

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 20, 2015 which found that the appellant is not eligible for assistance as a Child in the Home of a Relative (CIHR). The ministry found that the appellant's father resided with the appellant's relative and, therefore, the appellant is no longer eligible for assistance pursuant to Section 6 of the *Employment and Assistance Regulation* (EAR).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 1 and Section 6 (repealed)

Child in the Home of a Relative Program Transition Regulation

PART E – Summary of Facts

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

- 1) Letter dated September 14, 2007 in which the Ministry of Children and Family Development (MCFD) wrote regarding the appellant and two other children that the three children have resided with the grandmother since November 19, 2000 and she retains full guardianship responsibility. The MCFD wrote that the parents retain legal custody though do not play an active role in decision making for the children and that this arrangement is supported as there are protection concerns relating to their ability to parent.
- 2) Letter dated September 19, 2007 to the relative in which the ministry requested annual review documents for the child;
- 3) Application for Income Assistance for Child in the Home of a Relative dated September 28, 2007 in which the child's grandmother applied as the relative of the child who was placed with her "for child's safety;"
- 4) Shelter Information for the father of the child dated August 19, 2011 signed by the child's grandmother as the landlord, in which the address listed is that of the grandmother's house with no suite number, and the portion of the rental amount for the child's father is set out as \$375 , utilities are included in the rental rate, and two adults live at the address as well as two children;
- 5) Eligibility Review for Income Assistance for Child in the Home of a Relative dated May 25, 2015 in which the grandmother listed the child's father as living in her home; and,
- 6) Request for Reconsideration- Reasons dated July 3, 2015.

In the Request for Reconsideration, the child's grandmother wrote that:

- The child still needs assistance and has been in her care since he was a toddler.
- Her son, their father, lives in a suite on her property but she is the primary and only caregiver.

Additional Information

In the Notice of Appeal dated July 30, 2015, the child's grandmother wrote that:

- The child resides in a separate residence from the father.
- The care and custody of the children continues to be in the grandmother.

At the hearing, the appellant provided additional documents (collectively referred to as "the Supplemental Documents") as follows:

- 1) MCFD Investigation Report dated March 20, 2003 referring to a meeting with the child's grandparents and that, when asked about the appellant's parents, the child's grandmother stated that they had been living in the house for 3 to 4 months but are currently looking for a place to live elsewhere. The grandparents are asking the children's parents to leave as the house is crowded and there are too many adults and there have been changes in the children's behaviors since their parents moved in;
- 2) Applications for Income Assistance for Child in the Home of a Relative dated February 24, 2005 and May 9, 2006 in which the child's grandmother applied as the relative;
- 3) MCFD memo dated May 23, 2006 reporting on a visit to the grandmother's home and child's father was at the home at the grandmother's request. He had left, but she called him to help with the kids because she is ill. Report that there is no reason to ask the child's father to leave while he is helping out; and,
- 4) Handwritten note by ministry that there was a home visit on June 26 and a letter written June 27, 2006 providing permission for the child's father to be in the home Saturdays and Sundays

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- from 9:30 am to 1:00 pm and request July 12, 2006 for letter for child's father to attend the home for maintenance of the yard;
- 5) Shelter Information dated July 15, 2006 for the father of the child at an address in a different community from that of the child's grandmother;
 - 6) Medical Report- Employability dated July 13, 2006 for the father of the child;
 - 7) Letters dated September 27 and November 7, 2006 between the MLA for the grandparents of the child and the minister regarding benefits available under the CIHR program;
 - 8) Application for Income Assistance for the child's father dated May 21, 2009 indicating his address as "NFA" or no fixed address and that he states he is "couch-surfing";
 - 9) Consumer Report dated May 21, 2009 for the child's father indicating his address as "NFA";
 - 10) Ministry emails dated September 1, 2009 and August 29, 2013;
 - 11) Note dated August 17, 2011 signed by child's father indicating rental of accommodations at the home of the child's grandmother for \$375 per month payable to the grandmother as landlord at the beginning of each month, plus a security deposit of \$180. Rent and security deposit are overdue for August 2011;
 - 12) Application for Income Assistance for the child's father dated August 19, 2011 and indicating his residence as the basement of the home of the child's grandmother;
 - 13) Letter dated January 7, 2013 to the child's grandmother in which MCFD advised concern was raised about the child's father living in her home due to his previous history of violence and drug use;
 - 14) MCFD Report dated July 23, 2013 indicating that the child's father is living in the home and on the social worker's visit, it was observed that there is no separate basement suite and while the child's father's room is downstairs, it is accessed through the same hallway and "this has been confusing from the start as [the child's father] lives in the home, the family should not be entitled to receive CIHR funding;"
 - 15) Letter dated April 23, 2014 from the ministry to the child's father addressed to the basement of the home of the child's grandmother and associated Request for Reconsideration document;
 - 16) Notice of Disconnection of natural gas service dated May 4, 2015 addressed to the child's grandmother;
 - 17) Shelter Information for the father of the child dated July 30, 2015 at an address in a different community from that of the child's grandmother;
 - 18) Ministry file notes covering the period from December 4, 2001 through July 7, 2015 indicating that:
 - in June 11, 2002 the natural parents of child had been evicted and were temporarily residing at the same household;
 - June 2011 the child's father stated he is currently "couch-surfing" and his mother agreed to rent out her basement if he is able to pay rent;
 - May 13, 2015 child's father submitted notice of disconnection for natural gas under name of grandmother since living at same address and sharing utility bill; and,
 - 19) Written submission on behalf of the appellant along with a Book of Authorities.

At the hearing, the appellant's representative reviewed the written submission and the argument on behalf of the appellant, which will be addressed in the Reasons for the Panel's Decision in Part F. The appellant's representative also provided information that:

- The father of the child has a history of drug and alcohol use and had (and has) little or no means of income. He has an ad hoc business and sometimes keeps items in the yard or shed on the property owned by the child's grandmother.
- Since 2000, the father of the child has lived or slept at various locations in different

communities with friends and, at times, at the grandmother's house.

- When the father of the child is at the grandmother's house, he has at various times used or slept in the basement suite or in a motor home with hook-up on the property or in the shed in the yard of the property. The house has one common entrance.
- The father of the child has used and continues to use the grandmother's address as a contact address out of convenience.
- The grandmother has occupied the home for well over 30 years. It is one stable address the father of the child can use when giving his address to others.
- Although the father of the child has at times occupied the basement of the grandmother's home, or the motor home or the shed, he has not been a meaningful member of the grandmother's household and does not play a parenting role to the child. He has contributed small sums for rent from time to time when he used the basement and agreed to pay \$375 per month at one point but not on a consistent basis.
- According to the MCFD records, in 2003 the grandmother advised the ministry that the father of the child had been living in the house for 3 to 4 months but was looking for a place elsewhere to stay.
- According to the MCFD records, on May 20, 2006, the grandmother advised that the father of the child was "in the house" temporarily to assist her as she was ill.
- According to the MCFD records of a home visit, in late June 2006 the grandmother expressed that she was upset that the father of the child could not be in the house without the permission of the Director and she sought permission for him to be at the house during specific hours on the weekend and that permission was granted.
- In July 2006, the father of the child applied again for income assistance and gave an intended address in a different community than that of the grandmother.
- The ministry reviewed the eligibility of the child in 2007 and CIHR benefits were continued. MCFD wrote that the grandmother had been caring for the child since November 2000, the father and mother of the child played no active role in decision-making for the child and MCFD supported this arrangement given continued protection concerns and that the grandmother was providing a safe and stable living environment.
- In May 2009, the father of child applied for income assistance and, according to ministry records, he had no fixed address and was "couch-surfing." A consumer report also indicated that the father lived at no fixed address.
- According to the ministry records, the father of the child applied for income assistance in 2011 and he stated that his address was (or would be) the basement at the grandmother's home. On the Shelter Information form he referred to the grandmother's home as the address he was "renting or intending to rent" and he said that his rent there was (or would be) \$375 per month including utilities.
- An MCFD social worker attended the house on July 23, 2013 and recorded that the father was "living in the home," was listed as occupying the basement suite, but that there was not a separate entrance to the suite.
- Although the ministry wrote that the father sought assistance from the ministry on May 20, 2015 for payment of an utility account at the house and that he stated he and the grandmother shared expenses for the house, this was contradicted by the father's earlier statement that his rent at the house included utilities.
- In the eligibility review on May 25, 2015, the grandmother stated plainly that the father was at that time staying at the house but that he was in the basement and that she and the child lived upstairs in the house. She also stated that the ministry had previously been aware of similar

arrangements and had continued the CIHR benefits.

At the hearing, the child's grandmother stated that:

- The child's father has lived at her home for 2 or 3 months and has lived with her for 2 or 3 weeks at a time and then gone somewhere else. He has a key to her home and "comes and goes" as he likes.
- She has required that he pay rent at times because she needed the money.
- Her home is a split-level home with about 3,000 s.f. having 3 bedrooms up and 3 bedrooms down. In the lower level, there is also a laundry room, bathroom, freezer room and a hallway.
- The child's father is now living in another community and she is not aware whether he is paying rent there.
- Asked how much interaction she had with the child's father when he is living at her home, the grandmother stated that she has some interaction with him since she would see him regularly. She has asked him to help her with the yard work especially since her husband passed away in 2007.
- When the child's father was at the house "of course he would use the kitchen and have meals with them" since he is still her son.
- She sold the motor home "about 2 years ago" but when she had it at the property the child's father would often stay there and did so for 2 or 3 years. It had a full bathroom and kitchen and could sleep 5 people.
- Some of the time he has paid her rent but it has not been "steady."
- Her other son does not live with her but he still has all his documents come to her house and he uses her address as his mailing address.
- When she went to the ministry with the Disconnect Notice for the natural gas supply, both the child's father and her other son went with her.

The ministry relied on the reconsideration decision as summarized at the hearing. The ministry also clarified that:

- While there are two provincial ministries, namely the subject ministry and MCFD, involved with the family of the child, there is not necessarily ongoing communication between the two ministries.
- Therefore, MCFD may not have advised the ministry that the father of the child was residing with the child and relative prior to his application for a supplement to cover the cost of an outstanding utility payment.

Admissibility of Additional Information

The ministry did not object to the admissibility of any of the Supplemental Documents. The panel reviewed the documents and noted that many of them had been referenced in the ministry's reconsideration decision and the balance provided information about the residence of the child's father, which issue was before the ministry at reconsideration. Therefore, the panel admitted the additional documents, pursuant to Section 22(4) of the *Employment and Assistance Act*, as providing further detail relating to the residence of the child's father and the relative, and being in support of information that was before the ministry on reconsideration. The written submission and book of authorities were considered by the panel to be part of the appellant's argument.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for assistance as a CIHR pursuant to Section 6 of the EAR since the appellant's father resided with the appellant's relative, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Section 6 of the EAR, which has been repealed, provided:

Child in the home of a relative

6. (1) In this section,
"child" does not include a person with disabilities;
"relative" in relation to a child, does not include the child's parent.
- (2) Subject to subsection (2.1), a child is eligible for income assistance under section 11 of Schedule A if
 - (a) a child resides with his or her relative,
 - (b) the child's parent placed the child with the relative, and
 - (c) the child's parent does not reside with the relative.
- (2.1) A child is not eligible for income assistance under subsection (2) if
 - (a) the child ceases to meet the conditions set out in subsection (2),
 - (b) the relative with whom the child resides has entered into an agreement under section 8 of the Child, Family and Community Service Act in relation to the child,
 - (c) the relative with whom the child resides or the parent of the child fails
 - (i) to provide accurate and complete information to the minister,
 - (ii) to provide all of the authorizations requested by the minister under section 4.4 or 34.1 within the time, if any, specified by the minister,
 - (iii) to attend in person at the ministry office when required to do so by the minister under section 34.1 (2) (c), or
 - (iv) to submit the form required by the minister under section 34.1 (2) (a), within the time specified by the minister,
 - (d) the minister determines, based on a review of the application of the child provided on or after December 1, 2007 and information obtained under the authorization appended to the application, that there is a level of risk to the child in the home that indicates the home where the child resides is not an appropriate place for the child, or
 - (e) the minister has conducted an audit under section 34.1 and determines, based on information provided under the audit, that there is a level of risk to the child in the home that indicates the home where the child resides is not an appropriate place for the child.
- (3) If a child is eligible for income assistance under subsection (2), the minister may pay the income assistance to the relative for the child.

Ministry's position

The ministry's position is that the *Child in the Home of a Relative Program Transition Regulation* provides that the provisions of the repealed Section 6 of the EAR as it read on March 31, 2010 continues to apply as long as the child remains eligible for CIHR. The ministry argued that when an individual is found ineligible for assistance, he or she must re-apply and, as the CIHR program is no longer a provision in the EAA and EAR, a re-application may not be considered. The ministry argued that under the repealed Section 6(2) of the EAR a child is eligible for CIHR assistance if the child

resides with his or her relative, the child's parent placed the child with the relative, and the child's parent does not reside with the relative. The ministry argued that pursuant to Section 6(2.1) the child is not eligible for assistance as he ceased to meet the conditions of Section 6(2) of the EAR when the child's parent resided with the child. The ministry argued that there is insufficient evidence to establish that the child's father does not reside with the child since: 1) the child's father has resided in the basement of the home that is not a separate, self-contained suite, 2) on the CIHR Eligibility Review the grandmother listed the child's father as living in her home, 3) the child's father requested assistance with utility costs indicating that he shared the utilities with the grandmother while the Shelter Information form indicated that his rent included utilities, 4) MCFD reports that a home visit was completed in 2013 and the child's father lived at the home and it was not a separate residence in the home. At the hearing, the representative for the ministry argued that if it is found that the child's father resided with the relative at any time from when the child began receiving assistance in February 2001 until present, the child (appellant) no longer meets the conditions of Section 6(2) of the EAR.

Appellant's position

The appellant's position is that the child remains eligible for assistance as it cannot be concluded from the evidence before the ministry that the father was "residing with" the grandmother of the child, as the relative, pursuant to Section 6 of the EAR. The representative for the appellant argued that the ministry asked the wrong question since it concluded in the reconsideration decision that the father "resides in the same home" or residence as the child. The appellant's representative argued that "resides with" is more restrictive than "resides in" a household and even if the father could be seen to have "resided in" the same house as the relative, that does not lead to the necessary conclusion that he resided "with" her or with the child. The representative argued that "resides with" suggest a requirement that the child's father be part of the household upstairs and there is scant evidence that he was a functioning part of that household. The representative argued, on the strength of the court's findings in *Harris (Litigation Guardian of) v. Pilot Insurance Co.*, 1992 Carswell Ont 660, that the intention of the party is important in determining whether that person "is residing in the same premises" as another person and where a person lives in a residence intermittently and not with the fixed intention of residing there, that person "sojourned" rather than "resided" (as per the Supreme Court of Canada in *Thomson v. Ministry of National Revenue* [1946] S.C.R. 209). The representative argued that, here, the child's father appears to have come and gone from the grandmother's house but was only there temporarily and in the basement suite or the motor home or shed, as his circumstances required, and never with the fixed intention of residing there.

The representative argued further that the ministry was wrong to base its decision in part on the fact that the basement suite and upstairs portions of the grandmother's house share a common entrance as such a criterion is arbitrary and inconsistent with the legislation and, according to the court decision in *Wright v. Canadian Group Underwriters Insurance Co.*, 2002 BCCA 254, whether the basement suite was fully self-contained or discrete is not determinative. The appellant's representative argued that the decision to cancel CIHR benefits in June 2015 was inconsistent with the ministry's previous decisions, before and after March 31, 2010, to continue the benefits at times when the ministry was aware of the fact that the father at times had been staying at the grandmother's house in the basement and were aware of his "comings and goings." The appellant's representative argued that the ministry acknowledged that "this has been confusing from the start" as the child's father has lived in the home, and where a situation is confusing, the ministry ought to resolve the confusion in favor of the appellant for continued benefits. The appellant's representative argued that the spirit of the provision in the EAR is to provide benefits for children who can be cared

for by a relative at a great savings to the government over providing foster care and at an emotional benefit to the children in remaining within the family.

Panel decision

Section 6 of the EAR was repealed in March of 2010 and the *Child in the Home of a Relative Program Transition Regulation (Transition Regulation)* was enacted at that time to allow CIHR benefits to continue to apply until the date the child ceases to be eligible for income assistance under Section 6 of the EAR as it read on March 31, 2010. Section 6(2) of the EAR as it read on March 31, 2010 states that a child is eligible for income assistance as long as three criteria are met: the child resides with his relative, the child's parent placed the child with the relative, and the child's parent does not reside with the relative. The appellant's parents placed him in the care of his relatives and he has been in receipt of assistance as a CIHR since February 2001 as he has resided with both or one of his paternal grandparents as his "relative(s)" and the ministry argued that the child's parent, namely his father, has resided with the child and, therefore, the child no longer meets this criterion for eligibility in Section 6(2) of the EAR.

While the representative for the appellant argued that the ministry asked the wrong question since it concluded in the reconsideration decision that the child's father resided in the same residence as the child rather than the relative, the panel notes that Section 6(2) of the EAR also requires that the child resides with his relative and, therefore, if the father is residing with his child, he would necessarily be residing with the relative. The requirement in Section 6(2) of the EAR is that the child's parent *does not* reside with the relative (emphasis added), and, since both the child's father and his relative acknowledge that the child's father has lived in the same house as the child and the relative at different times since February 2001, the onus remains on the appellant to establish that his father does not "reside with" the relative.

The case law referred to by the appellant's representative provided definitions of "residing" specific to policies of home or automobile insurance or income tax legislation; in the *Employment and Assistance Act (EAA)*, the term "resides with" is used in a definition in Section 1. "Dependant." means anyone who "resides with" the person, as a minimal requirement, plus the additional requirement that the person is within a definite category, including a "spouse" or "dependent child" and who must meet the higher test of "residing together" with the other person for a specified number of months or a specific percentage of the time. In Section 6 of the EAR, there is no minimum time period or percentage of time defined since the child's parent is prohibited from residing with the relative at all and the panel finds that the ministry reasonably determined that if it is found that the child's father resided with the relative at any time from when the child began receiving assistance in February 2001 until present, the child no longer meets the conditions of Section 6(2) of the EAR.

The appellant's representative acknowledged that the child's father appears to have come and gone from the grandmother's house, sometimes temporarily occupying the basement suite, but argued that the father never had the fixed intention of residing at the grandmother's house. Although the representative referred to a basement area of the grandmother's house as a "suite" and the grandmother wrote in the Request for Reconsideration that the child's father lives in a "suite" on her property, the panel finds that the ministry reasonably determined that the area in the home that the child's father occupies when at the home is not a separate, self-contained suite. The MCFD reported after a visit to the grandmother's home in 2013 that there was no separate entrance in the home and concluded, after viewing the home, that the father was "living in the home" and that this made them ineligible for CIHR funding. At the hearing, the grandmother confirmed that there is one entrance to

the split-level home, with 3 bedrooms, bathroom, laundry and freezer room on the main floor and 3 bedrooms and kitchen upstairs, and that the child's father has a key to the main door and access to the upstairs of the home, including use of the one kitchen.

The appellant's representative argued that although the grandmother's house has one common entrance, the question whether the "basement suite" was fully self-contained is not determinative of whether the child's father was residing with the relative, according to the court decision in *Wright v. Canadian Group Underwriters Insurance Co.*, 2002 BCCA 254, as the father's intention was also an important factor. The appellant's representative argued that the child's father did not have a fixed intention of residing in the home of the relative, he is a "wanderer" and more of a "sojourner" than a resident when he was in the house, and he was only at the house for a short time or "couch-surfing." However, unlike the facts in *Wright* where the plaintiff was a stranger to the owners of the home and had no family connection to them, the child's father is related to the occupants of the upstairs of the home, which included his children and both of his parents until his father passed away in 2007 and his mother after that time.

As previously noted, Section 6 of the EAR contains a prohibition in that the child's father is not to reside with the relative and the panel finds that the intention of the child's father to reside in the "family home" can be inferred from his long history of returning to it. According to ministry notes, the child's father was at the home in June of 2002 "temporarily", although it is not clear when he left the home, that he was back in the home from about January to at least March 2003 and it is not clear when he left the home, he was in the home again in May 2006 to help the grandmother with the household and children when she was ill and it appears he rented other accommodation in July 2006 and he identified as having 'No Fixed Address' in May of 2009, he applied for shelter allowance for accommodation at the grandmother's home in August of 2011 and it is not clear when he left the home, he was at the home several months prior to and during an MCFD visit in July 2013, and he was at the home in May to July 2015. As the representative stated at the hearing, the grandmother has occupied the home for well over 30 years and it is one stable address the father of the child can use when giving his address to others, and to which it is clear the child's father often returns to live for weeks or months at a time.

Although the question whether the area that the child's father occupied when at the home was a self-contained basement suite is not determinative, it is an important factor in determining whether the child's father was in the same or a different residence from the relative. Given the layout of the grandmother's home as a split-level, the appellant used a bedroom and bathroom on the main floor of the home as well as the kitchen in the upstairs portion where both the relative and the child have their bedrooms. The ministry pointed to the Shelter Information document dated August 19, 2011, in which the address listed for the father of the child is that of the grandmother's house with no suite number, and information was provided that two adults live at the address as well as two children. At the hearing, the grandmother confirmed that the child's father has a key for the one entrance to the house, he is not restricted in his access to the home as he "comes and goes as he likes," he uses the kitchen in the upstairs, he has stored business items at the property, uses it as his mailing address, has done yard work around the property at various times and helped his grandmother by taking care of the house and the children when she was hospitalized. The panel finds that the ministry reasonably concluded that when the appellant identified the grandmother's home as his address and was physically present in the home, using a bedroom and bathroom and the kitchen in the home for a period of time, the child's father "resided with" the relative.

The appellant's representative argued that the decision to cancel CIHR benefits in June 2015 was inconsistent with the ministry's previous decisions, before and after March 31, 2010, to continue the benefits at times when the ministry was aware of the fact that the father at times had been staying at the grandmother's house in the basement; however, previous decisions by the ministry regarding the residence of the child's father do not bind the ministry or preclude the ministry making a different decision on residency, particularly where circumstances have changed or the passage of time brings new evidence to light. Here, with the passage of time, the weight of evidence has shifted towards finding that the child's father was residing with the relative. As the threshold is low in Section 6 of the EAR for the child's parent to "not reside with the relative", the panel finds that the ministry was reasonable to conclude that the child's father has resided with the relative, the child's grandmother, at various times since as early as 2003 and the appellant no longer met all of the eligibility criteria of Section 6(2), becoming ineligible for income assistance as a CIHR, pursuant to Section 6(2.1) of the EAR.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which concluded that the appellant's father resided with the appellant's relative and the appellant is, therefore, no longer eligible for assistance pursuant to Section 6 of the EAR, was reasonably supported by the evidence and the panel confirms the decision.