

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") Reconsideration Decision of August 14, 2024. The Ministry denied the Appellant's request to add her daughter and her son to her family unit as dependent children at this time.

The Ministry was unable to establish that the Appellant's relationship with the two children meets the definition of "dependent child" or "parent" as set out in Section 1 of the *Employment and Assistance for Persons with Disabilities Act* and Section 1 of the *Employment and Assistance for Persons with Disabilities Regulation*.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the "Act"), Section 1(1).

Employment and Assistance for Persons with Disabilities Regulation (the "Regulation"), Section 1(1)

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this document.

Part E – Summary of Facts

A hearing was held via teleconference on September 6, 2024. The Appellant attended along with her daughter and a friend who gave evidence. The Ministry Representative also attended the teleconference.

Background

- The Appellant and her spouse are recipients of disability assistance with four dependent children in their family unit. Prior to June 17, 2024, an additional daughter (child A) and son (child B) were also included as dependent children in the family unit.
- On June 17, 2024, the Ministry received information from a Family Preservation Counsellor (FPC). The FPC advised that they have not been involved with the Appellant's family since February 2024. However, to the best of their knowledge the following information is accurate:
 - Child A has resided full-time with her father (the Appellant's ex-partner) since March 2022.
 - Child B has resided full-time with his father (the Appellant's ex-partner) since November 2022.
 - As of February 2024, both Child A and Child B continue to reside with their father on a full-time basis.
- In response to this information, the Ministry end-dated Child A and Child B as dependent children on the Appellant's file. This resulted in a reduction of the case shelter benefit and of the Family Bonus Automatic Top-Up ongoing from the August Benefit month.
- On June 28, 2024, the Appellant called the Ministry and expressed concern that her ex-spouse had fraudulently alleged to have custody of her children.

Information before the Ministry at the time of reconsideration

- Email dated June 17, 2024, from the Ministry to FPC requesting status of Child A and Child B.
- Email dated June 17, 2024, from FPC to Ministry stating that:
 - He had not been involved with the family since February 2024.
 - As of February 2024, Child A and Child B were residing with their father.
 - Child A had been residing with the father since March 2022, and Child B had been residing with the father since November 2022.
- Undated letter from a Child and Youth Care Worker (CYCW) stating that:
 - She worked closely with the family and was also a family friend.
 - The Appellant had court-appointed custody and guardianship of both Child A and Child B.

- While the children spend time with their father, they also reside at the Appellant's home.
- Undated letter from an Early Childhood Educator/Supported Child Development teacher (ECE) stating that:
 - She has known the Appellant for 12 years and has provided care in her home many times.
 - To her knowledge, the living arrangements are that the Appellant has Child A and Child B eighty percent of the time, and they spend twenty percent of the time with their father.
 - The Appellant and her spouse have been the sole providers for Child A and Child B as the father was non-existent in the children's lives prior to 2022.
 - From March 1, 2022, until the time of writing the Appellant and her spouse had Child A and Child B most of the time, except for spring break in March 2022, which Child A spent with her father. After that they returned to the normal living arrangements with the Appellant having them eighty percent of the time.
- Undated letter from a Child Development Consultant, stating:
 - She has been involved with the Appellant's family for five years.
 - To her knowledge the living arrangements for Child A and Child B have been 80/20, with the primary guardianship to the Appellant.
 - From July 1, 2020, until the time of writing, the Appellant had all her children for most of the time, one hundred percent in most cases.
 - In March 2022, Child A spent some time with her father and then returned to the Appellant's home and the living arrangement returned to 80/20; Monday to Friday Child A and Child B lived at the Appellant's and the weekends were spent at the father's.
- A letter dated November 15, 2023, from the principal of Child B's school, stating that they had two addresses (from two different cities) on file for Child B.
- A letter dated July 1, 2024, from the same principal of Child B's school stating that they had two addresses (the same address for the Appellant but a different address than the previous year for the one in the other city).
- A letter dated August 29, 2022, from a Family Service Worker (FSW), stating that, to the best of her understanding,
 - the Appellant was the primary parent/caregiver for Child B from April 2020 until November 2022, when a Family Law court ordered agreement was put into place that defined shared parenting time with Child B spending Monday – Friday with the Appellant and the weekends with her ex-partner.
 - The Appellant was the primary parent/caregiver for Child A from April 2020 until September 2022. After that, Child A began to reside at both the Appellant's and her ex-partner's house, with the agreement to be 80/20.

- A letter dated January 3, 2024, from the same FSW stating that, for Child A and Child B, there is still a split parenting agreement, and the children are to reside with the Appellant from Monday to Friday.
- A series of Provincial Court Records; points relevant to this appeal are:
 - March 5, 2012
 - The Appellant and her ex-partner are to have joint custody of Child A and Child B.
 - The Appellant has primary responsibility for the day-to-day care of the children.
 - In the event the two parties cannot reach an agreement with respect to any major decision despite their best efforts, the Appellant will have the right to make such decision, and the ex-partner has the right to seek a review of any decision he considers contrary to the best interests of either or both children.
 - The ex-partner shall have liberal and generous access to the children.
 - October 25, 2022
 - Until an order is made specifying parenting time between the ex-partner and Child B, such parenting time shall be made in agreement between the Appellant and her ex-partner.
 - November 21, 2022
 - The ex-partner will have parenting time with Child B every weekend from Friday at 7:00 p.m. to Monday at 9:00 a.m.
 - Child A may attend the secondary school in a (town about halfway between the residences of the Appellant and her ex-partner), or such other school agreed to in writing by both parties.
 - June 27, 2023
 - Child B shall be picked up and taken to the Appellant on that date.
 - The only person who will place medication orders for Child B is the Appellant.
 - The order of November 21 remains in effect.
 - October 11, 2023
 - The court found that the ex-partner wrongfully denied parenting time to the Appellant and had not complied with the November 21 order and had been unwilling to comply with the parenting terms, including returning Child B to the Appellant.
 - The ex-partner will administer all medications prescribed by Child B's doctor.

- In the Reasons for Request for Reconsideration the Appellant states:
 - In the time in which the ex-partner is stating he had the children, she provided the basics for Child A and Child B, their day-to-day needs: booking appointments, taking them to appointments, dealing with school for their academics, purchasing their needed medications, etc.
 - In a conversation between the ex-partner and Child A on June 27, 2024, the ex-partner informed Child A that he had Child A and Child B transferred to his file. He told Child A not to tell the Appellant as she would be livid. He asked Child A when she would be "home" and that she would have to be at his home full time or, if the Ministry were to "catch wind" that they were not actually there full-time, he would be back at square one. The Appellant stated that this conversation had been recorded but that she was unable to submit the recording with her submission.
 - As it stands, the children are with her, the Appellant, the majority of the time (Child A 80/20 and Child B 60/40) as per agreement and court ordered times except that recently Child A (since May 14, 2024) and Child B (June 10, 2024) have not wanted to attend the ex-partner's residence because of abuse from the ex-partner and his girlfriend toward the children and for other reasons that have been revealed to the Ministry of Children and Family Development. While they were at the ex-partner's residence between March 2022 and present, they were not there full-time.

Testimony at the hearing

- The Appellant
 - The friend of the Appellant stated:
 - That she was the Early Childhood Educator/Supported Child Development teacher (ECE) who had written the undated letter available at the time of the Reconsideration Decision. She said the letter was written in January 2024.
 - That she has had a very close friendship with the Appellant for about 12 years and is considered an aunt to her children, although there is no biological connection.
 - That she confirmed the content of her letter, and that the living situation remains to this date. She visits the Appellant's house approximately twice a week and spends additional time with the Appellant away from her home. She sees the children in the home, and she sees them coming and going from the house via a video surveillance system on the Appellant's external doors that feeds to the Appellant's phone.
 - The Appellant's daughter stated that:

- She had lived mainly at the Appellant's house and had never lived mainly at her father's. She had been hospitalized in early 2022 and her father had taken her from the hospital to his place where she had stayed for the spring break. Other than that, there were no extended visits. She has not been at her father's house since the May 2024 long weekend.
- While she attended school in the other town, the parenting arrangement was maintained.
- Her brother has also always lived mainly at the Appellant's house, although he has not wanted to go to his father's house lately because of conflict with the father's girlfriend.
- The Appellant:
 - Confirmed that, while there were later court orders dealing with other subjects, she had included all that related to parenting arrangements.
 - Confirmed that there was no other court ordered parenting agreement for her daughter than the one granted on March 5, 2012. The agreed arrangement was 80/20 with the daughter spending 80% of her time at the Appellant's home.
 - She had been unable to get the desired letter from the Ministry of Children and Family Development because their policy only allows them to write letters on behalf of clients to the Canada Revenue Agency. They were also reluctant to assist because she was outside their service area.
- The Ministry
 - The Ministry Representative stated that the Reconsideration Decision was based on the email from the FPC being the most recent documentation of the family situation, and that he had no further information related to the Appellant's file.

Admissibility of New Evidence

Neither party objected to the new evidence of the other party provided at the hearing.

The Panel finds that the oral testimonies of the Appellant, her daughter, the CYCW and the Ministry at the hearing clarify issues related to this appeal. The Panel admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's Reconsideration Decision denying the Appellant's request to add her daughter and her son to her family unit as dependent children was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Section 1(1) of the Act provides the definition for a "dependent child".

Section 1(1) of the Regulation provides the definition for a "parent"

Ministry Position

Based on the most recent information available at this time, the Ministry is unable to establish that the children currently reside with the Appellant for more than 50% of the time and are reliant on her for the necessities of life. As such, the Ministry is unable to establish that the Appellant's relationship with the children meets the definition of "dependent child" or "parent" as set out in Section 1 of the *Employment and Assistance for Persons with Disabilities Act* and Section 1 of the *Employment and Assistance for Persons with Disabilities Regulation*.

Appellant's Position

The Appellant's daughter resided with her for 80% of the time and, since May 2024, has not been at her ex-partner's house, and her son resided with her for 60% of the time, as per the court-ordered custody agreement, and recently has not wanted to go to her ex-partner's house because of conflict with his girlfriend. The Appellant further advises that the children rely on her for the necessities of life.

As of March 2012, the Appellant's residence was designated, by the Provincial Court of British Columbia, as the children's primary residence, with her responsible for their day-to-day care. As of November 2022, the children were ordered, by the Provincial Court of British Columbia, to reside at both the Appellant's and her ex-partner's residences, with the agreement being for an 80/20 split in the Appellant's favor. As of January 2024, the children were supposed to reside with her from Monday to Friday.

The Appellant disputes the information received from the Ministry of Children and Family Development and explains that this information was fraudulently submitted by her ex-partner for the purposes of financial benefits.

Panel's Findings

Section 1(1) of the *Act* defines “dependent child” 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...”

There is an obvious contradiction between the email provided by the FPC, and the evidence provided by the Appellant and supported by her daughter, the CYCW, the ECE, the FSW, and the Child Development Consultant.

The Ministry has relied on the email from the FPC. Greater weight was given to the email from the FPC because it is “more current than any documentation you (the Appellant) have submitted regarding your custody agreement.” There is no evidence the Ministry investigated any further by talking to the Appellant or the children, ensuring there was no later court order, or contacting any of the individuals who submitted the letters supporting the Appellant, or seeking corroboration/verification of the ex-partner’s submission from other sources.

The Panel gives less weight to the letters of the ECE and the Child Development Consultant, and the letter of the FSW dated August 2022 because the first two are undated, and all three speak to a different timeframe. However, they all show a history of the living arrangements consistent with the Appellant’s testimony and the court orders. The Panel agrees that the two letters from the school do not contribute significantly to the topic under appeal.

The Panel notes that, while the email from the FPC was dated June 17, 2024, it states that the writer was not involved with the family since February 2024 and the second letter from the FSW, dated January 3, 2024, is very close in time to the involvement of the FPC. The letter from the CYCW was given little weight by the Ministry because it was undated. However, at the hearing, the CYCW stated that it was written in January 2024 and that the contents are still accurate today. This personal testimony has increased its weight as evidence for the Panel.

The Panel notes that the Ministry makes little mention of the court orders. The Panel specifically takes note of:

- The court order of March 5, 2012, which says:
 - The primary residence of the children shall be in the Appellant’s home.
 - While there will be joint custody, the Appellant will have primary responsibility for the day-to-day care of the children.
- The court order of November 21, 2022, which says:
 - The ex-partner will have the son from 7:00 p.m. on Fridays until 9:00 a.m. on Monday.

- The court order of October 11, 2023, which found:
 - The ex-partner has denied parenting time to the Appellant, has not complied with the order of November 21, 2022, and has been unwilling to comply with the parenting terms of the court order.

Based on the terms of the court orders and the evidence provided by the Appellant, her daughter, and the CYCW, and weighing this against the email from the FPC, the Panel finds the Ministry was not reasonable in finding that the primary residence for the children was not, and is not, with the Appellant.

While the supporting letters were of use on a persuasive level to confirm that the children live with the Appellant, it is the Court Order mandating the time share that is the conclusive argument in coming to this decision.

Section 1(1) of the Regulation defines "parent" as:

- “(a) a guardian of the person of the child, other than
 - (i) a director under the [Child, Family and Community Service Act](#), or
 - (ii) an administrator or director under the [Adoption Act](#)
- (b) **a person legally entitled to custody of a child...** (emphasis added)

The Panel notes that, under the terms of the court orders currently in place, the custody of the children is shared, with more than half of the time spent with the Appellant. Because the Appellant is legally entitled to custody of the children for more than half the time, only she can qualify as a parent under section 1(1)(b) for the purposes of "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 the definition of a dependent child.

Summary

The Panel finds that the evidence and the court orders establish that the children reside more than 50% of the time with the Appellant and, because the court orders establish that she has custody for more than 50% of the time, only she can be considered the parent for the purposes of defining a dependent child. If the ex-partner wishes to claim the children as dependent children, the onus would be on him to have the court order modified before applying to have them moved to his file.

Conclusion

The Panel finds that the Ministry decision denying the Appellant's request to add her daughter and her son to her family unit as dependent children was not supported by the evidence and was not a reasonable interpretation of the existing legislation.

The Panel rescinds the Reconsideration Decision and the Appellant's appeal is successful.

SCHEDULE OF LEGISLATION

Employment and Assistance for Persons with Disabilities Act

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);

...

Employment and Assistance for Persons with Disabilities Regulation

Definitions

1 (1) In this regulation:

...

"parent", in relation to a dependent child, includes the following other than for the purposes of section 17 [*assignment of maintenance rights*] of this regulation and section 6 [*people receiving room and board*] of Schedule A of this regulation:

(a) a guardian of the person of the child, other than

(i) a director under the [Child, Family and Community Service Act](#), or

(ii) an administrator or director under the [Adoption Act](#);

(b) a person legally entitled to custody of a child, other than an official referred to in paragraph (a) (i) or (ii);

(c) if the child is a dependent child of a parenting dependent child, a person who is the parent of the parenting dependent child;

...

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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
Wes Nelson

Signature of Chair

Date (Year/Month/Day)
2024/09/12

Print Name
Katherine Wellburn

Signature of Member

Date (Year/Month/Day)
2024/09/11

Print Name
Linda Pierre

Signature of Member

Date (Year/Month/Day)
2024/09/11