

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 27, 2013, which denied the appellant's request for shared parenting allowance (SPA). The ministry determined that the appellant's child is not considered her dependant as the child does not reside with the appellant in her place of residence for more than 50% of each month pursuant to Section 1 of the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)*. The ministry concluded that according to the Terms of the Court Order, the appellant's child does not reside with her for at least 40% of each month pursuant to s. 4(1) of the Schedule A of the *Employment and Assistance for Persons with Disabilities Regulations (EAPWDR)*.

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,

PART E – Summary of Facts

The evidence before the ministry at the reconsideration decision included:

- A copy of a Provincial Court Order dated January 28, 2009;
- A copy of the Provincial Court Order dated October 17, 2011;
- A copy of a Protection Order dated October 17, 2011;
- A copy of a school calendar for 2011/2012;
- A copy of the Provincial Court Order dated February 24, 2012;
- A copy of Terms of a Protection Order dated August 30, 2013;
- Copies of cheque history (query) dated November 14, 2013;
- Request for reconsideration dated November 15, 2014.

The appellant in the request for reconsideration wrote that she has made an application to the Court of Appeal requesting to change the court order to 50/50 shared parenting. The appellant wrote that she is the guardian of her child and needs assistance in order to cover the costs of extra expenses and to meet the needs of her child. The appellant wrote that she has her child 3 weekends every month, every statutory holiday and half time during Christmas, Spring Break and summer.

The appellant wrote that she has been off work due to a back injury since August 2013 and she would not be able to meet her child's needs without receiving additional assistance. The appellant indicated that some months she had her child 50% of the time as her child resided with her during school pro-d-days and statutory holidays.

The appellant in the Notice of Appeal dated December 9, 2013 submitted that there are several months throughout the year that she had her child more than 40% of the time and that she is appealing the reconsideration decision because the ministry has not given her enough assistance to cover her expenses and meet her child's needs. The appellant submitted that because of her back injury and not being able to work and taking care of her child put her in an unexpected hardship situation.

On December 23, 2013, the appellant further submitted that due to the Court Order, she has the responsibility to provide for her child and with the assistance she receives it is impossible to meet the child's needs, expenses, rent, food and gas.

At the hearing, the appellant submitted copies of her submissions in the Notice of the Appeal stating that she has her child more than 40% of the time during the year. She said that based on the recent Court Order dated August 30, 2013, she is considered the guardian of the child and is responsible to provide for her child. She has her child for two consecutive weekends in a row from Friday after school to Sunday evening and if a weekend falls on a school or statutory holiday, her parenting time includes the additional day. The appellant further submitted that she has her child every other week during the summer school break. She said that she also has equal parenting time with her child during Easter and Christmas break.

The appellant submitted that the Judge did not take into consideration that she has not been working due to a back injury and has ordered her to pay child maintenance in the amount of \$89 per month to the child's father. The appellant said that financially, she is not able to meet her child's needs. Her child has upper respiratory conditions and needs medications. She said that she doesn't have

resources to meet her child's medical needs. The appellant said that she will be consulting with a family court counsellor in order to change this order.

The appellant further said that her application for a partial Child Tax Benefit was denied due to the fact that her child was not residing with her 50% of the time. The appellant submitted that she made an application to appeal the August 30, 2013 Order but she was not approved for legal aid.

The panel accepted the appellant's written and oral submission as being in support of the information before the ministry under s. 22(4) of the *Employment and Assistance Act (EAA)* and therefore admitted the appellant's submission into evidence.

The ministry stated that the issue is whether the appellant is eligible for SPA. The ministry relies on the August 30, 2013 Court Order that was provided by the appellant. The ministry submitted that based on the terms of the Court Order that appellant is not eligible for the SPA because her child does not reside with her for at least 40% of each month.

The panel finds that the August 30, 2013 Order provides that:

- The appellant is considered a guardian of her child;
- The appellant has parenting time for 2 consecutive weekends in a row and if such weekend access falls on a school or statutory holiday, her parenting time includes that additional day;
- The appellant has equal parenting time during school break and summer holiday.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision dated November 27, 2013 denying the appellant the shared parenting benefit for her child.

Legislations:

EAPWDA

The ministry is authorized to provide disability assistance to a family unit and dependent children under the legislation and as defined in Section 1 "interpretation" of the EAPWDA:

- Child means an unmarried person under 19 years of age;
- 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.

EAPWDR – Schedule A

Pursuant to Section 4(1) of Schedule A of the EAPWDR 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 the EAPWDR.

Section 4(2) of the Schedule A of the EAPWDR deals with monthly shelter allowance and states: 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;

(2) The monthly shelter allowance for a family unit to which section 14.2 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	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375
2	2 persons	\$570
3	3 persons	\$660
4	4 persons	\$700
5	5 persons	\$750
6	6 persons	\$785
7	7 persons	\$820
8	8 persons	\$855

9	9 persons	\$890
10	10 persons	\$925

The position of the parties

The ministry's position is that in order to receive SPA, the appellant must demonstrate that the child resides with her for no less than 40% of each month. The ministry in the reconsideration decision determined that based on the terms of the Court Order the appellant has her child approximately 27% of each month which is less than the 40% that is a requirement to receive the SPA.

The appellant argues that the legislation is not fair and she will be contacting her Member of the Legislature in order to change the legislation. The appellant further argues that the Judge did not take into consideration her medical condition and that she is not able to work due to her back injury and ordered her to pay child maintenance to the child's father. The appellant further submitted that she has responsibility to care for her child but unable to meet her child's needs.

Analysis

Section 4(1) of Schedule A of the EAPWDR states that a 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 the EAPWDR.

Section 1(1) of the *EAPWDA* states that the dependent child means a child who resides for more than 50% of each month with a parent.

In this case, the panel relies on the terms of the most recent Court Order dated August 30, 2013 stating that the appellant has parenting time for 2 consecutive weekends in a row from Friday after school to Sunday evening including statutory and school holidays which fall on such weekends and that the appellant has equal parenting time during summer holidays, Easter and Christmas holidays. The panel accepts the evidence of the appellant that she does not have enough resources to meet her child's need and appreciates her frustration regarding the terms of the Court Order. However, the panel finds that in order for the appellant to be eligible for SPA, the appellant must provide evidence confirming that she has her child for no less than 40% of each month as described in Section 4(1) of Schedule A of the EAPWDR.

Conclusion

Accordingly, the panel finds that the ministry's reconsideration decision denying the appellant SPA was a reasonable application of the legislation in the circumstances of the appellant and confirms the reconsideration decision.