

APPEAL NUMBER  
2020-00015

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration dated December 24, 2019 which held that the appellant was not eligible to add a child as a dependent child because the child did not reside with the appellant for more than 50% of the time.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Act (EAA), section 1;  
Employment and Assistance Act Regulation (EAAR), section 1.

**PART E – SUMMARY OF FACTS**

The evidence before the ministry at the time of reconsideration consisted of the following:

1. The appellant had a child that was born in 2009 and was attending school;
2. The appellant had parenting time with the child in accordance with a parenting order made by the Provincial Court of British Columbia that stated the child resided with the appellant:
  - a. from Friday at 12:00pm until Monday at 7:00pm on the second, third and fourth weekends of each month (as appropriate);
  - b. the last two Thursdays of each and every month; and
  - c. on a 'shared' basis on days without school (whether because of professional development days, vacation days, or statutory holidays).
3. The panel notes that there was no actual information regarding the days in the prior year or the forthcoming year that the appellant's child resided with the appellant.

## **PART F – REASONS FOR PANEL DECISION**

The issue at appeal is whether the ministry's decision that the appellant was not eligible to add their child as a dependent child because that child did not reside with the appellant for more than 50% of the time was reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstance.

The authority to add a child as a dependent child is expressly provided for in the EAA and EAAR. The EAA provides that a child is a dependent child if it resides at the parent's place of residence for more than 50% of each month. The EAAR contains an additional provision that provides if a child resides with each parent exactly 50% of each month then the parents can designate in writing which parent will be considered the parent of the dependent child.

### **EAA**

#### **Interpretation**

1 (1) In this Act:

...

"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) but excludes a child in circumstances prescribed under subsection (2.1);

### **EAAR**

#### **Definitions**

1 (1) In this regulation:

...

(2) Subsection (2.1) applies to a child if

(a) the child relies on both parents for the necessities of life, and

(b) the child resides

(i) with each parent for 50% of each month in circumstances where the parents live in different residences, or

(ii) with both parents in circumstances where the parents live in the same residence but are not spouses.

(2.1) For the purposes of the Act and this regulation, a child described in subsection (2)

(a) is a dependent child of the parent who is an applicant or recipient, provided only one of the parents is an applicant or recipient, or

(b)if both parents are applicants or recipients, is a dependent child only of the parent who is designated in writing by both parents.

***The Appellant's Position***

The appellant did not appear at the hearing. In their Notice of Appeal the appellant wrote: "I disagree cause there was evidence of exact parenting time...that I have my son more than 50% of the time." (sic)

On reconsideration, the appellant wrote that they have the child more because they are "the only one that drives" and "in the past I've had [the child] on Mondays and Wednesdays."

***The Ministry's Position***

The ministry did not appear at the hearing.

***The Panel's Decision***

The panel notes that the EAA and EAAR both reference whether the child resides with a parent for 50% of each month. This, presumably, creates a situation where a child would be dependent child of one parent in one month and then a dependent child of a different parent in the subsequent month.

The panel notes that the most appropriate way for the appellant to support their application for the designation of the child as a dependent child would be to provide an actual accounting for the days the child resides with the appellant. The parenting time order specifically states that the time during which the child resides with the appellant can be altered "as agree upon by the parties" (sic), can be varied to be "different times as the parties may agree from time to time", and that the parties share "equitably" Pro-D days, statutory holidays, and longer school vacations.

In the absence of any particular information, the panel decided that the most appropriate manner to determine whether the child resided with the appellant 50% of the time or more was to consider the year from September 3, 2019 to September 2, 2020 and assume that the terms of the parenting order were strictly adhered to. The start date was chosen because it was the date that the appellant contacted the ministry and stated that the child would reside with them more than 50% of the time.

For the purpose of this decision, the panel considered that the following days were Pro-D days, statutory holidays or longer school vacations, based on the publicly available School District Calendar:

1. September 30, 2019;
2. October 14, 2019;
3. October 25, 2019;
4. November 8, 2019;
5. November 11, 2019;
6. December 23, 2019 through January 3, 2020;
7. January 6, 2020;
8. February 17, 2020;
9. February 21, 2010;
10. March 16 through March 20, 2020;
11. March 23 through March 27, 2020;
12. April 10, 2020;
13. April 13, 2020;
14. May 1, 2020;
15. May 18, 2020;
16. May 25, 2020; and
17. June 26 through September 3, 2020.

This is a total of 104 days. The panel determined that for the purpose of this hearing the parenting order reference to equitably meant that the child would reside with the appellant 50% of the time, or for 52 days.

The panel considered the number of days, exclusive of the days mentioned above, that the child would reside with the appellant by month (Fridays were considered a half day, and Mondays considered a full day).

1. September, 2019 – 11.5 days;
2. October, 2019 – 11 days;
3. November, 2019 – 12.5 days;
4. December, 2019 – 7.5;
5. January, 2020 – 12.5;
6. February 2020 – 13 days (assuming child resided with the appellant on the 28<sup>th</sup> and 29<sup>th</sup>);
7. March 2020 – 7.5 days;
8. April 2020 – 11 days;
9. May 2020 – 13 days;
10. June 2020 – 10 days;
11. July 2020 – no days (all holidays);
12. August 2020 – no days (all holidays); and
13. September 2020 – no days (holidays until September 2, 2020).

The panel determined that exclusive of holidays, the child resided with the appellant for 109.5 full-day equivalents.

Consequently, the panel determined that the child resided with the appellant for 161.5 full day equivalents during the 366 days between September 3, 2019 and September 2, 2020. This is 45% of the time.

The panel notes that its authority is limited to determining whether the ministry's decision was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The panel recognizes that the addition of a child as a dependent is a forward-looking determination and that the information provided by the appellant was not specific on a month-to-month basis. The ministry therefore was reasonable in applying the parenting agreement as written to determine the amount of time the child would reside with the appellant.

The panel is satisfied that the ministry decision of December 24, 2019, that the appellant was not eligible to add their child as a dependent child because that child did not reside with the appellant for more than 50% of the time was reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstance.

The panel confirms the ministry's reconsideration decision and the appellant is not successful on appeal.

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**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

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Marlene Russo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Anne Richmond

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)