APPEAL #

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the "ministry") dated December 8, 2014 which held that the ministry could not grant the appellant's request to have her son remain as a dependant on her file because the ministry determined that the appellant did not meet the eligibility requirements set out in section 1(1) of the Employment and Assistance Act (EAA). Specifically, the ministry found that the appellant's son does rely on the appellant for the necessities of life but does not reside with the appellant for more than 50 per cent of the time. In addition, the ministry confirmed that the appellant was not eligible for shared parenting because the ministry determined that the appellant did not meet the eligibility requirements set out in section 4(1) of Schedule A of the Employment and Assistance Regulation (EAR). Specifically, the ministry found that the appellant does not have an order or agreement confirming that the appellant's son resides with the appellant for more than 40 per cent of the time.

PART D – Relevant Legislation

EAA – section 1(1)
EAR – section 5
EAR – section 4(1) of Schedule A

PART E – Summary of Facts

The ministry was not in attendance at the hearing. Upon confirming that the ministry was notified, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The documentary evidence before the ministry at reconsideration included the following:

1. An *Individual Education Plan* for the appellant's son listing October 15, 2014 as the "*Date of Meeting*". The plan indicates that the appellant's son has a "current ministry designation" of "H". In addition, it confirms that the appellant's parents are listed as the guardians of the appellant's son.
2. The appellant's *Request for Reconsideration* signed and dated November 23, 2014 in which the appellant states that her son will be with her for 40 per cent of the time but she could not guarantee that it would be 50 per cent of the time. The appellant reports that her son is a level "H" designation at his school and has physiotherapists, occupational therapists and behavioral support set up. The appellant indicates that she feels she is being discriminated against based upon her marital status, family status and mental disability. She notes that there is extra rent support for shared parenting assistance but her son has no father in his life so the appellant cannot obtain any legal documents to confirm shared parenting. The appellant's son lives with the appellant's father and when the father is away for work (3 weeks a month) the appellant takes her son to school, picks him up, takes him to weekly medical appointments and buys his medicine, clothes and groceries. The appellant notes that she could argue that she spends over 70 per cent of her time each month with her son at her father's residence. She states that she should not have to ignore her child's basic human rights and she will not do so. The appellant observes that there is support for people involved with the Ministry of Children and Family Development (MCFD) but she cannot qualify for that either. She plans to move her son over the Christmas break so that the transition is easier. The appellant stated that she went to the local ministry office to inquire about her status as a single recipient and was told that she needed custody documents and a letter from MCFD confirming that she could have her son back. She feels that she is doing what is best for her son's health and it is not her son's fault that his father is not in his life nor is it the child's fault that the appellant has never had any financial help or support. The appellant states that she is the one taking care of her son and she has no money to get a custody document. She requests that the ministry reconsider giving her son medical benefits for medicine he needs every day and also to increase her rent support so that she can provide a home for her son when she can move him over to live with her.

The appellant's *Notice of Appeal* was dated December 11, 2014. Her reasons for appealing are presented as argument in Part F.

Prior to the hearing the appellant provided a submission consisting of the following:

1. A note from the appellant's physician dated July 23, 2014 which states "*This patient requires long term medical disability*". In the margin of the physician's note the appellant writes that she has been unable to qualify for the status of a Person with Persistent Multiple Barriers to Employment (PPMB) and was refused designation as a Person with Disabilities (PWD). The appellant states that this has caused her to be ineligible for benefits that could have alleviated some of the stress she experienced due to her son's disability. She comments that the ministry considers her to be employable despite the physician's note being on her ministry file.
2. An undated 3-page document titled *Ministry of Children and Family Development ICM*

Production Report that lists the appellant as "Key Player" and which indicates that her file was originally opened on April 29, 2014 and closed on July 24, 2014.

3. A 2-page letter dated March 26, 2014 from the appellant to a ministry case worker insisting that her son is not to be interviewed (by ministry staff) at school or any other location without a lawyer being present to ensure the child's rights are being met. She lists eight questions to which she requests a ministry response.
4. A one-page document titled "*Section 12 Collaborative Planning & Decision Making*"
5. A 4 page report regarding a "Family Case Planning Meeting" dated April 24, 2014. Present at this meeting were the appellant, 3 family members and a ministry worker. Included is a one-page document which provides a " . . . family's scored vulnerability level based on the highest score on either the neglect or abuse index". The report concludes with a plan that lists 8 next steps which were agreed to by consensus of the participants. The report identifies "housing for (the appellant)' as one of the " . . . worries or concerns". Beside this comment the appellant has written a note stating that no help has been provided for this as promised by (the ministry worker).
6. A one-page letter dated October 10, 2014 to the appellant from an Adjudicator with the Temporary Premium Assistance (TPA) Unit of the Ministry of Finance.
7. A one-page photocopy showing copies of two prescriptions for medicine prescribed for the appellant.
8. A one page letter dated November 7, 2014 from the office of the Ombudsperson to the appellant advising her that they have investigated her complaint about the ministry.
9. A nine page *Clinical Diagnostic Assessment* dated November 21, 2014 regarding the appellant's son. The report indicates that the appellant's son was referred for an assessment " . . .to get a more accurate account of what is happening for (the appellant's son)". The report concludes with 7 recommendations for follow-up action.

At the hearing the appellant began by indicating that she disagreed with some of the statements made by the ministry in the reconsideration decision. In particular, the appellant noted that the *Reconsideration Decision* states that " . . . your son has always lived with you at your father's residence. The appellant stated that this was not the case. She pointed to the notes of the April 24, 2014 Family Case Planning Meeting in which it is recorded that "(the appellant's child) will stay with (name of a family member of the appellant) for the next 8 weeks – until school year is complete". The appellant stated that this was her aunt with whom her son would be living for the 8 weeks – not her father. The appellant explained that she did not feel that her father's residence was a suitable home for her son especially because of the other family members who shared that residence. The appellant reported that she had been told by the ministry to move out of her father's residence and to remove her son as well. The appellant also challenged the ministry's claim that her son lived with her father because she reported that her father has a residence in a city in another province and lives at his local residence less than 30 per cent of the time. Accordingly, she argued that it was not accurate for the ministry to state that her son lived with her father. Instead she argued that she is the only one doing the parenting of her son. She noted that the ministry had concurred in the Reconsideration Decision that her son does depend upon her to provide the necessities of life.

The appellant stated that her son did not live with her during the period October 7 – 28, 2014. She relocated from her father's residence to a new residence and began to gradually familiarize her son with this new residence in the hopes that this would assist him to become comfortable with the possibility of him coming to live at that residence. The appellant pointed to comments contained in the

October 15, 2014 Individual Education Plan and in the November 21, 2014 Clinical Diagnostic Assessment report which confirmed the challenges faced by her son in dealing with change and new situations. She stated that she brought her son to her place of residence on weekends during October to gradually introduce him to living at that residence and then she moved him to live with her on a continuing basis from November 4, 2014 until the present. She explained that in light of her son's difficulties in accepting change she was not altogether certain that he would adjust well to a new place of residence. Accordingly, in the telephone conversation she had with a ministry supervisor following her submission of the Intent to Rent document, she told that supervisor that her son would be with her 40 per cent of the time but she could not guarantee that it would be more than 50 per cent of the time. The appellant noted that in the Reconsideration Decision the ministry states that the appellant does not dispute that her son is currently residing in the home of the appellant's father. The appellant does dispute this statement and maintains that her son has been living with her continuously in her place of residence since November 4, 2014.

The appellant noted that her son's father is not involved in the child's life and has provided no financial support for the appellant or her son. The appellant expressed frustration that the ministry has provided no assistance to her in her efforts to seek child support from her son's father. The appellant noted that she has to provide the necessities of life for her son but only receives funding as a single person. She stated that she is now receiving medical benefits support from the ministry but had not receiving this support until recently and was finding the costs of providing for herself and her son to be very stressful.

In response to a question from the panel the appellant explained that her son currently resides with her at a residence that is approximately 45 minutes away from the school her son attends whereas the residence of the appellant's father is about 2 minutes away from the school. The child still attends the same school and benefits from the behavioral and emotional assistance provided by various professionals associated with the school. She stated that her son has adapted well to the changes involved in moving to live with the appellant.

In response to another question from the panel the appellant explained that she had approached an advocacy organization to request their assistance regarding her situation but they indicated they could only help the appellant if her son was in foster care.

The panel reviewed with the appellant, the documents submitted by her following the reconsideration decision but prior to the appeal hearing. The appellant explained that the one-page document titled "Section 12 Collaborative Planning & Decision Making" was included in error and she did not mean to include it. Accordingly, the panel did not admit this document.

The panel admitted the appellant's oral testimony as it provides additional information regarding the place of residence of the appellant's son from October 7, 2014 when the child was removed from the appellant's care until the present. Nonetheless, the panel will discuss in Part F whether there is corroborating support for the appellant's claim that her son has lived with her at her place of residence since November 4, 2014 and whether the ministry was aware of this change of residence for the appellant's son when the ministry made the reconsideration decision. The panel also reviewed the admissability of the documents submitted by the appellant after the reconsideration decision but before the appeal hearing. The panel admitted the doctor's note dated July 23, 2014 since it corroborates the appellant's statement in her Request for Reconsideration that she did have such a

note from her doctor. The panel admitted the 4 page report regarding a "Family Case Planning Meeting dated April 24, 2014 as it supported the appellant's claim that her son had always lived wth the appellant at her father's residence. The panel also admitted the one-page photocopy showing two prescriptions for medicine prescribed for the appellant as it confirmed that the appellant was incurring costs for prescription medicines. Finally, the panel admitted the 9-page *Clinical Diagnostic Assessment* dated November 21, 2014 as it described some of the challenges faced by the appellant and her son in dealing with the changes involved in moving him from one residence to another. The panel concluded that all of the foregoing evidence was admissable under EAA section 22(4) as it was found to be in support of the records before the minister at reconsideration. The panel did not admit the undated 3-page document titled *Ministry of Children and Family Development ICM Production Report* as it was not found to provide information relevant to the appeal. For the same reason the panel did not admit the 2-page letter dated March 26, 2014 from the appellant to a ministry case worker, the one-page letter dated October 10, 2014 to the appellant from an Adjudicator with the Temporary Premium Assistance (TPA) Unit of the Ministry of Finance, and the one page letter dated November 7, 2014 from the office of the Ombudsperson to the appellant. The panel reviewed the extensive comments the appellant had written on the documents submitted by the appellant after the reconsideration decision but before the appeal hearing. The panel concluded that these are considered as arguments and where appropriate they have been included in Part F.

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PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request to have her son remain as a dependant on her file, and the decision that the appellant was not eligible for shared parenting were reasonably supported by the evidence or were a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant's son did not reside with the appellant for more than 50 per cent of the time, and that the appellant did not have an order or agreement confirming that the appellant's son resides with the appellant for more than 40 per cent of the time.

The relevant legislation is as follows:

From the EAA:

Part 1 — Introductory Provisions
Interpretation
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 per cent of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

From the EAR:

Applicant requirements
5 (1) For a family unit to be eligible for income assistance or a supplement, an adult in the family unit must apply for the income assistance or supplement on behalf of the family unit unless
(a) the family unit does not include an adult, or
(b) the spouse of an adult applicant has not reached 19 years of age, in which case that spouse must apply with the adult applicant.

Schedule A

Income Assistance Rates

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 per cent of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

The appellant's position is that she and her son had been living at her father's residence from July 2014 until October 7, 2014. The appellant's father works in another province and maintains a separate residence in that province only returning to his local residence for 7-10 days per month. Accordingly, when the appellant's father is away (about 3 weeks each month) the appellant takes her son to school, picks him up after school, takes him to weekly medical appointments, and buys his

medicine, clothes, and groceries. She notes that she could argue that she spends over 70 per cent of time per month caring for the son at her father's residence. The appellant was concerned that living at her father's residence was not a healthy experience for her son and she wanted to move him to another residence where he would live with her. Moreover, she reports that the ministry advised her that she should move her son out of her father's residence. Accordingly, the appellant moved out of her father's residence on October 7, 2014 with plans to have her son move to her new residence at the earliest opportunity. The appellant was aware that her son found change very challenging and she was concerned about how best to manage moving him to her new residence. She reported that she had her son come to stay with her over weekends in October to become oriented and familiar with the new residence. The appellant stated that she has had her son living with her continuously at her place of residence since November 4, 2014. In addition, she notes that the ministry acknowledged in the reconsideration decision that her son relies on her for the necessities of life. Consequently, she argues that she satisfies the legislative requirements for her son to be considered her dependant and added to her file as part of her family unit. The appellant also noted that section 1(2) of the EAA states that "The Lieutenant Governor in Council may prescribe other circumstances in which a child is a dependent child of a parent for purposes of this Act". She expressed frustration over her dealings with the ministry in her efforts to have her son added to her file as a dependant and wondered why the provisions of section 1(2) of the EAA had not been employed by the ministry for this purpose.

The ministry's position is that from October 7, 2014 when the child was removed from the appellant until the date of the Reconsideration Decision (December 8, 2014) the child was not living with the appellant at her place of residence for more than 50 per cent of the time. In the reconsideration decision the ministry noted that the appellant submitted an Intent to Rent form on November 5, 2014 which indicated that the appellant intended that she and her son would be moving to a new residence on November 1, 2014. The same decision also notes that the appellant's plan is to have her son living with her for at least 50 per cent of the time as of December 1. 2014. Accordingly, there was some uncertainty (at least on the ministry's part) as to the appellant's plans regarding the timing of her son's move to her new residence. The ministry stated in the reconsideration decision that it had contacted the appellant's father (no date provided) who confirmed that the appellant's son continues to live with him. The ministry advised the appellant to inform the ministry when her son moves into her residence in order to have the child added back onto the appellant's income assistance file as a dependant.

Panel Decision

The panel notes that both parties agree that the appellant does provide her son with the necessities of life so she satisfies that part of the legislative requirement for considering the appellant's son to be her dependant. But the panel is presented with fundamentally opposing positions by the two parties as to whether the appellant's son resides in the appellant's place of residence for more than 50 per cent of each month and thereby, whether the appellant's son meets the legislative requirement to be considered her dependant. The appellant testified that her son moved into her residence on November 4, 2014 and has been residing with her continuously at that residence since that time. In that event the child would be residing in the appellant's place of residence for more than 50 per cent of each month and consequently, he would be the appellant's dependant. But the ministry reported in the Reconsideration Decision that there was some confusion about the appellant's plans for the date on which she intended to have her son move to her residence to live with her. In that decision the ministry stated that the appellant planned to move with her son to their new residence on November

1, 2014 but it also noted a plan for the appellant to have her son living with her by December 1, 2014. The ministry also stated that they had contacted the appellant's father who confirmed that the appellant's son continues to live with him, but the ministry did not indicate the date of that contact. In her Request for Reconsideration dated November 23, 2014 the appellant stated that "I am trying to move (her son) over Xmas break so the transition is easier". This statement does not align with the appellant's claim that she had already moved her son to her residence on November 4, 2014. The panel also notes that the *Clinical Diagnostic Assessment* dated November 21, 2014 states " . . . (the appellant's child) lives with his maternal grandfather". From this review of the evidence the panel concludes that there is no corroborating evidence to support or establish the appellant's claim that her son has been living with her at her residence since November 4, 2014. According to the Reconsideration Decision the ministry was aware that the appellant had plans to have her son come to live with her at her residence but it was unclear when that event was to occur. After the appellant submitted her Intent to Rent form on November 5, 2014 she spoke with a ministry supervisor and advised him that her son would be with her at least 40 per cent of the time but she could not guarantee that it would be 50 per cent. The ministry advised the appellant to inform the ministry when her son moved into her residence so that he could be added back onto her file as aa. There is no evidence that the appellant did so prior to the Reconsideration Decision of December 8, 2014. Finally, the panel notes that in her Request for Reconsideration dated November 23, 2014 the appellant stated that she was trying to move her son to come to live with her in her residence over the Christmas break. In light of this evidence the panel concluded that the ministry reasonably determined that the appellant's son was not living with the appellant at her place of residence for more than 50 per cent of the time.

In the Reconsideration Decision the ministry noted that according to section 4 of Schedule A of the EAR, a recipient of income assistance can receive additional shelter assistance if they have a shared custody court order or shared parenting agreement filed in court showing that they have a child who is not listed as a dependant on their file, but who resides with them for no less than 40 per cent of each month. Unfortunately, the appellant indicated that she does not have such documents nor does she have the financial resources needed to obtain such documents. Accordingly, the panel concluded that the ministry reasonably determined that the appellant did not qualify for the shared parenting provision outlined in the legislation.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant's son does not reside with the appellant for more than 50 per cent of the time, and the decision that the appellant did not qualify for shared parenting were reasonably supported by the evidence.

The panel therefore confirms the ministry decision.