PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction ("the ministry") reconsideration decision of December 12, 2017 in which the ministry determined that the appellant was ineligible for a top up of disability assistance (DA) for the period December 2016 – July 2017 because the appellant failed to apply on behalf of her entire family unit as required by Section 5 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) until August 24, 2017.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA): Sections 1, 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR): Section 23

PART E – SUMMARY OF FACTS

The appellant is a recipient of DA with 4 dependent children.

The information before the ministry at reconsideration included:

- request for reconsideration submitted to the ministry on November 28, 2017 in which the appellant noted:
  - the ministry conducted a file review of her estranged spouse ("S") in August 2017;
  - in August 2017 a ministry worker told the appellant and S that an error had been made in adding one of the appellant's 4 dependent children ("T") to S's file as a dependent child because T had continued to reside with the appellant for 3 weeks of every month throughout the period in question;
  - the ministry worker told the appellant to request back pay from the ministry and also advised the appellant that she would be paid retroactively for the period that T was treated as a dependent child on S's file;
  - when T was added to S's file as a dependent child a signed agreement documenting the living arrangements was submitted to the ministry but was added to S's file only;
  - on November 22, 2016, when the appellant informed the ministry that she and S were separating, she did not inform the ministry that T would be residing with S more than 50% of the time each month.

- August 24, 2017 letter from S confirming that T resides with the appellant for 3 weeks of each month and authorizing the ministry to put T back on the appellant's file as a dependent child.

Information Received after Reconsideration

In her Notice of Appeal dated December 15, 2017 the appellant noted that she was not aware that she had to prove to the ministry that T was living with her for more than 50% of each month.

Prior to the hearing the appellant submitted 2 additional documents:

1. January 8, 2018 letter from an elementary school stating that T was a student enrolled at the school from August 2014 to the present and that the address provided for him was the same as the address at which the appellant currently resides. The document also lists T as residing with the appellant.

2. January 6, 2018 letter from S noting that T has resided with the appellant 75% of the time since S and the appellant separated effective December 1, 2016 and that the ministry had at all times been aware of the residency arrangements of T.

At the hearing the appellant submitted the following document:

3. December 6, 2016 letter jointly signed by the appellant and S indicating that the appellant's 4 children will reside with her for 3 weeks per month and with S for 1 week per month and agreeing to put T on the income assistance file of S.

At the hearing the appellant confirmed that the December 6, 2016 letter was delivered to the ministry on or about the same day as it was written. She also confirmed that S received T's ministry-based dependent child benefits during the period December 2016 – July 2017 but that she continued to receive all of T's federal child tax benefits during the same period.

The ministry did not object to the admission of Documents 1 and 2, and took no position respecting the admission of Document 3. The panel considered Documents 1, 2 and 3 and admitted them under EAA Section 22 (4) as evidence in support of the information that was before the ministry for the following reasons: Document #1 corroborates the appellant's assertion that T lived at her address and attended the same school as his sibling during the period December 2016 – June 2017. Document #2 provides confirmation by S that T resided with the appellant for 3 weeks per month during the same period. Document # 3 is relevant because it substantiates the letter that was described by the appellant in her request for reconsideration, was referenced by the ministry in the reconsideration decision and did not constitute new information.

The panel also admitted the appellant's oral testimony under EAA Section 22 (4) because it confirmed the information relied upon by both parties, namely that the appellant and S had asked the ministry to remove T as a dependent child from the appellant's DA file and transfer him to S's income assistance file commencing December 2016.

The ministry relied on the reconsideration decision.

PART F – REASONS FOR PANEL DECISION

The issue to be determined upon appeal is the reasonableness of the ministry decision which determined that the appellant was ineligible for a top up of disability assistance (DA) for the period December 2016 – July 2017 because the appellant failed to apply on behalf of her entire family unit as required by Section 5 of the EAPWDR until August 24, 2017

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Relevant legislation:

EAPWDA:

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;

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.

The appellant argues that she is entitled to a top up of DA because she received an underpayment of assistance during the period December 2016 – July 2017 because the ministry was aware that the dependent child T resided with her for 3 weeks of every month commencing December 1, 2017 and the ministry erred in allowing T to be transferred to S's income assistance file during that period.

The ministry's position is set out in the reconsideration decision, summarized as follows:

- on November 15, 2016 the appellant advised the ministry that she and S were separating as of December 1, 2016 and asked that S and T be removed from her DA file as part of her family unit;
- on November 25, 2016 the ministry advised the appellant that S and T had been removed from her file;
- on August 24, 2017 the appellant asked that T be added back onto her file because S had been advised by the ministry that T would be removed from S's income assistance file because he did not reside with S for more than 50% of each month;
- on August 29, 2017 T was again added to the appellant's family unit as a dependent child and the appellant received DA for August (pro-rated) and September 2017 commensurate with a family unit that included the appellant and 4 dependent children;
- on November 7, 2017 the ministry denied the appellant's request for a top up of DA for the period December 2016 to July 2017. The ministry determined that because the appellant had not provided information to indicate a change in the number of dependent children in her family unit until August 24, 2017 an underpayment of DA had not occurred.

Panel Decision

EAPWDR Section 5 requires an applicant for DA to apply for assistance on behalf of her entire family unit. "Family unit" is defined in the EAPWDA as an applicant or recipient and her dependants. "Dependant" is defined as the spouse or dependent child of the applicant or recipient, and "dependent child" is defined as a child under 18 years who resides with the parent more than 50% of the time.

The appellant and S have 4 children, all of whom reside with the appellant for 3 weeks of each month, or 75% of the time. In order to assist S with the expense of caring for all of the children for 25% of each month the appellant and S asked the ministry to transfer one of the 4 children, namely T, to S's social assistance file. The ministry transferred T to S's file as a dependent child in accordance with the appellant's request.

The appellant acknowledges that between December 2016 and July 2017 S received assistance for T as his dependent child. She also acknowledges that although she was told by a ministry worker that S would be required to pay back the child assistance he had received for T during this period no action has yet been commenced by the ministry to demand repayment. Although ministry actions related to S's file are not relevant to this appeal the fact that S received dependent child assistance for T between December 2016 and July 2017 is pertinent to this panel's task of determining the reasonableness of the reconsideration decision that no underpayment had occurred.

The appellant did not object to the dependent child arrangement of moving T to S's file until after a ministry review of S's file in August 2017. She did not inform the ministry of a change in her family unit until August 24, 2017. T was re-added to her file as a dependent child on August 29, 2017, and the appellant received pro-rated assistance for August and full monthly assistance for September commensurate with a family unit of the recipient and 4 dependent children.

The panel therefore finds that the ministry reasonably determined that that the appellant was not eligible for a top up of DA for the period December 2016 – July 2017 because the appellant did not inform the ministry of a change to the number of dependants in her family unit until August 24, 2017.

In conclusion the panel finds that the reconsideration decision to deny the appellant a top up of DA for the period December 2016 – July 2017 was reasonably supported by the evidence, and confirms the decision. The appellant is not successful in her appeal.