PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision which found that the appellant is not eligible for shared parenting assistance (SPA) as the child is not part of her family unit pursuant to Section 4 of Schedule A of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule A, Section 4

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 1

PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included:

1) Letter dated October 13, 2015 to the ministry in which the Ministry of Children and Family Development (MCFD) wrote that according to the appellant's case file records:

- September 24, 2013- the appellant and the father of her child were living at the subject premises as the RCMP were involved in a domestic assault;
- December 22, 2013- documents show that the appellant and the father of her child continue to live together after the father was released from jail;
- March 27, 2014- the appellant was admitted to hospital and address provided was the subject premises and in common-law relationship with father of her child;
- March 28, 2014- child born but removed at birth;
- December 8, 2014- mediation where both parents advised counsel and MCFD that they were living together as common law;
- March 12, 2015- correspondence received from the appellant advising she was moving out of the subject premises;
- June 2, 2015- correspondence received from the appellant confirming her address is at the subject premises;
- On July 10, 2015, a social worker attended at the subject premises to commence a home visit/ interview between the appellant, the father of the child and another social worker and, during the interview, it was disclosed that the appellant and the father of the child had been living common law for approximately 3 years at the subject premises;
- During the home visit, the social worker went to each room and it was clear that the couple is living common-law and have been for some time;
- During the interview, it was disclosed that the appellant and the father of the child had been giving the ministry separate and false addresses as they were entitled to the dual income to make ends meet. The father of the child stated that he could not have finished his schooling without the extra income;
- On August 19, 2015, the appellant and the father of the child were advised that the director for MCFD was seeking a Continuing Custody Order (permanency planning and/or adoption) for their child;
- At the time of this report, the appellant and the father of the child continue to live together in a common-law relationship; and,

6) Request for Reconsideration- Reasons dated October 16, 2015.

In her Request for Reconsideration, the appellant stated that:

- MCFD is "seeking" a Continuing Custody Order, they do not have a Continuing Custody Order as of late October 16, 2015, which is where they must be at before going forward with other options. There are no court documents indicating they are at this stage.
- We do not currently have a court date but it is not going to be until April 2016.

The ministry relied on the reconsideration decision as summarized at the hearing. The ministry clarified at the hearing that even though the child was apprehended from the appellant at birth, the shelter top-up was provided to the appellant under the ministry policy to allow her to create a suitable home for the child and to work towards the child's return.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, that the appellant is not eligible for shared parenting assistance (SPA) as the child is not part of her family unit, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Section 1(1) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) defines

"family unit" to mean "...an applicant or recipient and his or her dependants"

and also defines:

"dependant", in relation to a person, to mean 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 responsibility 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).

Section 1(2) of the EAPWDA provides:

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 4 of Schedule A of the EAPWDR provides in part:

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 ...

Section 1(2) of the EAPWDR provides:

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.

Ministry Policy provides:

Children Cared for Under the Child, Family, and Community Service Act (CFCSA): February 15, 2012

Support and shelter allowance amounts are based on the number of recipients in the family unit.

When one or more dependent children leave a family unit, the support and shelter allowances provided

must normally be decreased. The change in support takes effect as soon as the dependent child leaves the home.

When a dependent child is temporarily cared for under the Child, Family, and Community Service Act (CFCSA), the shelter allowance may be maintained. A Ministry of Children and Family Development social worker must confirm that the child is being cared for under the CFCSA and that the parent is actively working on the return of the child.

Confirmation is required **every six months** from a social worker that the parent is actively working on the return of the child.

The temporary shelter allowance may continue until one of the following occurs:

The child will not return to the parent's home
For example, a continuing custody order may be granted meaning the Director of Child Welfare becomes the sole guardian of the child. A social worker must provide confirmation.

The Ministry of Children and Family Development social worker determines that the parent is no longer actively working on the return of the child

The child returns to the parent's home
The parent has addressed the reasons why the child was being cared for under the CFCSA and the social worker supports the child residing with the parent.

Ministry's position

The ministry's position is that the appellant is not eligible for shared parenting assistance (SPA) as her child is not part of her family unit. The ministry stated that the appellant's child was taken into care by the Ministry of Children and Family Development (MCFD) at birth and MCFD has confirmed that they intend to apply for a Continuing Custody Order for permanent care of her child. The ministry pointed out that Section 1 of the EAPWDA defines "family unit" to include a recipient and her "dependants," which includes a "dependent child," and the definition of "dependent child" requires that the child reside with the parent more than 50% of each month. Section 4(1) of Schedule A of the EAPWDR, which relates to payment of monthly shelter allowance, includes in the definition of "family unit" a child who resides in the parent's place of residence for not less than 40% of each month, and the ministry wrote that there is no evidence that the appellant's child is in her care at least 40% of the time. The ministry argued that as the child is not included in the appellant's family unit for the purposes of Section 4 of Schedule A of the EAPWDR and, therefore, the appellant is not eligible for SPA and there is no other provision in legislation to top-up shelter allowance. The ministry stated that the ministry policy extends payment of the monthly shelter allowance for children temporarily cared for by MCFD but as MCFD has confirmed that they intend to apply for a Continuing Custody Order, this does not support that the appellant and MCFD are still actively working for the return of the child.

Appellant's position

The appellant's position, as set out in her Request for Reconsideration, is that she remains eligible for the SPA since MCFD is "seeking" a Continuing Custody Order and has not obtained an Order as of late October 16, 2015, which is required before going forward with other options. The appellant argued that there are no court documents indicating that MCFD is at this stage. The appellant wrote that they do not currently have a court date but it is not going to be until April 2016.

Panel's decision
The appellant did not dispute that her child was taken into care by MCFD from birth and that her child does not currently reside with her. As the child does not reside with the appellant, the panel finds that the ministry reasonably determined that child does not come within the definition of "dependent child" set out in Section 1 of the EAPWDA, which requires that the child reside with the parent more than 50% of each month. While Section 4 of Schedule A of the EAPWDR extends the definition of "family unit," for the purposes of the monthly shelter allowance, to include 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, the panel finds that the ministry reasonably determined that the child also does not reside in the appellant's place of residence for a minimum of 40% of each month and she is, therefore, not eligible for the SPA under Section 4 of Schedule A of the EAPWDR.

Although the appellant's child was apprehended at birth in March 2014 and never resided in the appellant's home, the ministry applied the policy that allows the shelter allowance to be "maintained," and began paying a top-up for the appellant's shelter allowance in September 2014. The policy states that the temporary shelter allowance may continue until it is determined that the child will not return to the parent's home, for example where a Continuing Custody Order is granted, the parent is no longer actively working on the return of the child, or the child has returned to the parent's home. The appellant pointed out that the MCFD is "seeking" a Continuing Custody Order and that they have not obtained the Order to date, and the ministry did not claim that an Order had been obtained and provided no further information regarding the status of the MDFD action. However, the ministry also wrote that because MCFD confirmed that the intention is to apply for a Continuing Custody Order for permanent care of the child and the ministry determined that the appellant and MCFD are not still actively working for the return of the child. The appellant did not attend the hearing or provide any further information on the appeal to show the efforts she has made to actively work for the return of the child. Therefore, the panel finds that the ministry reasonably concluded that the ministry policy no longer applied to allow a top-up of the appellant's shelter allowance because the ministry was not satisfied that the appellant, as the parent, is actively working on the return of the child.

Conclusion
The panel finds that the ministry decision, which found that the appellant is not eligible for the SPA, was reasonably supported by the evidence and confirms the decision.