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**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) decision dated May 30, 2018 which found that the appellant was not eligible to add her son as a dependent on her assistance file. The Ministry determined, pursuant to section 1 of the Employment and Assistance Act (“EAA”), the appellant’s son did not qualify as a dependant on the basis that he did not meet the requirements to be a dependant child, which includes a requirement that the dependent child reside with the parent for more than 50% of the time.

**PART D – RELEVANT LEGISLATION**

Section 1 Employment and Assistance Act (“EAA”)  
Section 5 Employment and Assistance for Persons With Disabilities Regulation (“EAPWDR”)

## PART E – SUMMARY OF FACTS

On February 20, 2018 the appellant contacted the Ministry regarding her February assistance. The appellant's son had been living with the appellant's brother in his community (the "Brother's Community") since approximately August 2017. The son had been living in the Brother's Community by reason of an order of the Ministry of Children and Family Development ("MCFD"). MCFD formally returned the son to the appellant's care January 19, 2018.

On April 4, 2018 the appellant advised the Ministry that although her son had been returned to her care, the son would remain in the Brother's Community for the purposes of remaining enrolled in French Immersion, a program that was not readily available to her son in the appellant's community until September, 2018. The appellant was advised by the Ministry that she was not eligible to add her son as her dependent. On May 1, 2018 the appellant submitted a request for reconsideration. On May 30, 2018 the Ministry denied the appellant's request to add her son as a dependent on the basis that her son cannot be her dependent because he does not reside with her for more than 50% of the time.

In her Notice of Appeal ("NOA") the appellant states that the "ministry is negating my parental responsibilities as I am still responsible for his need."

The appellant's advocate submitted a written submission with the request for reconsideration. The submission is nine pages in length. The relevant portions of the written submission are:

- The appellant's son is 15 years old. He will turn 16 in March, 2019. He was removed from the appellant's care on March 30, 2017 and placed in the Brother's Community in August, 2017.
- In June, 2017 the son expressed to the appellant that he wanted to attend French Immersion. However, at that time he was in the care of MCFD and MCFD refused to honour the son's wishes to attend French Immersion. MCFD failed to enroll the son in French Immersion even though that was his desire.
- In August, 2017 when MCFD placed the son in the Brother's Community the son was successful at enrolling in French Immersion there.
- After learning that her son was going to be returned to her care, the appellant attempted to facilitate having her son enrolled in French Immersion in her community. However, the appellant learned that this option to enroll in French Immersion in her community would not be available until September, 2018.
- French Immersion is such that students must "stick with it" or risk not being able to advance in the French Immersion program.
- The appellant believes that it is in the best interests of her son to continue in French Immersion, and therefore, remain in her Brother's Community.
- The appellant spent time with her son in her Brother's Community from around December, 2017 to March, 2018. After March, 2018 the appellant returned to her community while her son remained in her Brother's Community.
- The appellant has made a private financial relationship with her brother for the care of her son.
- The appellant was never informed by MCFD or the Ministry that her assistance would be decreased if her son was not in her care. She understood that her assistance would decrease by reason for a removal from MCFD, but she thought that once the child was returned to her care she would obtain her assistance and shelter for a family of two despite the fact that her son was temporarily residing in another location.
- The appellant still has all the decision making authority and financial responsibility for her son.
- The appellant asked for a letter of support from MCFD when her son was originally removed, so that she would at least be able to receive her shelter allowance but MCFD refused to provide this letter.
- The appellant believes that her son's residency is an extenuating circumstance that should be considered by the Ministry due the inability to enroll him in the local school of his choice.

No additional documentary evidence was introduced at the hearing.

At the hearing the appellant had an advocate and a friend attend with her. The friend was not able to indicate whether she would be acting as a support system or as a witness. However, based on the friend's statements, the panel found it was more likely that the friend would not have additional relevant evidence as a witness and decided

that the friend would be permitted to stay through the hearing. The Ministry also agreed that the friend could stay through the hearing and be treated as a support person and not as a witness.

The panel heard from the appellant's advocate who relied on her written submission but also re-iterated:

- This is an extenuating circumstance because the appellant is working through two legislative schemes, the Child, Family and Community Service Act ("CFCSA") and Ministry's legislation.
- Once the MCFD order was made, the appellant had no legal authority to make decisions about her son's schooling. So, because MCFD failed to enroll him into the school of his choice in the community where the appellant resides the appellant is now forced to choose between what schooling is in the best interests of her child (she argues attending French Immersion is) or the financial benefit of receiving an additional \$335.66 per month for his care.
- When a child is removed from a person who is receiving assistance, the Ministry is generally contacted by the MCFD social worker and the social worker asks the Ministry to continue to pay shelter amounts for the dependent. The purpose of this is to encourage reunification and not have a situation where the person receiving assistance is now homeless thereby decreasing chances for reunification with their child even further.
- In the appellant's case an MCFD social worker did not contact the Ministry and the appellant did not receive the shelter amounts for her son from May, 2017 to when he was formally returned to her care in January, 2018.

The appellant testified:

- She is trying to do what is in her son's best interests
- Her son remains away from her as he is working a part time job in his Uncle's Community this summer.

The appellant's friends provided some additional argument:

- The difficulties on the appellant and that the efforts she made were always with the best interests of her son. The Ministry legislation in this case is punitive, given that it is penalizing the appellant for making a decision that she submits is in the best interests of her son.

The Ministry representative relies on the Ministry reconsideration decision and also provided:

- The CFCSA has no effect on Ministry legislation.
- The legislation is clear that a child needs to reside at the residence for more than 50% of each month. The Ministry clarified that they have no discretion to make exceptions or to make decisions which are not in accordance with the legislation.
- The Ministry explained how a "child in care allowance" works. The Ministry could not point to legislation, but stated that it was policy taken from the Ministry's website.
- The "child in care allowance" is initiated when MCFD sends the Ministry a form indicating that a child has been removed from the care of the parent and also indicating that there is a plan to return the child. When there is a plan to return the child, the person receiving assistance will continue to receive the shelter amount for additional dependants, but would not continue to receive the support amount for such dependants. In the case of this appellant that would mean that she would receive an additional \$195.00 per month while the child was removed from her care if there was a plan to return to the child to her. The Ministry could not say whether or not the appellant in this case received the additional \$195.00 per month (also called the "child in care allowance") between the time that her son was removed from her care by order of MCFD and returned to her care by order of MCFD. The Ministry worker stated that she would be looking into this to either confirm that the appellant did receive the additional \$195 per month or determine why the appellant did not receive the additional \$195 per month.
- The regular support as for a single PWD is \$758.42 for support, \$375.00 for shelter and \$52 for transportation (a total of \$1185.42).
- In this case, with a 2 family unit when her son lived with the appellant, she was receiving \$899.41 in support, \$570.00 for shelter, and \$52 for transportation (a total of \$1521.41).

## PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether or not it was reasonable for the Ministry to determine that the appellant was not permitted to add her son as a dependant on her disability assistance file by reason that her son was not a dependant child as per the definition set out in s.1 EAPWDR. Specifically, was it reasonable for the Ministry to determine that the appellant's son did not reside at her residence for more than 50% of each month, and therefore failed to meet the definition of a dependant child?

The legislation provides:

### Section 1 EAA

Interpretation

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income 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;

"chair" means the chair of the tribunal appointed under section 19 [employment and assistance appeal tribunal];

"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);

"dependent youth" means a dependent child who has reached 16 years of age;

"employment plan" means a plan required under section 9 [employment plan] and includes an amended employment plan;

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

"former Act" means

(a) the BC Benefits (Income Assistance) Act,

(b) the BC Benefits (Youth Works) Act, or

(c) the BC Benefits (Appeals) Act;

[Redacted]

"hardship assistance" means an amount for shelter and support provided under section 5 (1) [hardship assistance];

"income assistance" means an amount for shelter and support provided under section 4 [income assistance and supplements];

"panel" means a panel, appointed under section 22 (1) [panels of the tribunal to conduct appeals], of the tribunal;

"person with disabilities" has the same meaning as in the Employment and Assistance for Persons with Disabilities Act;

"recipient" means the person in a family unit to or for whom income assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

(a) the person's spouse, if the spouse is a dependant, and

(b) the person's adult dependants;

"spouse" has the meaning in section 1.1;

"supplement" means any form of assistance specified by regulation, other than income assistance, hardship assistance or financial assistance provided under section 6 [financial assistance to service or program providers] and, without limitation, includes access to programs established or funded under this Act;

"tribunal" means the Employment and Assistance Appeal Tribunal established under section 19 [Employment and Assistance Appeal Tribunal].

(2) 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.

(3) For the purpose of the definition of "dependant", spouses do not reside apart by reason only that a spouse is employed or self-employed in a position that requires the spouse to be away from the residence of the family unit for periods longer than a day.

## **Section 5 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 panel finds:

The definition of dependant in the EAA is such that in order for someone to be a dependent they must reside with the person (and the person is the person who applies for assistance). To qualify as a dependent child, the child must be under 19 years of age, reside in the parent's place of residence for more than 50% of each month, and rely on that parent for the necessities of life. The son, in the case of this appellant, does not reside with her and also does not reside with her, in her capacity as a parent, for more than 50% of each month.

With respect to s.1(2) the panel has not been pointed to any regulations where the Lieutenant Governor in Council has prescribed other circumstances in which a child is a dependent child of a parent for the purposes of this Act.

The Ministry did not make a decision regarding whether or not the son relies on this appellant for the necessities of life. The Ministry's determination is that the son is not a dependent because he does not reside with the appellant for more than 50% of the time.

The appellant argued that the legislative schemes of the CFCSA and the Ministry legislation are in conflict; that Ministry legislation is discriminatory; and that she is being financially penalized for choosing in the best interests of her son. The Ministry stated that a determination about whether Ministry legislation is in conflict or discriminatory is outside the scope of the Ministry to determine.

The panel, also cannot make determinations about the legislative scheme of the CFCSA. The panel must determine if the decision of the Ministry was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel finds that the requirements of a dependant are that the dependent must reside with the applicant. Further, the panel finds that to be a dependent child there are three requirements, and all must be met. The dependent child must be 19 and under, reside with the parent for more than 50% of the time, and rely on the parent for the necessities of life. The panel finds that it was reasonable for the Ministry not to make a determination of necessities of life, since failing on one of these grounds will cease the chance to be qualified as a dependent child. The panel also finds that it was reasonable for the Ministry to determine that this child does not reside with this appellant parent more than 50% of the time in a month. The evidence from both the Ministry and the appellant was that the son lived in his Uncle's Community full time.

For these reasons, the panel finds the Ministry's decision was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.

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**PART G – ORDER**

<b>THE PANEL DECISION IS: (Check one)</b> <input checked="" type="checkbox"/> <b>UNANIMOUS</b> <input type="checkbox"/> <b>BY MAJORITY</b>
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<b>THE PANEL</b> <input checked="" type="checkbox"/> <b>CONFIRMS THE MINISTRY DECISION</b> <input type="checkbox"/> <b>RESCINDS THE MINISTRY DECISION</b>
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No

<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>
<i>Employment and Assistance Act</i>
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>
and
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>

**PART H – SIGNATURES**

PRINT NAME MEGHAN WALLACE (by telephone)	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/July/12

PRINT NAME GLENN PRIOR	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/July/12

PRINT NAME CARMAN THOMPSON	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/July/12