

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of February 24, 2014 wherein the ministry denied additional support to the appellant because his child resides with him for less than 50% of each month and therefore does not meet the criteria for a “dependent child” set out in Section 1 of the Employment and Assistance for Persons With Disabilities Act (EAPWDA) and Section 1 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR). The ministry also determined that the appellant was not eligible for increased shelter allowance for February 2014 under Section 4 of Schedule A of the EAPWDR because his child did not reside with him for at least 40% of that month.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Act (EAPWDA) Sections 1, 3

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 1 (2), Schedule A, Section 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 (EAA).

The appellant is a recipient of disability assistance with no dependants on his file. He shares custody of his young child with the child's mother pursuant to a court order.

The evidence before the ministry at the time of reconsideration included:

- Request for Reconsideration dated February 6, 2014 with the following attachments:
 1. Letter from the appellant to the ministry dated January 24, 2014 in which the appellant stated that a November 1, 2013 provincial court order awarded him parenting time with his child amounting to 40% per month and 44% per year. He requested increased financial assistance from the ministry.
 2. Letter from the appellant to the ministry dated February 10, 2014 in which the appellant specified his need for additional support in order to feed and otherwise care for his child. The appellant noted that without an increased support allowance he would be forced to sacrifice therapeutic choices that are beneficial to his painful medical condition, namely Ankylosing Spondylitis (fusing of the spine) and Osteoarthritis in his right hip.
 3. Radiology report of appellant's right hip dated August 8, 2011.
 4. Ministry Medical Equipment request dated October 16, 2012.
 5. Diagnostic Imaging Requisition dated September 11, 2013.
 6. Provincial Court of British Columbia consent order dated November 1, 2013 setting out the terms of custody and access of the infant child of the appellant and his estranged spouse.

In his Notice of Appeal dated March 4, 2014 the appellant attached a three page letter in which he clarified that his child would be in his care 45% the year. The appellant acknowledged that effective March 2014 the ministry had increased his monthly shelter allowance from \$375.00 for one person to \$570.00 for a two person family. The appellant stated that because he is responsible for almost half of his child's food, clothing, utilities, school and other expenses he should also be eligible for an increased support allowance. Further, the appellant stated that he has not yet been able to determine what federal child support benefits might be available to him and submitted that in the meantime he should receive an increased support allowance which can be "deducted back" to the ministry when he begins to receive federal benefits.

The appellant also appended to his Notice of Appeal eight pages of information relating to the issue of child poverty in British Columbia and to his medical condition. The poverty information is accepted as argument. The appellant's medical issues were not under reconsideration and therefore the medical information is inadmissible as evidence pursuant to Section 22 (4) of the Employment Assistance Act (EAA) because it is not in support of the information that was before the ministry at the time of reconsideration.

The ministry did not submit additional evidence on appeal, and relied on its reconsideration decision which found that the child does not meet the criteria for a "dependent child" found in Section 1 of the

EAPWDA and Section 1 of the EAPWDR because she resides with the appellant for less than 50% of each month. She therefore cannot be added to the appellant's file as a member of the family unit. However, the appellant is now receiving an increased shelter allowance because the definition of "family unit" set out in EAPWDR Schedule A includes a child who is not a dependent child and who resides in the parent's residence for not less than 40% of each month.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision which denied additional support to the appellant because his child resides with him for less than 50% of each month and therefore does not meet the criteria for a "dependent child" set out in Section 1 of the Employment and Assistance for Persons With Disabilities Act (EAPWDA) and Section 1 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR). The ministry also determined that the appellant was not eligible for increased shelter allowance for February 2014 under Section 4 of Schedule A of the EAPWDR because his child did not reside with him for at least 40% of that month.

The statutory criteria for eligibility are as follows:

EAPWDA:**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);

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

EAPWDR:**1 (2) For the purposes of the Act and this regulation, if a child resides with each parent for 50% of each month under**

- (a) an order of a court in British Columbia,
- (b) an order that is recognized by and deemed to be an order of a court in British Columbia, or
- (c) an agreement filed in a court in British Columbia,

the child is a dependent child of the parent who is designated in writing by both parents.

EAPWDR Schedule A:**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;

The appellant argues that his child is under his care approximately 45% of the time, which means that he is responsible for almost half of her food, clothing, utilities, school, entertainment and other expenses. He believes that the ministry's denial of an increased support allowance does not reflect this reality and is not in the child's best interests. Without additional support he will be forced to sacrifice therapeutic and health-giving choices that have proven beneficial to his medical condition and control of pain. The appellant also argues that he does not yet receive federal child support benefits, and suggests that the ministry could temporarily increase his support allowance until the federal benefits are in place, at which time the increased support could be "deducted back" to the ministry.

The ministry argues that the appellant is ineligible for an increase in support allowance because his child does not meet the definitions of "dependent child" found in Section 1 of the EAPWDA and Section 1 of the EAPWDR as she resides with the appellant for less than 50% of each month. She therefore cannot be added to the appellant's file as a member of the family unit. The ministry argues further that the appellant was not eligible for shelter assistance during the month of February 2014 because his child stayed with him for 6 nights in February, which is less than the 40% monthly parenting time required for eligibility as a two-person family unit under EAPWDR Schedule A, Section 4 (1).

Panel Decision

There is no dispute that the appellant's child resides with him less than 50% of each month pursuant to a court order. EAPWDA Section 1 defines "dependent child" as a child 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. EAPWDR Section 1 (2) deems a child who resides with each parent for 50% of each month under a court order to be the dependent child of the parent who is designated in writing by both parents. The court order submitted by the appellant in this appeal limits his parenting time to less than 50% per month.

The panel finds that the ministry reasonably determined that the child of the appellant is not eligible as a member of the appellant's family unit because she resides with the appellant for less than 50% of each month and therefore does not meet the criteria for a "dependent child" set out in Section 1 of the EAPWDA and Section 1 of the EAPWDR. The panel also finds that the ministry reasonably determined that the appellant was not eligible for an increased shelter allowance during the month of February 2014 because his child resided with him less than 40% of total monthly parenting time and

therefore could not be included as a member of the family unit pursuant to EAPWDR Schedule A, Section 4 (1).

According to EAPWDA Section 3 only those persons who meet the initial and continuing conditions of eligibility established under the Act can be considered part of the family unit.

The panel therefore finds that the ministry's decision is a reasonable application of the applicable enactment in the circumstances of the appellant, and confirms the decision.