APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation ("the ministry") reconsideration decision of December 27, 2013, wherein the ministry determined that the appellant had not complied with a direction to provide information requested by the ministry under section 10 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA"). As a result, the ministry found under section 10(4) of the EAPWDA that the appellant was not eligible for a portion of the shelter allowance requested by him under section 4 of Schedule A of the Employment and Assistance for Person With Disabilities Regulation ("EAPWDR") for the month of September, 2013.

PART D – Relevant Legislation

EAPWDA, section 10
EAPWDR, Schedule A, section 4

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PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A "Note to Worker" completed by the appellant on September 11, 2013.
- A "return to care plan" produced by the Ministry of Children and Family Development ("MCFD") dated October 28, 2013 (the "Return to Care Plan").
- A set of terms and conditions for a proposed three month supervision order produced by MCFD dated November 19, 2013.
- The appellant's Request for Reconsideration dated November 18, 2013.

As a result of a third party complaint, the appellant's dependent son was removed from the appellant's home by two social workers from MCFD approximately August 5, 2013. On the same day, the appellant – for reasons unrelated to the seizure of his son – lost his job. The appellant had been designated as a person with disabilities under the EAPWDA, and so after the loss of his job he submitted an application to the ministry for disability assistance. Because his son was then in the care of MCFD the appellant's application for disability assistance was made as a single recipient.

For a single person the monthly maximum shelter allowance set out in section 4 of Schedule A of the EAPWDR is $375. For 2 persons (i.e. the appellant and his dependent child) the maximum shelter allowance is $570. As a matter of policy the ministry is prepared to allow a single recipient of disability assistance to receive shelter allowance at the $570 rate in circumstances where the person's dependent child is temporarily cared for by MCFD, so long as a social worker from MCFD confirms that the child is being cared for and that the parent is actively working on the return of the child. The ministry refers to this additional shelter allowance as a "Child in Care top-up supplement".

On September 26, 2013 the ministry asked the appellant to provide confirmation from the MCFD social worker of the child's return to the appellant's care. On October 29, 2013 the ministry received the Return to Care Plan from MCFD. On November 18, 2013 the ministry denied the appellant a "Child in Care top-up supplement" for September 2013, which decision was subsequently upheld in the reconsideration decision that is the subject of this appeal.

In the September 11, 2013 Note to Worker, the appellant requested an amount for a security deposit for a new rental residence, and wrote "...I need to keep this place to have any possibility to get my son back, he was taken from me by [MCFD] and I need this place for them to consider letting me have him back for overnights and eventually for good."

In his Request for Reconsideration the appellant wrote "...I tried to get [the MCFD social worker] to fax what she needed to in Sept. She refused for what I consider to be personal reasons and I am taking the steps necessary to bring her mistreatment of me to the attention of those who can do something about it. I made it very clear that he was coming back. I don't think it should be my fault that [the MCFD social worker] refused to do what she was supposed to do."

In his oral testimony the appellant stated that he'd been advised by one of the MCFD social workers at the time his child was seized that MCFD would have to provide the ministry with a letter in order for the appellant to receive a Child in Care top-up supplement. The appellant said that subsequently he left multiple phone messages for the MCFD social worker and received no response. When he finally did manage to speak with the MCFD social worker, he said that the social worker refused to provide

the requested documentation on the basis that "The ministry knows what it needs from us and will let us know." The appellant stated that when he spoke to the ministry worker, the ministry worker told him "MCFD knows what information we need. It's up to you (the appellant) to ask them to provide it."

The appellant also said that since his son had been seized by MCFD, he (the appellant) had picked his son up from his foster home each morning to take him to school, picked the child up from school each day and taken him to the appellant's residence, where he provided dinner for the child and subsequently took him to the foster home to spend the night. He said that he effectively continued to care and provide for the child except for overnights. The appellant said that he now has full time custody of his child.

Prior to the appeal hearing, the appellant had submitted to the offices of the Employment and Assistance Appeal Tribunal a letter from MCFD dated December 13, 2013. The letter was a response to a complaint filed by the appellant that day regarding, among other things, the MCFD social worker's "...lack of response to your needs for food and shelter". The letter concluded that "With regard to this complaint, your motivation is simply to bring your concerns to the attention of [MCFD]. Your complaint file will now be closed."

In her oral testimony, the ministry representative stressed that the issue on appeal is the reasonableness of the ministry's decision with respect to the appellant's failure to provide documentary evidence that his child had been in MCFD's temporary custody in September and that he was actively working on the return of the child, as requested by the ministry under section 10 of the EAPWDA. She said that at one time it was the ministry's practice to contact MCFD to request a return to care plan from MCFD. She said that she was surprised to find out recently that the practice had been changed so that it is now the citizen's (in this case, the appellant's) responsibility to contact MCFD to request that the return to care plan be sent to the ministry. At the ministry representative's request, a brief recess was granted so that she could consult with her supervisor as to what position the ministry would take on the appeal. After that consultation, the ministry representative said that the Return to Care Plan doesn't contain any information to confirm that the child was under MCFD's care in September and that the appellant was actively working on his return. She said that the appellant should have specified that he wanted such confirmation when he made his complaint to MCFD in December, and indicated that he may still wish to do so depending on the result of this appeal.

The oral testimony of the appellant and the ministry representative provided additional detail with respect to evidence that was before the ministry at the time of reconsideration. Accordingly, the panel has admitted this information as oral testimony in support, as per section 22(4) of the *Employment and Assistance Act* ("EAA"). The December 13, 2013 letter from MCFD is a response to the complaint referred to by the appellant in his Request for Reconsideration. Accordingly, the panel has admitted this letter as written testimony in support, as per section 22(4) of the EAA.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision finding that the appellant had not complied with a direction to provide information requested by the ministry under section 10 of the EAPWDA, and resulting in the appellant being found ineligible, under section 10(4) for the requested shelter allowance.

The relevant legislation is as follows:

EAPWDA

Information and verification

10 (1) For the purposes of

(a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,

...

the minister may do one or more of the following:

(e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;

(f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;

(g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.

(2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.

(3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).

(4) If an applicant or a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.

(5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

Monthly shelter allowance

4 (2) The monthly shelter allowance for a family unit to which section 15.2 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	Column 2

	Family Unit Size	Maximum Monthly Shelter
1	1 person	$375
2	2 persons	$570

(rest of table truncated)

* * *

The appellant's position is that he attempted to comply with the ministry's direction by contacting the MCFD social worker multiple times and advising her that she was required to provide the Return to Care Plan to the ministry. He says that he should not bear the consequences for MCFD's refusal to provide the document in a timely manner.

While acknowledging that it would be reasonable for the ministry to consider whether or not it was possible for the appellant to provide the requested information, the ministry takes the position that the appellant has not provided documentary evidence from MCFD verifying that MCFD considered the appellant was actively working on the return of his son during the month of September 2013. The ministry says that it requires strict compliance with directions under section 10 of the EAPWDA, arguing that if exceptions are recognized it will lead to a slippery slope of inconsistency and administrative inefficiency.

Panel Decision

The panel recognizes the need for, and desirability of, administrative efficiency. However, even the ministry acknowledges that it would be reasonable, when exercising its discretion under section 10(4) of the EAPWDA, for the ministry to consider whether it was possible for the appellant to comply with the direction to provide the required information. The ministry does not appear to have taken that into consideration in its reconsideration decision.

The onus is on the appellant to prove on the balance of probabilities that he made reasonable efforts to comply with the ministry's direction. In this case, the evidence of the Note to Worker indicates that as early as September 11, 2013 the appellant advised the ministry that his son was with MCFD and that he expected his son to be returning to his home. The ministry noted in its reconsideration decision that the appellant's file was reopened in August, 2013, and that the appellant raised the matter of the intended return to care on September 26, 2013.

The appellant made multiple efforts to get MCFD to respond to his phone calls, only to ultimately be told by MCFD that the ministry should make its own request for the information it required. This appears to be a throwback to the previous practice between the two ministries, as described to the panel by the ministry representative, whereby the ministry worker would contact MCFD for a return to care plan. The appellant advised the ministry in his Request for Reconsideration that he had made efforts to obtain the Return to Care Plan from MCFD and that he had been refused. His evidence on this point was not disputed by the ministry.

On balance, the evidence shows that:

- the appellant's son was in the custody of the MCFD during the month of September, 2013,

- the appellant advised the ministry of this at least as early as September 11, 2013,
- given the degree to which the appellant continued to be involved in his son's care, it was apparent that the return of the child was being contemplated by both MCFD and the appellant;
- the appellant made numerous efforts to contact the MCFD social worker with respect to a return to care plan, and
- he advised the ministry that MCFD had refused to provide a return to care plan.

The ministry argued that the appellant should have asked MCFD to ensure that the Return to Care Plan specified that the child had been in MCFD's care in September and that he had actively been working on the child's return during that period. The panel does not accept the proposition that it was the appellant's responsibility to spell out in precise terms to MCFD what MCFD should include in its Return to Care Plan. One of the primary purposes of a return to care plan is to advise the ministry of an applicant's eligibility for a Child in Care top-up supplement, and there is no dispute on the evidence that the child had been in MCFD's care since at least August, 2013, with the ministry having been aware since at least September 11 that the appellant was actively seeking the child's return.

The appellant's circumstances were that the information requested by the ministry was in the hands of another department of the provincial government which refused to provide the information in a timely manner (presumably on a misunderstanding as to the standard practice between the two ministries). In those circumstances, the panel concludes that the ministry's reconsideration decision which found that the appellant failed to comply with direction under section 10, and the resulting finding of ineligibility for a portion of the requested shelter assistance under section 10(4), was an unreasonable application of the legislation. Accordingly, the ministry's decision is rescinded in favour of the appellant.