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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") reconsideration decision dated December 29, 2014 in which the ministry determined that the appellant is not eligible for the shared parenting allowance for December 2014 because the appellant's daughter is not included in his family unit within the definition under Schedule A, section 4(1) of the Employment Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Regulation Schedule A, section 4(1)

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PART E – Summary of Facts

The appellant did not attend the hearing. The panel received confirmation from the Tribunal that the appellant had been notified of the date, time and location of the hearing. Accordingly, under s.86(b) of the Employment Assistance Regulation the panel heard the appeal in the appellant's absence.

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

1. The appellant's Request for reconsideration (RFR) dated December 15, 2014 in which the appellant attached page 2 of the record of minutes from a court proceeding ("the Record") dated August 31, 2011 which states that a Consent Order amending the February 22, 2011 court order be drafted as follows:
    - the appellant will have access to his daughter 3 weekends per month (Friday night to Sunday night), including long weekends when they fall during his access time; two weeks each month in the summer. Parties will split the March break, the times to be arranged between them. Parties will split Easter holidays with the time to be arranged between the parties.
    - The appellant is to have Christmas access each Boxing Day at 10:00am to the date of his daughter's return to school.
1. A court order dated July 14, 2014 granting the appellant two three day weekends in July 2014 and fourteen days in August 2014 after which time the summer schedule will be that stated in the previous court order.
2. A letter from the appellant's lawyer dated September 8, 2014 stating that the appellant instructs them that he has his daughter with him for 18 days this month.
3. A letter from the appellant's lawyer dated December 2, 2014 stating that the appellant instructs them that he has his daughter with him for 16 days this month.

In the Notice of Appeal (NOA) dated January 7, 2015 the appellant states:

- for December 2014 he had his daughter for a total of 16 days;
- the court gave him 10 days for Christmas and because Christmas holidays ran into January, the appellant will have his daughter for 16 days in January;
- he receives $235.00 a month for himself and this is not enough to support a child for 16 days.

The panel has accepted the information in the Notice Of Hearing into evidence as it is in support of information and records before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*, as it relates to the appellant's living circumstances.

At the hearing the ministry relied on the reconsideration decision and stated that the appellant had not satisfied section 4 of Schedule A of the EAR. Specifically, the ministry noted that the appellant had not established that his daughter resided with him for not less than 40% of the month of December 14, 2014.

In response to questions, the ministry stated that the appellant had not demonstrated that the issue of his daughter's residence was provided in a BC court order or a BC court filed agreement as required by section 4 of Schedule A of the EAR. The ministry referenced the record respecting the Consent Order but noted the resulting Consent Order was not submitted. The ministry stated that the two letters from the appellant's lawyer similarly did not satisfy the legislation.

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PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's determination that the appellant was not eligible for a shared parenting allowance for December 2014 because the appellant's daughter is not included in his family unit within the definition under Schedule A, section 4(1) of the Employment Assistance Regulation (EAR) was a reasonable application of the legislation in the circumstances of the appellant.

The applicable legislation is as follows:

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% 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 as set out in the Notice of Appeal is that while the court order grants him access to his daughter 3 weekends a month, he often has her 4 weekends a month. The order also grants him access from Boxing Day until the end of the Christmas school holiday. As a result, this year he had his daughter for 16 days in December and he will have her 16 days in January. This increased time with his daughter results in extra expenses and he is not able to pay for those expenses on the $235.00 a month he receives from the ministry as a sole recipient with no dependent children.

The ministry's position is that the appellant has not established that his daughter resided with him for not less than 40% of December 2014 under a BC court order or a BC court filed agreement. Page 2 of the record of minutes dated August 31, 2011 stating a Consent Order be drafted amending the February 22, 2011 order grants the appellant access to his daughter 3 weekends a month. However, there is no Consent Order submitted as evidence. The court order dated July 14, 2014 grants the appellant two three day weekends in July 2014 and fourteen days in August 2014 after which time the summer schedule will be that stated in the previous court order. December 2014 is not included in that July 2014 court order.

The ministry stated that the lawyer's letter is not a court order and if the appellant has his daughter for 16 days in December that would be over 50% of the month. Since there is not a court order granting the appellant 50/50 access, the ministry's position is that the appellant is still not eligible for the shared parenting allowance.

Panel Decision

Schedule A, Section 4(1) of the EAR grants a Shared Parenting allowance to a parent of a non-dependent child if that child resides with them for not less than 40% of each month under the terms of a BC court order or a BC court filed agreement. The ministry reports that the appellant agrees that his child is not his dependent. The Record appears to reflect a custody arrangement which grants the appellant access to his daughter 3 weekends a month,

including long weekends when they fall during his access time as well as two weeks each month in the summer. However, there was no BC Court Order or court filed agreement submitted as evidence showing the amendment to the original 2011 court order. Further, the Order does not make specific reference to custody in December 2014.

While the appellant argues that he may have his child at his residence for more than 3 weekends a month and in December 2014 had her for 16 days, that access is not stated in the original 2011 court order. The legislation is clear that there must be a BC court order or a BC court filed agreement granting that the child resides with the appellant for not less than 40% of each month. There is no evidence that a court order or filed agreement exists that grants the appellant access to his daughter for not less than 40% of the month of December 2014.

Conclusion

The panel finds that the ministry's determination that the appellant was not eligible for a shared parenting allowance for December 2014 because his daughter did not reside with him for not less than 40% of the month under the terms of an order of or an agreement filed in a court of B.C. is a reasonable application of the applicable legislation in the appellant's circumstances. The panel confirms the ministry's decision.