APPEAL

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) reconsideration decision dated September 9, 2014 in which the Ministry determined that the Appellant was not eligible for the support portion of the disability assistance she received in May, June, and July 2014 while her child was under the care of the Ministry of Children and Family Development (MCFD). The Ministry found that the child no longer meets the definition of "dependent child" under section 1 of the *Employment and Assistance for Persons with Disabilities Act* (*EAPWDA*) and that the Appellant is liable to repay the support amount pursuant to section 18 of the *EAPWDA*.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act - sections 1 and 18

APPEAL

PART E – Summary of Facts

The evidence before the Ministry at reconsideration included the following:

1.The Appellant's Request for Reconsideration dated August 19, 2014 with the following documents attached:
a). A submission from the Appellant's advocate which stated that overpayments of $380.66 per month for May, June, and July 2014, and a three month sanction of $25.00 (applied as a consequence of "Inaccurate or incomplete reporting") were the result of the Ministry's eligibility review on July 30, 2014. The Ministry had received documentation from MCFD regarding the current living arrangement for the Appellant's child. The Appellant remains the child's legal guardian and has maintained a role as primary caregiver since the child's birth,
b) A copy of the Ministry's policy and procedure: *Children Cared for under the Child, Family, and Community Service Act* (*CFCSA*): February 15, 2012. This document states that when a child has been temporarily removed from the family and is cared for under the *CFCSA* the Ministry will update the case and add a stop date for the removed dependant.

2, Two letters from the Ministry to the Appellant dated July 30, 2014. In the first letter, the Ministry advised that as a result of a review of the Appellant's assistance payments between January 1st and July 30, 2014 and documentation received relating to a change in the living arrangements of the Appellant and her child, the Ministry determined that the Appellant received assistance for which she is not eligible. An overpayment of $1,141.98 has been recorded on her file. In the second letter, the Ministry advised the Appellant that the overpayment occurred due to her inaccurate or incomplete reporting regarding the living arrangements for her child, and as a result a three month sanction ($25 per month reduction) will be applied to her file.

3. A Ministry overpayment chart for the Appellant indicating an overpayment of $1,141.98 for May – July 2014 assistance months.

4. An MCFD form: *Children Cared for Outside the Parental Home Notification and Confirmation* dated July 29, 2014 which stated the following:

- The Appellant's child is in a living arrangement outside the parental home under the *CFCSA*.
- The child left the parental home on April 24, 2014.
- The parent continues to actively work towards the return of her child, confirmed on July 29, 2014.
- The child is living out of the parental home under the *CFCSA* temporarily; and
- The child has not been returned to the Appellant's care.

5. A letter from the Ministry to the Appellant dated June 26, 2014 (with attached copy of her application for assistance - Part 1) in which the Ministry asked the Appellant to provide a birth certificate for her child along with her shelter, tax, and banking information.

6. A Ministry "Overpayment Notification" for the Appellant dated July 30, 2014 in which the Ministry advised that she is liable to repay assistance of $1,141.98. A notation on this document stated: "Discussed overpayment and sanction by phone with the client on July 31, 2014."

7. A copy of an email to the Ministry from an MCFD social worker (the social worker) dated July 29, 2014. The social worker advised that an Extended Family Plan (the Plan) was signed by the child's "caregivers" on April 24, 2014 and the child has been residing with them ever since. The Appellant "was at the hospital with the child for awhile (after the child's birth) for planning", and the social worker will meet with her and confirm when the child was officially discharged.

Appellant's additional information

Subsequent to the reconsideration decision, the Appellant submitted a Notice of Appeal dated September 23, 2014 in which she stated that MCFD provided an incorrect date for when her child was taken into care. Attached to the Notice of Appeal is a letter to the Appellant from MCFD signed by the social worker and a team leader and dated August 26, 2014. This letter states the following:

1. On April 24, 2014, the Appellant, a third party, and the MCFD Director signed an Extended Family Plan. They agreed the Appellant and her child would reside at the third party's home. The child "was in your care at the time of this plan."

2. On June 25, 2014, a court order was granted for the Director to supervise the Appellant's care of the child. The child "was in your care at the time of this plan."

3. On July 21, 2014, the child was removed from the Appellant's care and placed in the care of the third party.

The panel finds that the information in the Notice of Appeal and attached letter relates to the arrangements for the care of the child and the date on which the child was removed from the Appellant's care. At the time of the reconsideration, the Ministry had other documents from MCFD regarding the arrangements for the child and dates thereof. The Panel therefore admits the information pursuant to section 22(4)(b) of the *Employment and Assistance Act* (*EAA*) as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

Appellant's oral testimony

The Appellant brought an advocate to the hearing. She stated that part of the Plan was for her and her child to reside with the third party. She signed the Plan in April and MCFD asked her to complete "form CF3471" to notify the Ministry that the child was being cared for outside of her usual place of residence. She stated that the child was not being cared for independent of her until July 21, 2014 as indicated in the MCFD letter of August 26, 2014. The Advocate stated that they could not obtain this letter in time for the reconsideration because MCFD was slow to respond to their request.

In response to questions from the panel, the Appellant explained her situation as follows:

- After her child was born, she and the baby were not allowed to leave the hospital because MCFD was putting together the Plan to create a supportive environment for the child due to an allegation they received that the Appellant was in an abusive relationship.
- She and the baby were discharged from the hospital on April 24, 2014 and both of them together went to stay with the third party. They remained there until the child was removed

from her care on July 21st and the Appellant could no longer stay at the third party's home. She is still in the process of gaining the full-time return of her child.
- The terms of the Plan were for the third party to supervise the Appellant's care of the child. She remained the legal guardian and primary caregiver but was not allowed to be alone with the child.
- While residing with the third party, she cared for the child including breast-feeding, changing diapers, and spending her own money on formula supplements, baby clothing and supplies. She stated that she has receipts for the things she bought and when she asked MCFD who was supposed to be paying for these things, the social worker said that she was to keep supporting the child.
- The Appellant maintained her own residence while she was residing with the third party but stated that she was at their place 98% of the time. She only went home for a couple of hours here and there to feed her cat and change the litter box because she was not supposed to use the third party as a babysitter.
- The third party was receiving financial support from MCFD while the Appellant and her child were in their home, but the social worker told her that the third party had the discretion to use the money however they wanted. She stated that it was in the Plan that the third party was getting money for the child's "necessities" but MCFD does not dictate what the third party can spend the money on and it could be used to compensate them for their time (spent supervising the Appellant) rather than to support the child.

In accordance with section 22(4)(b) of the *EAA*, the panel finds that the Appellant's oral submissions relate to the Appellant's and her child's living arrangements and to financial support for the child. The panel admits the oral testimony as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

In its reconsideration decision the Ministry stated the following:

- The child was born in March 2014 and on April 3rd the Ministry added the child to the Appellant's file as a depandant.
- On July 22nd the Ministry was notified by MCFD that the child was removed from the Appellant's care and the Ministry in turn removed the child from the Appellant's file.
- On July 29th the social worker confirmed by phone that the child was removed from the Appellant's care and was living with the third party and receiving financial assistance from MCFD. The third party will continue receiving support for the child while the child is living with them.

In response to questions for the panel at the hearing, the Ministry stated that it did not have a copy of the Plan and based its decision on the information that was provided by MCFD, along with a submission regarding Extended Family Plan policy that talks about payment to the third party care provider. The Ministry was aware that the Appellant was with the child at the third party's residence but they continued to pay the shelter allowance for her usual place of residence and they do not have information that concretely shows whether she was at the third party's home for a full day or half a day.

The Ministry reported that there is no breakdown to show what the financial assistance to the third party was used for but they had verbal confirmation from the social worker that the third party was receiving financial support for the child's care, and written documentation indicated that the child was not in the Appellant's care.

The panel makes the following findings of fact:

- The Appellant maintained her usual place of residence during the period in which she was staying at the third party's home.
- The third party was receiving financial assistance from MCFD to support the child under the Plan.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of September 9, 2014 in which the Ministry determined that the Appellant was not eligible for and is liable to repay the support portion of the disability assistance she received in May, June, and July 2014 because her child no longer meets the *EAPWDA* definition of "dependent child" is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the Appellant.

The following sections of the *EAPWDA* apply to the Appellant's circumstances in this appeal:

Interpretation

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);

Overpayments

18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [reconsideration and appeal rights].

Appellant's Position

In her Notice of Appeal, the Appellant argued that the Ministry's reconsideration decision relied on an MCFD document "which offered an incorrect date of April 24, 2014 as the date that the child was taken into care." The Appellant submitted that this date is an error on the part of MCFD but it is rectified by the MCFD letter of August 25, 2014 which states that the child was removed from the Appellant's care and placed in the care of the third party on July 21, 2014. The Appellant argued that this letter confirms that the child was in her care on April 24, 2014 because it twice states "was in your care at the time of the Plan".

In her Request for Reconsideration, the Appellant argued that the location of her child did not diminish her financial responsibility to provide material supports and that she has maintained a role as primary caregiver since the child's birth and this makes the child her depandant. She argued that she had no choice but to support the child financially during the course of the Plan because the third party had the discretion to use the money they received from MCFD however they wanted to and the financial responsibility fell upon her as the child's actual caregiver.

The Advocate argued that "the child was never not in (the Appellant's care" while she and the child resided with the third party. The child meets the definition of "dependent child" in the *EAPWDA* because the Appellant retained custody of the child and remained the legal guardian; had physical care and control of the child per the *CFCSA*; and used her support allowance to maintain the family unit.

Ministry's Position

In its reconsideration decision, the Ministry argued that the child no longer meets the Ministry's definition of a depandant once removed from the Appellant's care because the child does not reside with the Appellant for more than 50% of the time or rely on her for the necessities of life. The Ministry maintained that the Appellant could continue to receive her shelter allowance as the child was being temporarily cared for under the *CFCSA*, and the social worker confirmed that the Appellant is actively working on the return of the child. However, since the child was no longer considered to be her dependant, she was not eligible for the support allowance for May, June, and July 2014 and his liable to repay the amount that she received.

The Ministry explained at the hearing that it relied on the information from MCFD confirming that the child was not in the Appellant's care as of April 24, 2014: It noted that the *Child Cared for Outside the Parental Home Notification and Confirmation* form states that the child left the Appellant's home on April 24th, and the email from the social worker dated July 29, 2014 states that the child has been residing with the third party since April 24, 2014, the date on which the third party signed the Plan.

In response to questions, the Ministry argued that even though the Appellant was also residing with the third party and being supervised in her interactions with the child, this was part of the requirement to actively work on the return of the child and does not diminish that the child was in the care of the third party under the Plan and that the third party was receiving financial support for the child. The Ministry argued that even if the child was residing with the Appellant "for more than 50% of each month" per section 1(1) of the *EAPWDA*, the Ministry accepted that the third party was being paid to provide "the necessities of life" for the child. The Ministry argued that although it does not have information to concretely show that the child was residing with the Appellant less than 50% of the time, the Appellant's primary "place of residence" was maintained through the Ministry's shelter allowance

Panel's Analysis

***EAPWDA* section 1(1): definition of "dependant" and "dependent child"**

Under section 1(1) a dependant includes a dependent child "who resides with the person" (in this case the Appellant). "Dependent child" means a child (under the age of 19) "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". The panel notes that this definition contains two criteria and the definition is not met if the evidence confirms only one of these criteria.

1. *resides in the parent's place of residence for more than 50% of each month*:

With regard to the first criterion, the Appellant argued that the child resided with her from the date of birth in March 2014 and that her "place of residence" was the home of the third party from the date that she and the child left the hospital. The Ministry argued that the Appellant continued to maintain her usual place of residence where she had been living prior to going to the hospital to give birth.

The panel notes that "parent's place of residence" is not defined in section 1(1) nor is "residence" defined in the *Interpretation Act*. Nevertheless, the principles of statutory interpretation require the panel to first consider the plain meaning of terms. The panel finds that the plain meaning of "parent's place of residence" is the Appellant's usual residence where she lived immediately prior to going to the hospital to give birth. The Appellant acknowledged that she maintained this residence while she and the child were at the third party's home, going there occasionally (without the child) to take care of her cat.

The Appellant's evidence was that she had intended to return to her usual residence with the child after they left the hospital; however, on April 24, 2014 she and the child went to live at the third party's home pursuant to a temporary arrangement under the Plan. The panel notes that the *Child Cared for Outside the Parental Home Notification and Confirmation* form also indicates "temporary" in the box that describes the child's status while "living out of the parental home under *CFCSA*". The Ministry's evidence corroborates that it was a temporary arrangement because it continued to pay the Appellant's shelter allowance to maintain her usual place of residence.

Furthermore, the form itself by definition in the title "*Cared for Outside of the Parental Home*" and the quote "living out of the parental home" imply that the Appellant's child was not residing in the parental home and that the third party's home was not the Appellant's residence for the purpose of caring for the child. The panel therefore finds that the criterion in *EAPWDA* section 1(1) is not met because the third party's residence is not the "parent's place of residence" for the purposes of this section.

2. *and relies on that parent for the necessities of life*:

With regard to the second criterion, the Ministry argued that even if it had information to confirm that the Appellant resided at the third party's home with the child more than 50% of the time (assuming that the third party's home was her "place of residence" for the purposes of section 1(1)), the child was still not relying on the Appellant for "the necessities of life". MCFD was providing the third party with financial support to care for the child. The social worker confirmed on July 29th that the third party began receiving financial assistance on April 24, 2014 (the date they signed the Plan) and will continue to receive support for the child for as long as the child is residing with them.

The Appellant acknowledged that the third party was receiving financial support under the Plan; however, she argued that this support was not to provide "the necessities of life" for the child because while she was residing at the third party's home, she was using her own money to buy formula,

diapers, and other supplies. The social worker also told her that the third party could use the money at their discretion and that the Appellant was to continue to support the child.

The evidence before the Ministry was that the child was being cared for outside the parental home pursuant to a formal arrangement (the Plan) and the third party was receiving financial support for the child under this arrangement. The July 29th email from the social worker to the Ministry refers to the third party as the "caregivers". While the Appellant's evidence was that she remained the child's legal guardian and primary caregiver, and provided financial support with her own money, there is no evidence that she was required to financially support the child pursuant to the Plan.

The panel finds that the criterion in *EAPWDA* section 1(1) is not met because the third party was receiving financial support for the child. The panel finds that it was therefore reasonable for the ministry to conclude, given the evidence before it, that the third party would provide the necessities of life

Panel's decision

The panel finds that the Ministry reasonably determined that the evidence confirms the child's living arrangement outside of the parental home does not meet the two criteria for "dependent child" in section 1(1) of the *EAPWDA* and that the Ministry reasonably determined that the child is not a "dependent child" or the Appellant's dependant pursuant to section 1(1) of the *EAPWDA*.

***EAPWDA* section 18(1): overpayments**

This section requires the recipient (Appellant in this case) to repay to the government the amount of any disability assistance overpayment that was provided to a family unit that is not eligible for it. The Ministry argued that the Appellant was not eligible for the support portion of her disability assistance for May, June, and July 2014 because her child was not her dependant during this period. She is liable to repay the support portion which will be recalculated by the Ministry to determine the amount.

The Appellant argued that she should not have to repay support for May, June, and July because the child was her dependant and met the definition of "dependent child" in section 1(1) of the *EAPWDA* until she ceased residing with the child on July 21, 2014.

Panel's decision

For the reasons set out earlier, the panel finds that the Ministry reasonably determined that the child was not the Appellant's dependant and did not meet the definition of "dependent child" under section 1(1) of the *EAPWDA*. The panel therefore finds that the Ministry reasonably determined that the Appellant received support allowance for May, June, and July 2014 for which she was not eligible and is liable to repay pursuant to section 18(1) of the *EAPWDA*.

Conclusion

The panel finds that the Ministry's determination that the Appellant was not eligible for the disability support allowance and is liable to repay it was reasonably supported by the evidence and a reasonable application of the applicable legislation in the circumstances of the appellant. The panel confirms the Ministry's reconsideration decision.