

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision, dated June 10, 2022 (the “Reconsideration”), in which the Ministry determined that the Appellant was not eligible for either:

- disability assistance at the rate specified in section 2 of Schedule A to *the Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”) for a person with a dependent child; or
- an increased shelter allowance, based on a two person household, under section 4 of Schedule A to the EAPWDR

because the Appellant had not satisfied the Ministry, respectively, that:

- the appellant’s child was a dependent child as defined in section 1 of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”); and
- the appellant’s child was in the care of the appellant at least 40% of the time, as required by the definition of “family unit” in section 4 of Schedule A to the EAPWDR.

Part D – Relevant Legislation

EAPWDA- sections 1, 10

EAPWDR- Schedule A, sections 1, 2, and 4

Part E – Summary of Facts

The Appellant is classified as a sole recipient of disability assistance and receives \$983.50 in monthly support, a shelter allowance of \$375.00, and a \$52.00 transportation supplement. The appellant has one child who, according to the Appellant, resides with the appellant about half of the time.

In or about May, 2022, the Appellant requested an increase in total assistance to \$1,703.50, which is consistent with the rate payable to a recipient with a dependent child for support and for a shelter allowance for two people. This amount does not appear to have included the transportation supplement.

The Ministry requested that the appellant provide verification, such as an agreement which sets out the parenting arrangements between the appellant and the other parent of the appellant's child. The appellant did not do so but, instead, provided information about the other parent's work schedule and photographs of the appellant with the child.

The information before the Ministry at the time of the Reconsideration Decision included:

- The appellant's Request for Reconsideration, dated May 26, 2022("RFR"), in which the appellant made four main points:
 - that a contract between the appellant and the other parent should not be required in the circumstances;
 - that a contract would not prove the "legality" of the appellant's actions or that the appellant had the child for 2 to 3 days per week;
 - that the other parent works seven days per week and doesn't have time to care for the child; and
 - that documents shouldn't be needed to prove the love of a parent for a child.

In the Notice of Appeal, filed June 14, 2022, the appellant stated that the appellant's situation was in line with the relevant policy but was only lacking in evidence and that there really was no problem.

At the hearing of the appeal, the appellant repeated the points set out in the RFR but was also able to clarify several matters, including:

- that the child was born in 2010;
- that the appellant and the other parent had entered into a separation agreement (the "Agreement") in or about 2020, which provided for only very limited parenting time for the appellant;
- that the Agreement had not been provided to the Ministry;
- that the Agreement no longer reflected actual parenting arrangements;
- that the child stayed with the appellant from Friday nights until Monday morning most weekends and that the appellant also provided some care during the week;

- that the other parent will not change the Agreement or provide any documentation confirming the current parenting arrangement;
- that the appellant is not willing to go to court to get the Agreement changed or to seek the assistance of a family law professional, such as a family justice counselor; and
- that the appellant still pays child support in the amount of \$300.00 when financially able.

At the hearing of the appeal, the Ministry noted that the three nights per week which the appellant described having care of the child was still less than the 50% threshold required for the Ministry to find that the child was a dependent child. Likewise, the Ministry advised that it needed some evidence that the parenting arrangements were as described by the appellant in order to provide a shelter allowance for two persons under section 4 of Schedule A to the EAPWDR and that a revised agreement, court order, or written confirmation from the other parent of the current parenting arrangements would generally be satisfactory.

The panel admits the evidence of the Appellant which was given at the hearing as evidence that is not part of the record but which the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal, pursuant to section 22(4) of the EAPWDA.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant was not eligible for either:

- disability assistance at the rate specified in section 2 of Schedule A to *the Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR") for a person with a dependent child; or
- an increased shelter allowance, based on having a two person household, under section 4 of Schedule A to the EAPWDR

because the Appellant had not satisfied the Ministry, respectively, that:

- the appellant's child was a dependent child as defined in section 1 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA"); and
- the appellant's child was in the care of the appellant at least 40% of the time, as required by the definition of "family unit" in section 4 of Schedule A to the EAPWDR.

Panel Decision

In order for the Appellant to be eligible for disability assistance at the rate prescribed in section 2 of Schedule A to the EAPWDR for a sole applicant/recipient and one or more dependent children, the Appellant's child must be a dependent child.

The term "dependent child" is defined in section 1 of the EAPWDA as "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 this case, the Appellant's evidence was that the child was in the Appellant's care approximately 3 days per week, overnight. This was in excess of the parenting time which was apparently provided for in the Agreement, which provided limited parenting time to the Appellant. Either way, the evidence does support the Ministry's finding that the Appellant did not have care of the child more than 50% of each month or that the child was reliant on the Appellant for the necessities of life and, as such, the panel finds that the Ministry was not unreasonable in its determination that the Appellant's child was not a "dependent child" for the purposes of determining the Appellant's monthly disability assistance.

To be eligible for a shelter allowance as a family unit with 2 persons, the Appellant must satisfy the Ministry that the Appellant's family includes "a child who is not a dependent child and who relies on the parent for the necessities of life and resides in the parent's place of residence for not less than 40% of each month", as per the definition of "family unit" in section 4(1) of Schedule A to the EAPWDR.

Based on the evidence of the Appellant at the hearing, the Appellant's family unit may well be a family unit consisting of two persons, which would make the Appellant eligible for a shelter

allowance in the amount payable to a family unit consisting of two persons. If the Appellant has care of the child for three nights each week, the Appellant's child would reside with the Appellant 42.9% of the time, exceeding the 40% threshold set out in the definition of family unit.

The Appellant, however, has not provided verification to the Ministry of the current parenting arrangements. The Appellant advised at the hearing that it was not possible to obtain documentation confirming those arrangements because the child's other parent was not willing to sign any documentation to that effect. Pursuant to section 10 of the EAPWDA, the Ministry has the discretion to request verification of information that would support a recipient's eligibility for assistance or a supplement. Section 10 of the EAPWDA also authorizes the Ministry to discontinue or deny assistance or a supplement until a request for information is complied with. The Ministry confirmed at the hearing that it would accept a revised agreement as to parenting arrangements, a court order, or a written statement from the child's other parent confirming the current parenting arrangements. In this case, the Appellant has not complied with the request for information and stated at the appeal that the information could not and would not be provided. In the circumstances the panel finds that, in the absence of verification of the current parenting arrangements for the Appellant's child, the Ministry reasonably determined that the Appellant was not eligible for a shelter allowance based on a family unit consisting of two persons.

The Appellant is not successful in this appeal.

Applicable Legislation

Section 1 of the EAPWDA defines dependent child:

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);

Section 10 of the EAPWDA authorizes the Ministry to request information and verification of a recipient's eligibility for assistance and/or supplements:

Information and verification

10 (1) For the purposes of

(a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,

- (b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,
- (c) assessing employability and skills for the purposes of an employment plan, or
- (d) assessing compliance with the conditions of an employment plan,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
- (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
- (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.

(2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.

(3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).

(4) If an applicant or a recipient fails to comply with a direction under this section, the minister may

- (a) reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or
- (b) declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.

(4.1) The Lieutenant Governor in Council may prescribe circumstances in which subsection (4) (a) or (b) does not apply.

(5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

Section 1 of Schedule A to the EAPWDR sets out the maximum amount of disability assistance before the deduction of net income:

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

Section 2 of Schedule A to the EAPWDR sets out the monthly support allowance available to recipients based on the composition of a recipient's family unit:

Monthly support allowance

2 (0.1) For the purposes of this section:

"deemed dependent children", in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

- (1) A monthly support allowance for the purpose of section 1 (a) is the sum of
- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus
 - (a.1) Repealed. [B.C. Reg. 193/2017, s. 9 (a).]
 - (b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	\$983.50
2	Sole applicant / recipient and one or more dependent children	Applicant / recipient is a person with disabilities	\$1 133.50

Section 4 of Schedule A to the EAPWDR sets out the monthly shelter allowance available to recipients based on the size of the recipient's household:

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who relies on the parent for the necessities of life and resides in the parent's place of residence for not less than 40% of each month;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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
1	1 person	\$375
2	2 persons	\$570

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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)

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

Part H – Signatures

Print Name

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2022/July/08

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2022/July/08

Print Name

Joe Rodgers

Signature of Member

Date (Year/Month/Day)

2022/July/08