

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 25th October 2018 in which the ministry determined that:

- the appellant was not eligible to receive disability assistance as a two parent family with three dependant children, as the appellant's parenting schedule do not meet the definition of "dependant child" under the Employment and Persons With Disability Act; and
- there was insufficient evidence at reconsideration to determine that the appellant was not eligible to receive disability assistance, as a re-application for disability assistance had not been completed and no information had been provided by the appellant to confirm the income and assets amounts of the appellant's family unit.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWD) –Section 1
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) –Schedule A

PART E – SUMMARY OF FACTS

The evidence and documentation before the ministry at reconsideration consisted of the following:

1. A Consent Order dated 2nd September 2016, amongst other matters, describing a shared parenting schedule for the three children of the appellant and his ex partner;
2. A Family Case Conference and Record & Order dated 5th July 2017 confirming the date for the summer parenting schedule;
3. Reasons for Judgement of a Judge of the Provincial court of British Columbia dated 25th July 2015 relating to a Judgement rendered by the said court on 10th July 2018;
4. A letter dated 4th September 2018 from the appellant to the ministry that, amongst other matters, requested the ministry to add his children to be added to his account to allow an increase in his disability income;
5. A letter dated 9th October 2018 from the appellant to the ministry that, amongst other matters, submitted that: (a) the appellant's children lived with the appellant at least 50% of the time; and (b) the appellant had slightly higher parenting time percentage (more than 50%) during the summer break;

The evidence and additional new documentary information (NDI) before the panel at the time of the hearing of the appeal consisted of the following:

1. The ministry's reconsideration decision dated 25th October 2018 that, amongst other matters, stated and determined the following:
 - On 5th September 2018, the appellant requested to be re-assessed for disability income and add his three children as "dependants" on his file;
 - On 19th September 2018, based on the Court decisions submitted by the appellant, the ministry determined that the appellant did not have his three children living with him for more than 50% of the time and therefore the appellant was not able to add them as "dependants" on his file;
 - On 21st September 2018, the ministry worker reviewed the appellant's file to see if the appellant would qualify for disability assistance if he was to receive shared parent assistance, which is a shelter top up in cases where a child who is not a "dependant" resides with a person for at least 40% of the time;
 - On 12th October 2018, the appellant filed a submission submitted with the ministry to the effect that, when calculated without normal school hours, the appellant had slightly more than 50% of the parenting time than his ex partner, as the appellant prepared 1 more meal than she does;
 - As the court documents indicate that during a two week period, the appellant has his three children for 7 of the 14 nights, the ministry considers this to be 50% of the time that the appellant's children are living with him; and that based on the said parenting schedule for the three children, they do not meet the definition of "dependents" under EAPWDA. Therefore, the appellant was not eligible to receive additional disability assistance as a two parent family with three "dependant" children;
 - The ministry is satisfied that the appellant has his children living with him more than 40% of the time each month, as required by Schedule A of the EAPWDR;
 - The disability assistance is an asset and income tested program;
 - The ministry had previously determined that the appellant's CPP income, as a disabled contributor's child benefit amounting to \$1746.76, was "unearned income" that exceeded the income allowance eligible for the appellant amounting to \$1677.56. This finding was corrected in

the reconsideration and the ministry acknowledged that said the CPP income is to be considered to as "exempt income" for the purposes of the calculation of the income allowance eligible for the appellant;

- Unfortunately, the appellant has not completed a reapplication for disability assistance, no information has been provided to confirm the income and asset amounts for the appellant's family unit; and
- Without information from the appellant, as to his family unit's income and assets, there was insufficient evidence to determine the appellant's eligibility for additional disability assistance.

2. Appellant's Notice of Appeal dated 7th November 2018 in which the Reasons For appeal stated that the "Ministry's interpretation of parenting schedule is unjust and only exists to avoid coverage;

3. Appellant's submission dated 11th December 2018 that, amongst other matters, stated the following:

- One of the three of the appellant's child has decided to live primarily with her mother and therefore the portion of the parenting benefits that the appellant would be qualified for should be reduced by one child;
- The two of the other three of the appellant's children have a history of staying an extra night or two each month; the said time is not scheduled in advance, but is the result of the requests from the said two children, or their mother;
- The two letters attached to the appellant's submission dated 11th December 2018 include (a) a letter dated 14th February from a Client Service Manager of a Food Bank that stated that, based on the "*personal knowledge*" of the said Manager, the three children of the appellant lived with the appellant at least half the time, which is also confirmed by the Food Bank's system going as far back as December 2014; and (b) a letter dated 28th March 2017 from the Pastor of the appellant's Church that stated that, based on the "*personal and professional knowledge*" of the Pastor, the three children of the appellant lived with the appellant at least half of the time; and
- The said letters from the Food Bank and the Pastor support the appellant's claim that he cares for two of his three children slightly more than 50% of the time.

4. A ministry's submission dated 21st December 2018 that, amongst other matters, stated the following:

- The ministry relied upon the reconsideration decision;
- The ministry's reconsideration officer had recommended to the appellant that he should contact the ministry to have his eligibility re-evaluated for disability assistance, including the shared parent allowance, because there was not enough information available at reconsideration to determine if his total income and assets would affect his eligibility for disability assistance;
- The ministry acknowledged that the appellant had his children living with him exactly 50% of the time and therefore his request for additional income allowance meets subsection 1(2) of EAPWDR. The reconsideration officer did not refer to the said subsection in the reconsideration decision, as (a) the appellant had not provided a written submission from the children's mother as the parent; and, as such, subsection 1(2) did not and continues not to apply to the appellant.

New Documentary Evidence

Having carefully considered the contents of the appellant's submission dated 11th December 2018 and the ministry's submission dated 21st December 2018, the panel finds that both the submissions are admissible and, as such, admitted as additional evidence under Section 22(4), as they are in support of the records of information and records, corroborating the information before the minister at reconsideration.

The panel, having regard to the relevant issues it has to decide, further finds that the relevant evidence before it establishes the following facts:

1. The appellant is currently a recipient of disability assistance (Medical Services Only);
2. The appellant's children live with him more than 40% of the time each month as required by Schedule A of EAPWDR; and
3. The Canada Pension Plan Disability (CPPD) income received by the appellant, as a disabled contributor's benefit, is exempt income and cannot be included in calculating the appellant's shared parenting eligible allowance.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry's decision, which determined that (a) the appellant was not eligible to receive disability assistance as a two parent family with 3 dependant children, as the appellant's parenting schedule did not meet the definition of "dependant child" under the EAPWDA; and (b) there was insufficient evidence at reconsideration to determine that the appellant was not eligible to receive disability assistance, as a re-application for disability assistance had not been completed and no information had been provided by the appellant to confirm the income and assets amounts of the appellant's family unit.

The relevant applicable legislation is as follows:

Section 1 - 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.

Schedule A – EAPWDR

Part I – Interpretation

"**unearned income**" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

(f) any type or class of Canada Pension Plan benefits;

Monthly shelter allowance 4 (1) For the purposes of this section:

"**family unit**" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
2	2 persons	\$570
5	5 persons	\$750

The appellant argues that, at least two of his three children are living with him for more than 50% of the time. Therefore, he is entitled to have his children added to his account as "dependants" within the meaning of Section 1 of the EAPWDA.

The ministry's argues that the Court documents provided by the appellant indicate that during a two-week period the appellant has his children for 7 of 14 nights. Based on the said parenting schedule prescribed by the court, the appellant's children live with the appellant only and exactly 50% of the time. Accordingly, they do not meet the definition of "dependent child" under EAPWD Act, and therefore the appellant is not eligible to receive disability assistance as a two-parent family with dependent children.

Panel's Decision

Section 1 of the EAPWDA provides that, a "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. In his 11th December 2018 submission, the appellant acknowledges that only two of his three children are residing with him, and in support thereof he submitted a letter dated 14th February 2018 from his Food Bank and a letter dated 28th March 2017 from his Pastor, both of which expressly state that the children of the appellant residence with him "at least half of the time". The panel finds that the said two letters do not support the appellant's claim that the children live with him "slightly more than 50% of the time".

The appellant further argued that if school hours were not to be included in parenting time, his children lived more than 51% of the time with him. The panel notes that the court documents clearly describe the parenting time and schedule for each parent and does not make any distinct reference to school hours. Therefore, the panel finds that school hours are included in the parenting time assigned to each parent and cannot be excluded in calculation of parenting time.

The panel notes that the appellant argues that two of the three appellant's children often spend an extra night or two each month either at the request of the children or as the request of the appellant's ex partner. The panel is of the view that such an intermittently fluctuating parenting schedule, unendorsed by the court, cannot override the court prescribed parenting schedule.

The panel notes that the ministry also gave consideration to the facts before it as reconsideration to determine whether the appellant was entitled to a "shelter allowance", as the ministry was satisfied that the appellant had his children living with him for more than 40% of the time. However, as the "shelter allowance" is an "income and asset" tested program, and the appellant had not applied for and/or provided information to confirm the income and assets of his family unit, the ministry determined that there was insufficient evidence to determine that the appellant is not eligible to receive such "shelter allowance". The panel makes no finding as to this determination of the ministry as it is not an issue under this appeal.

Having regard to the foregoing analysis of the evidence before the panel and the findings of fact made by the panel

in Part E above, the panel finds that the ministry's decision was reasonably supported by evidence and also a reasonable application of the applicable legislation to the circumstances of the appellant. The panel confirms the reconsideration decision.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

TAJDIN MITHA

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-01-07

PRINT NAME

ADAM ROLLINS

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-01-09

PRINT NAME

RABINDER NIJJAR

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-01-07