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 06 May 2015 that denied the appellant's request for additional income assistance for parenting his children. The ministry determined that the information provided did not establish that the children are dependants in the appellant's family unit under section 1(1) of the *Employment and Assistance Act* or part of his family unit for the purposes of the shared parenting allowance under section 4(1) of Schedule A of the Employment and Assistance Regulation.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 1(1).
Employment and Assistance Regulation (EAR), Schedule A, section 4(1).

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PART E – Summary of Facts

The appellant did not appear at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration included the following:

1. From the ministry's files:
   - The appellant is a sole recipient of income assistance. He is the father of 2 children younger than 18 years.
   - His rent is $725/month.
   - On 14 April 2015 the appellant attended the ministry office and submitted an order regarding custody arrangements for his children (see below). The appellant stated that the second custody option in the court order was currently in place and that he had his children 50% of the time, alternating 2 days/nights. He stated that he was unable to provide confirmation of the current custody arrangement due to conflict with the mother of the children and that he could not provide verification from a social worker or third-party. At that time the appellant was issued shared parenting assistance for the months of March and April to avoid eviction and hardship while he obtained verification of 50-50 custody arrangement.
   - On 23 April 2015 the appellant was contacted by a ministry worker regarding the need to verify that the children resided with him for 40% or more of the month in order to continue to be eligible for shared parenting assistance. The appellant stated that no one could verify the current 50-50 arrangement and that he could not provide verification until his next court date in August 2015.

2. An Order by a Provincial Court Judge dated 28 March 2014 ("the order"), by consent of the parties, directing that:
   - The primary residence of the children will be with their mother.
   - The appellant will continue to have frequent and generous parenting time with the children as follows:
     a) The appellant will parent the children every alternate weekend from Friday after school until Sunday at 6 PM, and every Wednesday after school until Thursday morning before school.
     b) Quoting from the order: "The [appellant's] parenting scheduling will change when he commences work outside the [local area] and must live elsewhere during weekdays. The appellant has not yet found work and therefore, when he does find work and the parenting scheduling needs to change, he will provide [the mother] with 1 week notice of his work schedule and departure from the [local area] for work purposes. His parenting time will occur during his days off work when he returns to the local area as follows:
        I. "The [appellant] will have parenting time based on a continuous schedule of two (2) days on and two (2) days off during the weeks that he is off work. [The appellant] will notify [the mother] of his return to the local area and provide the date of his first two days of parenting and thereby determine the schedule for two days of parenting by him followed by two days of parenting by the mother, *eturned [sic] after working away. The appellant will provide*

[the mother] with 1 week notice of his impending return to the [local area] for parenting of the children in the first day of his four-day block of parenting during the first week. If he has a second consecutive week off work, the second four-day block will commence one week later unless the parties agree otherwise."

II. *"[The mother] will ensure the children are available after school on the first day of the appellant's four days if the first day falls on a school day, or by 12 noon if the first day is not a school day. After three nights and on the fourth day at 6 PM, the children will be returning to the mother's care at 6 PM at [location]."*

(The panel has quoted the above paragraph of the order for completeness. The panel does not understand that part of the passage displayed in italics relating to "a four-day block" of parenting time by the appellant as it is not consistent with the 2 day, 2 day off arrangement described at the beginning of the paragraph.)

- Paragraph 9 states that both parties will review the agreement from time to time for the purpose of making mutually agreeable changes to the parenting scheduling to ensure that the children have time with both parents, and each party is at liberty the request in order for a change to the parenting scheduling based on the children's needs and the parent's employment responsibilities.

3. The appellant's Request for Reconsideration, dated 25 May 2015. The appellant writes:
"I have my children 2 days and 2 nights, same as their mother and it says it in the court consent order. My lawyer fought and won this argument because if I don't have them 50% my ex can come after back payments for child support. My rent is $725 plus utilities…… It clearly says when I'm in town working I get my kids every Wednesday and every alternate weekend. I'm not working so we fell back on the 2 and 2 rotation."

The appellant's Notice of Appeal is dated 08 June 2015. His Reasons for Appeal provide no new information and go to argument (see Part F, Reasons for Panel Decision, below).

At the hearing, the ministry stood by its position at reconsideration.

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PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that denied the appellant's request for additional income assistance for parenting his children is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. More specifically, the issue is whether the ministry reasonably determined that the information provided did not establish that the children are dependants in the appellant's family unit under section 1(1) of the *EAA* or part of his family unit for the purposes of the shared parenting allowance under section 4(1) of Schedule A of the EAR.

The applicable legislation is from the *EAA*:

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% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

"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.

From the EAR:

Definitions

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.

And from the EAR, 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's position, as he explains in his Notice of Appeal, is:

> "Because it clearly says in my court papers I only get my two kids every Wed. and every alternate weekend when I'm working in town. Since I'm on assistance not working I get them every two days on and off or I would have to pay child support: 50% with me and their mom."

The position of the ministry, as set out in the reconsideration decision, is that to be considered a dependent child in the family unit the child must reside with the parent more than 50% of time. The appellant has indicated that, because he is not working, he currently has the children 50% of the time (2 days and 2 nights), same as their mother, and it says so in the court order. The ministry is unable to add the children as dependants because a) primary care of the children is held by the mother as per the court order and b) there is no written statement provided by the mother to confirm a change in parenting scheduling to establish that the children reside with the appellant more than 50% of the time.

In a shared parenting arrangement, when the child resides with the parent for less than 50% of the time but more than 40% of each month under the terms of an order or an agreement, the ministry can include a child in the family unit for the purposes of the shelter allowance (shared parenting assistance). The position of the ministry is that it is unable to provide the appellant the shared parenting allowance because:

- The court order intended for the appellant to continue parenting alternating weekends and every Wednesday, which works out to 8 nights/month, while the ministry considers 12 nights/month to meet the minimum 40% required; and
- The appellant has not provided any written confirmation from the mother that a 50/50 split is the current arrangement. The ministry notes that based on the court order the 50/50 split was intended to be in place when the appellant was on his days off while working and living out of town to make up for some of the parenting time missed while he was away working. A review of the appellant's file confirms that he last worked in November 2014. It is not clear to the ministry why the arrangement did not revert back to Wednesday's and alternating weekends after the job ended. Without confirmation from the mother, or copy of any written record (e-mail or text) between the appellant and the mother confirming the parenting scheduling changes, the ministry is unable to establish that the children currently reside with the appellant at least 40% of time.

Panel Decision

Despite the appellant maintaining that the court order provides for the appellant parenting the children 50% of the time when he is not working, alternating every 2 days/nights, on a close reading of the order the panel finds that the default parenting arrangement when the appellant is not working – as is the situation currently – is for the appellant to have the children every Wednesday and alternate weekends. A 50-50 split only comes into effect when the appellant is working and must live elsewhere during workdays, with the appellant having parenting time on a two days on and two days off basis during the weeks that he is off work. The panel notes that paragraph 9 of the order provides

for the appellant and the mother to make mutually agreeable changes to the parenting scheduling and each is at liberty to request an order for a change in parenting scheduling based on the children's needs and parent's employment responsibilities.

Section 1(2) of the EAR states that, if a child resides with each parent for 50% of each month under an order of a BC court or an agreement filed in a BC court, the child is a dependent child of the parent who is designated in writing by both parents. The appellant has not provided evidence that there is an order or agreement providing for a 50 – 50 split in parenting time and naming him as the designated parent. The only order before the ministry states that, by consent, the primary residence of the children will be with their mother, with the parenting schedule showing that when the appellant is not working, the children reside with the mother more than 50% of each month (parenting by the appellant every Wednesday and alternate weekends = 8 days per month on average). As the appellant acknowledges, he is currently "not working," – i.e. he is not working outside the local area and living elsewhere during workdays, temporarily returning home between periods of work, during which time, as provided in the order, he would be entitled to the two days on, two days off parenting arrangement. For these reasons, the panel finds that the ministry was reasonable in determining that the children are not dependent children of the appellant's family unit under section 1(1) of the EAR or section 1(2) of the EAR.

As to the appellant's eligibility for a shared parenting allowance, section 4(1) of Schedule A of the EAR also requires a court order or an agreement filed in a BC court showing the children residing with the appellant at least 40% of each month. The appellant has not provided any confirmation of any such order or an agreement, or even informal documentation (such as e-mail or text) showing an agreement with the mother under paragraph 9 of the order, that would confirm a 2 days on, 2 days off parenting arrangement. Without confirmation to the contrary, the panel finds that the ministry was reasonable in relying on the terms of the order providing the appellant parenting time every Wednesday/alternate weekends when he is not working, or 8 days per month on average, representing less than 40% of the month. Taking into account the legislation and the general principle under administrative law that it is the responsibility of an applicant for a public benefit to provide the information necessary to establish eligibility, the panel finds that the ministry was reasonable in determining that the appellant had not provided the information necessary to establish eligibility for the shared parenting allowance under section 4(1) of the EAR.

Conclusion

Based on the foregoing, the panel finds that the ministry's decision denying the appellant's request for additional income assistance for parenting his children is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.