limited by the provisions set out in sections 1 and 1.1 of the *EAPWDA*. Under these provisions, the appellant's 20 year old son does not meet the definition of "dependent child," and therefore cannot be considered as part of the appellant's "family unit," as defined in the legislation.

The appellant's position is that his son is an integral part of his family unit, providing live-in caregiver support to his "deathly ill" father. The ministry should recognize the appellant's dependency on his son by adding him to his disability assistance file.

The panel notes that the appellant's son is now 20 years of age. Thus, the panel finds that the ministry reasonably concluded that he is not a "child" under the definition in section 1 of the *Act*. He therefore cannot be considered a "dependent child" of the appellant. A "family unit," as defined in the *Act*, is limited to the recipient (the appellant) and his dependants. In turn, a dependant is defined as anyone who resides with the recipient and who is either is a spouse or who indicates a parental role for the person's dependent child, neither of which apply to the son, or who is a "dependent child." As the appellant's son is not a "dependent child" of the appellant, the panel finds that the ministry reasonably determined that the son cannot be added to the appellant's file under sections 1 and 1.1 of the *Act*.

The panel has carefully reviewed all of the *EAPWDA* and can find no reference in the legislation to providing benefits to or for caregivers of recipients of disability assistance. The panel notes that other federal and provincial legislation, agencies or programs, as well as charitable organizations, may provide such support, but the mandate of the panel is strictly limited to the decision under appeal.

Accordingly, the panel finds that the ministry decision to deny the appellant's request to add his adult son to his file as a caregiver is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.