

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision dated February 14, 2012 that held that the appellant was not eligible for further Disability Assistance (DA) as a single person because she is residing with person A in a marriage-like relationship pursuant to section 1.1 of the Employment and Assistance for Persons With Disabilities Act. The appellant had been a single recipient since June 19, 2003.

**PART D – Relevant Legislation**

Employment and Assistance for Persons With Disabilities Act (EAPWDA), section 1.1. (1) and (2).

## PART E – Summary of Facts

The evidence before the ministry at reconsideration was comprised of:

- Bank statements from September and November 2011, with 2 entries for December 2011. No account name(s) appeared;
- A Shelter Information form and Rent Receipt dated July 1, 2011 for the appellant at the same address as person A, indicating rent at \$400 per month including utilities;
- A letter from person A dated December 8, 2011 confirming that the appellant has paid \$400 per month rent since July 1, 2011;
- A letter from person A dated December 14, 2011 indicating that he has lived at the same address since April 1, 2011 and that the appellant moved in on July 1, 2011. The appellant agreed to pay him \$400 per month for rent towards his \$1100 monthly rent. Person A indicates that the appellant usually paid in cash or he deducts money owed when she pays for groceries or other living expenses. He adds that from this point on, the appellant will provide person A with post-dated cheques for her portion of the rent;
- Copies of 3 cheques for rent for January, February and March 2012, of \$400 each, made out to person A and signed by the appellant;
- Account transactions dated from October 31, 2011 through November 14, 2011, from the appellant's credit card with purchases listed for example: oyama sausage, chocolaterie, pacific angler, etc.;
- An undated statement from the appellant showing how she paid her rent since moving in with person A. It gives a breakdown from July through December, 2011 as follows:
  - July - \$500 cash including utilities indicating a credit card advance,
  - August - \$500 cash including utilities indicating a credit card advance,
  - September - \$400 cash to person A,
  - October - \$330 by cheque and \$70 cash,
  - November - \$400 cash,
  - December - used a credit card to purchase Xmas items for person A in Vancouver.

The appellant adds that her ministry cheques went to a previous address but were not located; so prior to being reimbursed by the ministry; the appellant took out cash advances from her credit card.

- A Tenancy Agreement for person A dated April 1, 2011;
- A receipt from a department store dated November 23, 2011 for \$350.52;
- A Request for Reconsideration dated January 19, 2012 from the appellant;
- A 4 page submission from the appellant's advocate dated February 8, 2012.

The appellant's advocate submits that the appellant is residing with person A "solely due to circumstances outside her control, namely the bedbug infestation of her previous residence" and that she does not identify as being in a "marriage-like" relationship. It is argued that the appellant's use of "boyfriend" when referring to person A does not have the same stable, long-term connotation as "husband" or "spouse" and cannot be deemed equivalent. The advocate indicates that the appellant would prefer to live alone and has only moved in with person A on a temporary basis until she can find appropriate housing on her fixed income. The appellant has registered and is on waiting lists for other housing. It was noted that the appellant had lived at her previous residence for 13 years before she was forced to move due to a bedbug infestation and health considerations. For that reason, the appellant stopped paying rent in December 2010 and couch surfed until July 2011. It is further argued that there is "no financial dependence or interdependence" and person A is still legally married. As such the appellant is not eligible for person A's pension, health benefits or any other financial benefits that would accrue from being in a "marriage-like" relationship. It is also stated that the appellant purchases her own groceries and does not have any joint accounts with person A. As legal considerations, the advocate cites excerpts from: *Abrahams v. Canada* that asserts that "where social benefits are concerned, ambiguities arising from difficulties with the legislative language should be resolved in favor of the claimant"; *Hudson v. EAAT* asserts that "legislation must be interpreted with a benevolent purpose in mind"; and section 8 of the

Interpretation Act that states " [e]very enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its object".

In its reconsideration decision, the ministry notes that the appellant had acknowledged to the Investigation Officer (IO) on November 22, 2011, that she was in a relationship with person A. The ministry states that while the appellant has since recanted this, she calls person A her "boyfriend". The ministry finds that this still meets the definition of "spouse" according to the legislation. The appellant had also indicated to the IO, that person A had income and she did not think she would qualify for DA because of this. The ministry also notes that the appellant and person A have lived together for at least 3 consecutive months (July, 2011-February 2012). The ministry has determined that while person A is still married and the appellant may not be entitled to be named in his will or eligible for his pension, this does not mean that he cannot meet the definition of "spouse" under the Act. By using her credit card to make purchases for person A, the ministry is satisfied that that the appellant's relationship with person A is not consistent with a roommate relationship and demonstrates "financial dependence and interdependence". Additionally, the ministry is satisfied that the appellant's relationship with person A demonstrates "social and familial interdependence consistent with a marriage", by using her credit card to make purchases for person A's daughter and to pay for a hotel room for both herself and person A. The ministry concludes that the appellant did acknowledge that she was in a relationship with person A and not as a roommate. Also, paying for her share of the rent by paying for groceries and other living expenses is not the same as purchasing gifts for his children and paying for hotel rooms. The ministry advised the appellant that she was not eligible for DA as a single recipient.

The ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The appellant gave oral evidence that after she left her apartment of 13 years, she had no fixed residence until she moved in with a man she had known for 20 years. She pays him \$400.00 per month in rent, which includes utilities. She acknowledged that he is a "boyfriend" but denies that they are in a "marriage-like relationship". The appellant stressed that she values her independence and that while her previous residence had been small, she had enjoyed living there. She said that she wishes to live on her own again as soon as she can find a place that she can afford.

The appellant expressed concern that losing her status as a single recipient would make it difficult for her to purchase the medications for her disability and the food she requires to address her health issues. She said that she would be interested in re-locating to Vancouver in order to be closer to her daughter, but that prices there are also out of her price range; moreover, her daughter might be moving to another province in the near future. She is on wait-lists for housing in both Vancouver and Victoria.

The panel admitted the appellant's testimony as evidence under section 22(4) of the Employment and Assistance Act as it was found to be in support of the information and records before the ministry at reconsideration.

#### Findings of Fact

- The appellant has been a recipient of DA since June 2003 as a single person.
- Both the appellant and person A have lived together at the same address from July 1, 2011-February 1 2012.
- The appellant refers to person A as a boyfriend.

## PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry reasonably determined that the appellant was no longer eligible for Disability Assistance as a single person because she is residing with person A in a marriage-like relationship as per section 1.1 of the Employment and Assistance for Persons With Disabilities Act.

### Relevant Legislation

#### Employment and Assistance for Persons with Disabilities Act

##### Meaning of "spouse"

1.1 (1) Two persons, including persons of the same gender, are spouses of each other for the purposes of this Act if

(a) they are married to each other, or

(b) they acknowledge to the minister that they are residing together in a marriage-like relationship.

(2) Two persons who reside together, including persons of the same gender, are spouses of each other for the purposes of this Act if

(a) they have resided together for at least

(i) the previous 3 consecutive months, or

(ii) 9 of the previous 12 months, and

(b) the minister is satisfied that the relationship demonstrates

(i) financial dependence or interdependence, and

(ii) social and familial interdependence, consistent with a marriage-like relationship.

It is the appellant's position that she is residing with person A "solely due to circumstances outside her control, namely the bedbug infestation of her previous residence" and that she does not identify as being in a "marriage-like" relationship. It is argued that the appellant's use of "boyfriend" when referring to person A does not have the same stable, long-term connotation as "husband" or "spouse" and cannot be deemed equivalent. The appellant states that she would prefer to live alone and has only moved in with person A on a temporary basis until she can find appropriate housing on her fixed income. The appellant has registered and is on waiting lists for other housing in both Vancouver and Victoria.

It is the ministry's position that the appellant was not eligible for DA as a single person as she is in a "marriage-like" relationship with person A with whom she resides and has done so for at least 3 consecutive months. The ministry is satisfied that the appellant's relationship with person A is not consistent with a roommate relationship and demonstrates "financial dependence and interdependence" and "social and familial interdependence consistent with a marriage".

The panel notes that the issue to be decided is whether the ministry reasonably determined that the appellant was no longer eligible for Disability Assistance as a single recipient. The panel finds that the appellant has lived with person A since July 1, 2011 and acknowledges him as her "boyfriend". She is noted to contribute \$400 by cash or other purchases towards person A's monthly rent of \$1100 however; there is no evidence to substantiate this in the bank account records or by confirmation of these deposits to person A. The panel recognizes that although person A is still married, and the appellant is not named in his will or eligible for his pension, such provisions are not required under the Act to meet the definition of "spouse". By using her credit card to make purchases for person A; such as special food, and not contributing an equal portion of the rent, the panel finds that the appellant's relationship with person A is an informal arrangement and not consistent with a roommate relationship and demonstrates "financial dependence and interdependence". Additionally; the panel finds that by using her credit card to make purchases for person A's daughter and pay for a hotel room for both herself and person A for a two night stay, that this supports the appellant's admission of person A as a boyfriend and demonstrates "social and familial interdependence consistent with a marriage". The panel therefore finds that the ministry determined that the appellant is in a relationship with person A that meets the definition of "spouse" pursuant to section 1.1(1)(b) of the EAPWDA and that the appellant was not eligible for Disability Assistance as a single recipient pursuant to section 1.1(2) of the EAPWDA.

The panel concludes that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.