

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated June 13, 2017 which found that the appellant’s daughter is not eligible for assistance as a dependent on the appellant’s file because she had reached 19 years of age in May 2016 and her school year ended in June 2016, pursuant to Section 1 of the Employment and Assistance for Persons with Disabilities Act and Section 5 of the Employment and Assistance for Persons with Disabilities Regulation.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act (“EAPWDA”), Section 1*  
*Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), Section 5 and Schedule A.*

## PART E – Summary of Facts

The ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

### **Information before the ministry at reconsideration**

- A letter from an instructor at the Education Center dated March 7, 2016 who confirms that the appellant's daughter is in an academic program for the 2015/2016 school year which runs from September 8 to June 16 and is scheduled to complete her high school diploma by June 2017.
- A letter dated November 10, 2016 from an advocate who states that the appellant's daughter was removed from the family unit which has resulted in a reduction in the family unit's monthly assistance and serious financial hardship for the family. Further indicated is that the appellant's daughter has a disability and is enrolled in a secondary school equivalent education program scheduled for completion in June 2017. Requested is that the appellant's daughter be added to the appellant's file until at least the end of 2016.
- A letter dated April 25, 2017 from the appellant's daughter's physician who indicates that "Due to medical reasons, she is unable to work at any occupation."
- A 2<sup>nd</sup> letter from the same instructor at the Education Center dated April 25, 2017 who provides an update on the appellant's daughter's eligibility to return to school for the 2017-18 academic year. He confirms that the appellant's daughter is on track to finish 2/5 of her graduation requirements for the adult diploma and that the school year ends on June 15. Because of her age, she is ineligible to attend regular secondary school programs; therefore, she would be scheduled to restart on September 6, 2017. In order to graduate, she will need to complete her remaining Grade 12 credits.
- A Request For Reconsideration dated May 30, 2017 by the appellant who reports that her daughter is still in school, (an adult learning center), lives with her and needs food and a care card for travel. The appellant states that her daughter needs her and that they do not want to split up.

In the appellant's Notice of Appeal dated June 20, 2017, the appellant writes that the daughter lives with her and needs food, a compass card and money for bills.

On Appeal, the appellant re-submitted the following two documents:

1. A 2<sup>nd</sup> copy of the letter dated April 25, 2017 from the instructor at the Education Center.
2. A 2<sup>nd</sup> copy of the letter dated April 25, 2017 from the appellant's daughter's physician.

At the hearing the appellant testified that her daughter is awaiting surgery and that she intends to continue her school program in the fall. The appellant stated that her daughter had applied to the ministry for assistance but was denied and as they live together, it is the appellant who provides for her.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant's daughter is not eligible for assistance as a dependent on the appellant's file because she had reached 19 years of age in May 2016 and her school year ended in June 2016, pursuant to Section 1 of the Employment and Assistance for Persons with Disabilities Act and Section 5 of the Employment and Assistance for Persons with Disabilities Regulation is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

### **Relevant Legislation**

#### **Employment and Assistance for Persons with Disabilities Act**

##### **1 (1) In this Act:**

"applicant" means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

"business day" means a day other than Saturday or a holiday;

"child" means an unmarried person under 19 years of age;

"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);

#### **Employment and Assistance for Persons with Disabilities Regulation**

##### **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.

##### **Schedule A**

**2** If the family unit includes one or more dependent children or deemed dependent children, the support allowance under subsection (1) for a calendar month is increased by an amount equal to

(a) the total BC child adjustment amount for all dependent children and all deemed dependent children in the family unit, minus

(b) the sum of

- (i) the family bonus, if any, paid to the family unit for the preceding month,
- (ii) the Canada child benefit, if any, paid to the family unit for the preceding month in respect of dependent children in the family unit, up to a maximum of the BC child adjustment amount in respect of those dependent children, and
- (iii) the total amount of the supplements, if any, provided to or for the family unit under section 59 [supplement for delayed, suspended or cancelled family bonus] or 59.1 [supplement for delayed, suspended or cancelled Canada child benefit] of this regulation for the current calendar month.

(2.1) If the amount calculated under subsection (2) is less than zero, it is deemed to be zero for the purposes of this

section.

(3) In calculating the adjustment under subsection (2), an amount that, under the Income Tax Act (British Columbia) or the Income Tax Act (Canada), is deducted or set off from the family bonus or the Canada child benefit must be treated as if it were paid to a person in the family unit.

(4) The support allowance under subsection (1) for a calendar month is not increased under subsection (2) if a person in the family unit refuses to

(a) apply for the family bonus or the Canada child benefit for the preceding calendar month, or

(b) accept the family bonus or the Canada child benefit for the preceding calendar month

in respect of a dependent child in the family unit who is, or may be, a qualified dependant within the meaning of the Income Tax Act (Canada).

(5) If a family unit includes a person who

(a) immediately before reaching 19 years of age was a dependent child in the family unit, and

(b) reached that age while attending secondary school,

the person is deemed to be a dependent child, for the purposes of this section, until the earlier of

(c) the end of the school year in which the person reached the age of 19 years, and

(d) the date the person stops attending secondary school.

(6) For the purposes of this section, if the family unit includes a deemed dependent child, the BC child adjustment amount applies in respect of the deemed dependent child as if the deemed dependent child was a dependent child.

## **Ministry Position**

The ministry's position is that the appellant's daughter turned 19 years of age in May 2016 and as she was attending secondary school at that time, she remained eligible as a dependent on the appellant's file until the end of the school year which was in June 2016. After being requested by the appellant's advocate that the appellant's daughter remain on file as a dependent as she was taking secondary school courses and the ministry policy is to retain a child as a dependent if they turn 19 while still attending school; the ministry effective, November 2016, added the appellant's daughter as a dependent on the appellant's file. The ministry removed the appellant's daughter from her file at the end of May 2017.

## **Appellant's Position**

The appellant position is that her daughter's school year ended in June 2017 and that she will continue in the graduation program once the school year re-starts in September. The appellant stated that she doesn't understand why the older documents such as the letter dated March 7, 2016 from the school ought to be considered as part of her appeal. The appellant further argues that her daughter is her dependent as she lives with her, has medical problems and needs food and a care card for travel. The appellant testified that her daughter who turned 19 in May 2016 and she is currently 20 years of age needs her and that they do not want to split up.

## **Panel Decision**

Section 2(5), Schedule A of the EAPWDR provides that If a family unit includes a person who

(a) immediately before reaching 19 years of age was a dependent child in the family unit, and

(b) reached that age while attending secondary school, the person is deemed to be a dependent child, for the purposes of this section, until the earlier of

(c) the end of the school year in which the person reached the age of 19 years, and

(d) the date the person stops attending secondary school.

The panel finds that the evidence is that the appellant's daughter turned 19 in May 2016 at which time she was enrolled in the graduation program at the Education Centre. According to the letter dated March 7, 2016 from an instructor at the Education Centre, the school year ran from September 8, 2015 to June 16, 2016. Noting the above legislation and the evidence provided at reconsideration, the panel finds that the ministry was reasonable to deny assistance for the

appellant's daughter as a dependent on her file given that the appellant's daughter turned 19 in May 2016 and she remained on the appellant's file as a dependent until the end of the school year which was confirmed by the school to be June 2016.

While the panel acknowledges that the appellant takes care of her daughter who lives with her, the panel finds that the ministry has limited discretion to allow the appellant's daughter to remain as her dependent on the appellant's file after 19 years of age. The panel concludes that the ministry reasonably determined that the appellant's daughter is no longer a dependent pursuant to Section 1 of the Employment and Assistance for Persons with Disabilities Act and Section 5 of the Employment and Assistance for Persons with Disabilities Regulation.

### **Conclusion**

The panel confirms the reconsideration decision and the appellant's appeal, therefore, is not successful.