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 18, 2015, which held that the appellant is not eligible for disability assistance pursuant to section 5 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because she failed to apply for assistance on behalf of her entire family unit. The ministry determined that "R" is a dependant of the appellant as defined in section 1 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) because he resides with the appellant and indicates a parental role for the appellant's dependent child, her grandchild.

PART D – Relevant Legislation

EAPWDA, section 1

EAPWDR, section 5

Employment and Assistance Act (EAA), section 19.1

Administrative Tribunals Act (ATA), section 44

PART E – Summary of Facts

A ministry observer was in attendance at the hearing with the consent of the appellant.

The appellant's ministry file opened in 1995 and she has been receiving disability assistance as a single parent family unit with one dependent child, her grandchild.

On November 12, 2015, a ministry Investigative Officer (IO) commenced a review of the appellant's file due to an allegation that the appellant has been living with "R" for several years and was planning to move to another community with "R."

During a November 23, 2015 telephone interview with the IO, the appellant stated that a joint purchase of a 2014 vehicle with "R" was done so that he would not have to pay tax (the appellant has tax exempt status) and that "R" used the vehicle to drive the appellant's grandchild to and from school. Third party checks conducted by the IO indicated that the appellant and "R" have had a joint auto loan since December 2014 with $37,000 owing and $653 monthly payments in good standing, and that the vehicle is not registered to the appellant.

On November 25, 2015, the IO conducted a telephone interview with the appellant and her advocate. The appellant confirmed her address, that "R" was her roommate, and that the total rent is $1,400 of which she and her grandchild pay $500 with "R" paying the $900 balance. The appellant denied a dependency relationship with "R" who she described as a family friend. She stated that she does not drive or pay the vehicle loan. The IO recorded that a July 2011 court order granted the appellant and "R" joint custody of the appellant's grandchild.

Documents before the ministry prior to reconsideration included the following:

- A Residential Tenancy Agreement listing the appellant and "R" as tenants, effective November 1, 2015 for a 6-month tenancy, with the option to continue on a month-to-month basis or for another fixed length of time.
- The birth certificate for the appellant's grandchild, indicating that the second middle name is the surname of "R."
- A Final Order issued by the provincial court respecting a July 2011 hearing awarding the appellant and "R" joint custody and guardianship of the appellant's grandchild.
- A November 23, 2015 Equifax Consumer Report showing details of checks on the appellant respecting the loan for the vehicle driven by "R."
- Results of a ministry Personal Property Registry search identifying the appellant and "R" as residing at the same address and as debtors for the vehicle loan.
- Information respecting the appellant. Under the heading "Driver Particulars," a driver licence number with the birth date of the appellant is shown. Under the heading "Policy/Licence Particulars," a licence plate number and expiration date are identified.
- Registration information respecting the vehicle for which the appellant and "R" obtained a loan, identifying what is presumably "R's" driver licence number for both principal operator (PODL) and operator (ODN).
- A December 3, 2015 Student Information Verification form from the grandchild's school listing the appellant as parent/guardian, "R" as the emergency contact, and identifying the

relationship status of “R” as friend.

The appellant was determined to no longer be eligible for assistance as she was in a spousal dependency relationship with “R.” The panel notes that this original basis of denial was, in part, contingent on the time that the appellant and “R” resided together in a marriage-like relationship. As this is not a factor in the reasons for denial at reconsideration, the information in the appellant’s reconsideration submission is on this issue is not summarized.

In her Request for Reconsideration submission, the appellant writes that she did not realize she was jointly on the vehicle loan with “R”, thinking her name was involved in the sale to save on taxes, and that she didn’t realize she would be responsible for the loan if anything happened to “R.” Due to her disabilities, she needs significant help with her daily living activities, which is provided by “R.” The reason “R” drives her grandchild to and from school is because the appellant has been unable to obtain a driver’s license due to her learning disability. Her persons with disabilities (PWD) designation also explains why “R” pays more rent – she is unable to afford more than $500 as she only has disability assistance to support herself and her grandchild. The current housing arrangement is only temporary until a custody dispute with her daughter, the grandchild’s mother, is resolved. She did not choose her grandchild’s name and believes that her daughter included the surname of “R” to honour him as a long-time family friend. “R” has not had custody of the grandchild since December 2011 when a new court order was issued.

A copy of a Final Order By Consent was submitted at reconsideration by the appellant. It identifies the appellant, her daughter, and “R” as the persons appearing and indicates that the appellant received sole custody and guardianship of her grandchild.

*Information provided on appeal*

The appellant’s advocate submitted an 8-page typewritten submission to the tribunal on February 4, 2016. The submission is largely comprised of argument which is set out in Part F of the panel’s decision. Additional evidence is follows.

Prior to November 2015, the appellant and her grandchild lived together in low income housing, with rent and utility costs being satisfied by the ministry shelter allowance amount. Due to harassment from a previous relationship, the appellant applied for and received a moving supplement. She then gave notice to end her tenancy of the low cost housing but was subsequently subject to a court order preventing her from moving her grandchild from the community. Unable to cancel her notice to end tenancy in the low cost housing, her friend, “R”, offered to enter into a short-term lease with the appellant and accept only what the appellant could afford, since there was no place the appellant could afford to rent on her own. They moved into a common residence on November 1, 2015.

Respecting the July 2011 joint custody court order, the advocate writes that the appellant sought joint custody fearing that, due to her disabilities, the Ministry of Children and Family Development (MCFD) would take her grandchild away if she did not have the support of another person. After discussing the situation with MCFD, the appellant was advised that there was no risk MCFD would take her grandchild away, and that she should obtain a sole custody order so that they could help her with

child care. The advocate discussed the matter with a ministry quality service manager and an office worker from the appellant's MLA's office, both of whom asked the advocate if he was aware of the joint custody order. The advocate informed both of them about the subsequent sole custody order.

The appellant and "R" no longer reside in the same residence and "R" was removed from the lease he and the appellant signed together.

At the hearing, the advocate reviewed the information in his appeal submission, stating that much of the care assistance 'R' provides is explained by the appellant's disability.

The appellant stated that "R" lived in his camper prior to November 2015 and that he moved back into his camper at the end of January 2016. The appellant explained that prior to moving in with "R" in November 2015, she resided in low cost housing for 3 years. During that time, she walked her grandchild to and from school as the low cost housing was closer to his school than her current residence. "R" stayed with her in the low cost housing for one period, a couple of weeks when he was undergoing medical treatment and needed her to provide care for him. She recalled that he was out of town for work much of the time. The appellant stated that, as is necessary when raising a child, she has built a village of family and friends who provide assistance. She has many friends and that she and her friends are heavily dependent on each other. Now that "R" no longer lives in the same residence, she must pay half of the rent ($700.00). A friend was temporarily her roommate but she is now attempting to find another roommate. "R" has been removed as the emergency contact for her grandchild and was only listed because they rented together and he could drive the appellant to the school if necessary.

The appellant refutes ever having had a driver's licence, stating that due to her disability she has been unable to pass the driver's test. She confirmed that she did have a car many years ago when she was still living with her mother, a vehicle she shared with her mother.

The ministry relied on the information available at reconsideration, noting that the information respecting driver's licence numbers and vehicle registrations was obtained from ICBC.

The ministry had no objection to the admissibility of the additional oral and written testimony provided on appeal. The panel determined that the additional testimony provided further explanation which was consistent with the previous information provided by the appellant and was therefore admissible under section 22(4) of the EAA as information in support of the information before the ministry at reconsideration.

PART F – Reasons for Panel Decision

*Issue under appeal*

The issue under appeal is whether the ministry decision that the appellant was not eligible for disability assistance pursuant to section 5 of the EAPWDR because she did not apply for assistance on behalf of her entire family unit which includes "R" as a dependant as defined in section 1 of the EAPWDA because he resides with the appellant and indicates a parental role for the appellant's dependent child, was reasonably supported by the evidence or a reasonable application of the legislation.

*Relevant Legislation*

**EAPWDA**
**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;

**"family unit"** means an applicant or recipient and his or her dependants;

**EAPWDR**
**Applicant requirements**

**5** For a family unit to be eligible for disability assistance or a supplement, an adult in the family unit must apply for the disability 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.

**EAA**
**Application of *Administrative Tribunals Act***

**19.1** Sections 1 to 6, 7 (1) and (2), 8, 9, 30, 44, 46.3, 55, 56, 58 and 61 of the *Administrative Tribunals Act*

apply to the tribunal. (B.C. Reg. 425/2004)

**ATA**
**Tribunal without jurisdiction over constitutional questions**

**44** (1) The tribunal does not have jurisdiction over constitutional questions.

(2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

*Appellant's position*

The appellant's position is that the reconsideration decision is unreasonable on three grounds.

First, the ministry unreasonably found that "R" indicates a parental role for the appellant's grandchild.

- The care and assistance "R" provides to the grandchild is explained by the appellant's disabilities due to her mental impairment from a learning disability. To receive this designation, the ministry accepted that she needs significant help with her DLA. She cannot obtain a driver's licence which explains why "R" drives the grandchild to and from school and is listed as an emergency contact.
- The ministry was aware of the appellant's intention to move to another community and the reasons she was unable to move and has unreasonably characterized the rental situation as something other than temporary help from a friend.
- The inclusion of "R's" last name as a middle name was not done by the appellant or "R" and does not establish any assistance or help "R" provides to the grandchild.
- The appellant's decision to obtain joint custody of her grandchild is explained by her disability and resulting fear that MCFD would take the grandchild away. Further, it is unreasonable to conclude that a joint custody order for some months, four years ago, establishes that "R" currently indicates a parental role.

Second, it was unreasonable of the ministry to not inform the appellant of the case against her by not mentioning the joint custody order to the appellant prior to making the initial decision which was based on the appellant's relationship with "R", not the relationship between "R" and the grandchild. The ministry misled the ministry supervisor and MLA staff member investigating the matter on the appellant's behalf by not mentioning the sole custody order. At the hearing, the advocate allowed for the possibility that the ministry may not have been aware of the sole custody order at this time, making the ministry negligent rather than intentionally misleading. The decision is unreasonable as it did not comply with policies of administrative fairness.

Third, the ministry interpretation of the legislation is unreasonable because it is inconsistent with the values enshrined in the Canadian Charter of Rights and Freedoms. More specifically, it is discriminatory to treat a ministry client who had a dependent child differently from one who does not. Where there is no dependent child, the joining of family units by the addition of an adult dependant as

a "spouse" is contingent, in part, on a 3-month joint residency whereas a person with a dependent child may have another adult added to the family unit immediately [if a parental role is indicated] with no 3-month joint residency requirement. Consequently, a person with a dependent child may be subject to a possible reduction in assistance sooner than a person without a dependent child. The advocate recognizes the application of section 44 of the ATA to the tribunal but argues that the Supreme Court of Canada has found this to be a narrow exclusion that only applies to questions of constitutional validity, applicability, or remedies and as such, argues that the tribunal may consider the discriminatory issues when deciding what interpretations of the legislation are reasonable or unreasonable.

*Ministry's position*

The ministry argues that "R" is a dependant of the appellant as defined in section 1(1) of the EAPWDA because he resides with the appellant and indicates a parental role for her grandchild. The ministry relies on the information that "R" had joint custody of the grandchild under a July 2011 court order and that "R" drives the grandchild to and from school, and is the emergency contact for the school. The ministry also argues that the fact that "R" pays $900 of the $1400 monthly rent, rather than the appellant paying two thirds as in a typical tenancy arrangement, indicates that "R" is financially supporting the grandchild by subsidizing the shelter costs for both the appellant and her grandchild. Furthermore, the ministry's position is that the honouring of "R" in the naming of the appellant's grandchild indicates a familial role rather than friendship. In conclusion, the ministry argues that although the appellant states that "R" drives her grandchild to and from school due to her disabilities, the information and behaviours as a whole indicate "R" has a parental role for the appellant's dependent child.

*Panel Decision*

Relevant to this case is section 5 of the EAPWDR which requires that for a family unit to be eligible for disability assistance, the assistance must be applied for on behalf of the entire family unit. A "family unit" is defined in section 1(1) of the EAPWDA as being an applicant or recipient and his or her dependants. Subsection (1) also defines "dependant," setting out three categories of persons, all of whom must reside with the applicant or recipient – the spouse of a person, a dependent child (such as the appellant's grandchild), or a person who indicates a parental role for the applicant or recipient's dependent child. The ministry determined that "R" is a dependant of the appellant because he resides with her and indicates a parental role for her dependent child and that the appellant did not apply for disability assistance on behalf of the family unit, which includes "R."

The evidence clearly establishes that "R" indicated a parental role during the time he had joint legal guardianship of the grandchild. However, it has been over four years since the July 2011 court order was replaced by the order granting the appellant sole custody in December 2011 and there is no information to support a finding that "R" indicated a parental role from that time until November 1, 2015.

The panel finds that the fact that "R's" surname is included as a middle name of the grandchild is

indicative of the importance “R” has for the child’s mother but that it does not indicate or require a parental role on the part of “R.” Respecting the fact that “R” was listed as the emergency contact for the grandchild’s school, it may be surprising that he is the sole emergency contact given the appellant’s testimony that she has a village of family and friends who assist with her grandchild, but it does not establish the indication of a parental role.

The ministry also relies on the undisputed information that “R” drove the grandchild to and from school when they resided together. The appellant argues that the much of the assistance “R” provides to her, and in particular, driving her grandchild to and from school, is attributable to her mental disability and the resulting inability to obtain a driver’s licence. However, the appellant has also provided information that demonstrates her ability to independently get her grandchild to and from school when she resided in low cost housing prior to moving in with “R.” Additionally, the appellant provided information demonstrating her ability to provide assistance for others as she provided care for “R” for a couple of weeks when he was undergoing medical treatment and provides assistance to her friends. That the appellant is unable to drive due to her learning disability has not been established. While the appellant adamantly maintains that she has never had a driver’s licence, the information from ICBC indicates a driver’s licence number associated with the appellant’s birth date and that a number of years ago, which the appellant confirms, a vehicle was insured in the appellant’s name, a vehicle the appellant described as being shared with her mother. While there may be a number of contributing reasons for “R” driving the grandchild to school, the panel concludes that the fact that “R” drives the grandchild to and from school is not in and of itself sufficient to establish that “R” indicates a parental role.

Respecting the tenancy arrangement between the appellant and “R”, the ministry argues that “R” is financially supporting the grandchild by subsidizing the rent the appellant pays for herself and her grandchild, and that this together with the other behaviours and information indicates a parental role. The appellant argues that this was simply a case of a friend temporarily helping out another friend as evidenced by the circumstances of her unsuccessful attempt to move to another community and the resulting loss of her low cost housing. According to the appellant’s testimony, prior to assuming a joint lease with the appellant effective November 1, 2015, “R” had another residence to which he has now returned. This indicates that “R” was willing to incur monthly costs of $900.00 for a period of 6 months, to lease a residence he did not and currently does not require, in order to secure housing for the appellant and her grandchild. Further, as the ministry notes, the amount of shelter costs incurred by “R” represent more than his share and as the appellant stated, since “R” moved out, she has had to assume half of the rent, including while sharing the rent temporarily with a friend. While the panel finds that the ministry has reasonably viewed this information as reflecting a relationship between “R” and the appellant that goes well beyond that of typical friends, the issue is whether it establishes the indication of a parental role by “R” for the grandchild. The panel finds that there is insufficient information available to establish that the provision of this financial assistance to the appellant amounts to indicating a parental role for the grandchild.

In conclusion, the panel finds that the factors relied on by the ministry, each on its own or viewed as a whole, are not sufficient to establish that “R” indicated a parental role for the appellant’s dependent grandchild. Accordingly, the panel finds that the ministry determination that “R” is the appellant’s “dependant” and part of her “family unit” as defined in section 1(1) of the EAPWDA was not reasonable.

The appellant's advocate also argues that the reconsideration decision is unreasonable on the basis that the reasons for denial at reconsideration differed from the original reasons for denial and consequently, the appellant was denied the opportunity to know the case against her. However, the reconsideration decision is an entirely new decision arising from what is essentially a new written hearing. Upon requesting reconsideration, an applicant is afforded the opportunity to provide any new information he or she chooses without limitation. In turn, the ministry makes a new decision which may, perhaps in response to information submitted by an applicant, be different and possibly be in favour of the applicant. Upon receiving a reconsideration decision, a person is provided with the details of the case against his or her eligibility and has an opportunity to meet that case by seeking an appeal with this tribunal. Consequently, the panel does not accept the advocate's argument that the reconsideration decision is unreasonable on the basis that it did not comply with the policies of administrative fairness.

The advocate's final argument is that the ministry has interpreted the legislation unreasonably by not taking into account Charter values and that it is within the panel's jurisdiction to address this despite the application of section 44 of the ATA. By application of section 19.1 of the EAA which imports section 44 of the ATA, the tribunal does not have jurisdiction over constitutional questions and the panel will not address this argument.

*Conclusion*

In conclusion, the panel finds that the ministry's reconsideration decision that the appellant is not eligible for disability assistance because she did not comply with section 5 of the EAPWDR by failing to apply for assistance on behalf of her entire family unit, was not reasonably supported by the evidence. Therefore, the panel rescinds the reconsideration decision in favour of the appellant.