APPEAL

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) decision dated 17 July 2014 determined that the appellant's application to have a child added to her family unit as a dependent child was denied because the appellant had not established that the child resided in her place of residence for more than 50% of each month and that he relied on her for the necessities of life and thus not meeting the conditions set by s. 1 (1) of the Employment and Assistance for Persons with Disabilities Act.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), s. 1.
Employment and Assistance for Persons with Disabilities Regulations (EAPWDR), s. 1 and 5.

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant applied to have a 17 year old child added to her family unit.
- An Ex-Parte order dated 13 March 2013 from the Supreme Court of British Columbia (SCBC) stating that:
  - Until further order of this Court, the child [name], born on [date of birth – 17 year old] shall reside with the Claimant [name of the appellant].
  - The child's father [name] shall be served with all documents in this file by sending them to him…
  - The child's mother [name] shall be served with all documents in this file by sending them to her…
  - This application is adjourned until the Claimant files a Guardianship Affidavit and the Respondents and the Ministry of Children and Families have been served.
- A Restraining Order dated 13 March 2013 from the SCBC stating that:
  - The Respondent [name of the child's mother] is restrained from molesting, annoying, harassing, communicating or attempting to molest, annoy, harass or communicate, with the child [name and date of birth] and the Claimant [appellant's name].
  - Same disposition with respect to the child's father named in the order.
  - Both of the Respondents [names of the child's mother and father] are hereby restrained from entering any premises in which the child [name and date of birth] resides from time to time, including [address].
  - An order to peace officers to arrest the Respondents and be brought before the SCBC if they breach the order.
- With her request for reconsideration dated 8 July 2014 and signed by the appellant is a letter from the appellant stating that the child has been in her sole care for the last year and a half, since she was granted day-to-day care for him by the SCBC on 13 March 2013. She added that the child's father has a restraining order against him and has not provided any financial assistance since the child in the appellant's care. She concluded that the application for guardianship has been adjourned but that the 13 March 2013 court order stating that the child is to remain in her care is still in force.
- In a section of the request for reconsideration form, page 1, section 2 dated 12 June 2014 by a ministry worker it is stated that the appellant's request was denied because the child's father has full custody and guardianship and is responsible to provide the necessities of life for the child. It also states that the social worker with another ministry indicated the Ex-Parte order was adjourned.

In her Notice of Appeal dated 28 July 2014, the appellant indicated that the child has been in her care for a total of 1 year and 6 months by order of the SCBC and that there is a restraining order against both of his biological parents.

As submission for her appeal the appellant provided the following documents:

- A letter dated 27 August 2014 by the appellant's landlord to the effect that the appellant and her "son", the named child, have been renting at her home since 1 June 2014. The document does not indicate any address.
- A letter from a Health Authority dated 27 August 2014 advising the appellant that her request for

information about the child named in her request must go through a request under the Freedom of Information form and she is asked to leave the request duly completed at their office [address] and that she will be notified as soon as the information is available.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant's application to have a child added to her family unit as a dependent child was denied because the appellant had not established that the child resided in her place of residence for more than 50% of each month and that he relied on her for the necessities of life and thus not meeting the conditions set by s. 1 (1) of the EAPWDA was a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation in this matter is s. 1 of the EAPWDA
1 (1) In this Act:
"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);
"dependent youth" means a dependent child who has reached 16 years of age;...
"family unit" means an applicant or a recipient and his or her dependants;...
(2) The Lieutenant Governor in Council may prescribe other circumstances in which a child is a dependent child of a parent for the purposes of this Act.

Section 1(1) of the EAPWDR defines "parent":
"parent", in relation to a dependent child, includes the following other than for the purposes of section 17*[categories of persons who must assign maintenance rights]* of this regulation and section 6 *[people receiving room and board]* of Schedule A of this regulation:
(a) a guardian of the person of the child, other than
(i) a director under the *Child, Family and Community Service Act*, or
(ii) an administrator or director under the *Adoption Act*;
(b) a person legally entitled to custody of a child, other than an official referred to in paragraph (a) (i) or (ii);
(c) if the child is a dependent child of a parenting dependent child, a person who is the parent of the parenting dependent child;

The ministry argued that the evidence presented did not confirm that the child resided with the appellant for more than 50% of the time and that he relied on her for necessities of life. The ministry took the position that the Ex-Parte order was adjourned and that the Restraining order was irrelevant to the situation because the information the ministry had was to the effect that the child was not in the appellant's custody and that the father held guardianship – information that was verified by the child's social worker. The ministry also argued that there was no verification from school or from a physician that the child was her dependent and that there was no documentation provided that confirmed the child was her dependent as per the ministry's definition of dependent. Thus, the ministry argued that the child could not be added to the appellant's disability assistance file as dependent.

The appellant argued that the child has been in her sole care for over a year and a half and that this

was confirmed by the Ex-Parte order of the SCBC of 13 March 2013. She further argued that the biological parents were ordered not to contact their son as a result of a Restraining order made the same day and that the father provided no financial assistance since the child has been in the appellant's care. She took the position that since the Guardianship order was adjourned, the child was in her care meanwhile.

Is the appellant a "parent"?
The panel notes that the evidence presented by both the ministry and the appellant is unclear in terms of parent relationship with the child. The appellant did not indicate what type of relationship she had with the child. The ministry based its decision on the definition of "dependent child" that applies only to a "parent" under s. 1(1) of the EAPWDA and "parent" is defined at s. 1(1) of the EAPWDR. According to that definition, the appellant is a "parent" if she is the guardian of the child or legally entitled to custody of a child. Since the ministry took the position that the Ex-Parte order was "adjourned" (not in force), then why did the ministry determine to include that child under the definition of "dependent child"? What was the evidence of guardianship or of legal custody? The evidence shows that the appellant is not one of the child's biological or adoptive parents and she did not obtain guardianship of the child since the matter was adjourned. The panel finds there is no evidence provided that would suggest the Ex-Parte order was vacated and accepts it is still in force. Yet, the issue is whether the order can be considered as entitling the appellant to the legal custody of the child. The appellant and the ministry did not address this issue and it is not for the panel to make such a determination. Thus, the panel finds it cannot determine whether the appellant is a "parent" under the legislation. In other words, if the appellant has not demonstrated that she was a parent under the legislation, then the ministry reasonably determined the child did not qualify as a "dependent child".

Is the child a "dependent child"?
If the appellant qualifies as a "parent" of the child because of the Ex-Parte order and assuming the "shall reside" is akin to a legal custody, then the panel must address the issue whether the child meets the criteria for being a "dependent child" under s. 1(1) of the EAPWDA. The panel notes that the appellant provided two court orders, the Ex-Parte order of 13 March 2013 to the effect that the child "shall reside" with the appellant and the Restraining order, dated the same day, ordering the biological parents of the child to have no communication with him and stay away from him and his place of residence. The panel also notes that the appellant's evidence is somewhat corroborated by a letter from a third party, the appellant's landlord, to the effect that she and the named child do reside at her home since 1 June 2014 but no address is provided nor any indication as to whether the child is there all the time or part of the time.

On the other hand, the ministry's information provided by an unnamed social worker that the child is not in the appellant's custody and that his father holds guardianship of the said child is unsubstantiated and defies the Restraining Order and the panel finds this evidence has no weight in this matter. As mentioned above, there is no evidence to the effect that either the Ex-Parte or the Restraining orders have been vacated and the panel finds this evidence quite compelling. Yet, the legislation is very clear as to what criteria must be applied to determine whether the child can be considered as a "dependent child": he must reside in the parent's place of residence for more than 50% of each month and must rely on that parent for the necessities of life. The ministry suggested the appellant should provide some evidence to verify the situation but the appellant did not even mention

in her documentation that the child "resided" with her, let alone the percentage of time he did: her evidence was limited to stating that the child was in her care by order of the court and the note from the landlord stating that the appellant and "her son" had been renting at her home. As well, the appellant in her evidence did not mention whether the child relied on her for necessities of life other than stating that the child's father had not provided any financial assistance and, for instance, she provided no indication whether that 17-year-old child works or goes to school. The panel finds this evidence is far from sufficient to demonstrate that the child resides with her for more than 50% of each month and that he relied on her for the necessities of life.

Consequently, the panel finds the ministry reasonably determined the appellant had not demonstrated the child was a dependent child under s. 1(1) of the EAPWDA and reasonably determined he could not be added to the appellant's family unit as a "dependent child".

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.