

### PART C – Decision under Appeal

The decision at appeal is the ministry's reconsideration decision of February 2, 2012. In their decision the ministry denied the appellant's request for income assistance as a single person. The ministry found that the evidence showed the appellant to be living with his spouse in circumstances which indicated that his application for income assistance should have been made on behalf of his entire family, as per Section 5 of the *Employment and Assistance Regulation, EAR*, and not as a single person. The ministry found that the appellant's situation with his spouse conformed to the definitions set out in the *Employment and Assistance Act, EAA*, sections 1 (1) and 1.1 (1) and (2).

### PART D – Relevant Legislation

*Employment and Assistance Act, EAA*, Interpretation sections 1 (1), 1.1 (1) and (2).  
*Employment and Assistance Regulation, EAR*, Sections 5(1) and (2).

## PART E – Summary of Facts

The documents before the ministry at reconsideration included:

- An Application for Income Assistance Form (Parts 1 and 2) signed and initialed by the appellant on December 20, 2011;
- A Request for Reconsideration Form, signed by the appellant on January 30, 2012, together with a 2-page letter from the appellant of the same date, the form Shelter Information provided and signed by the appellant's landlord on December 28<sup>th</sup>, 2011, a letter dated January 9, 2012 from the appellant's landlord, and a Bank Profile of the appellant from a bank in the municipality in which he lives, dated December 21, 2011.

When he filed his Notice to Appeal on February 9, 2012, the appellant wrote, "I am living under the same roof as my child and wife for cultural reasons. We have no marital relationship". He also provided a single page document giving information on his life insurance. The panel accepted this document into evidence as (a) it had been promised by the appellant in his letter seeking reconsideration, (b) it is clearly in support of evidence that was before the ministry at that time, (c) there was no objection raised by the representative from the ministry and (d) in these circumstances acceptance is allowed based on Section 22 (4) (b) of the *EAA*.

At the hearing the appellant offered two further documents from banks in another municipality with respect of his appeal. The information contained in the documents is clearly in support of evidence that was before the ministry at reconsideration. The ministry's representative at the hearing did not object to them being accepted into evidence, and so, based on Section 22 (4) (b) of the *EAA* these two documents were also accepted into evidence.

At the hearing the evidence of the appellant was that although he lives in the same house as his wife and 18 year old son, the only room in the house which he shares with them is the kitchen. He is single, he stated, having separated from his wife six years ago in 2006, and has no wish to marry again. His evidence is that he shares the rent of the residence with his wife; that he has paid his share of the rent for January and February through funds borrowed from others but that he has so far been unable to pay his rent for March. He confirmed that his wife is the co-account holder of two accounts held by him at the bank in the municipality in which he lives, as stated in the Bank Profile that was before the ministry at reconsideration. One of the tendered documents accepted at the hearing indicates that on February 22, 2012, the appellant had two accounts at a bank in another municipality of which he is the sole owner and four accounts of which he is a joint owner. That document does not indicate who the other party or parties are on the joint accounts.

Based on the documents before us and on the testimony of the appellant, the panel makes the following finding of facts:

1. The appellant's application form gives his marital status as married, but separated.
2. According to the appellant's application form, his separation from his spouse did not result in any arrangement for the appellant to provide support to his spouse.
3. According to the appellant's landlords, since December 2011 the appellant has shared rented accommodation with his spouse and a child, paying half the monthly rent.
4. At December 21, 2011, the appellant's bank in the municipality where he lives advised that the

appellant's personal chequing account and a personal loan account were held jointly with his spouse.

5. The document provided by the appellant as evidence of his life insurance names the policy owners as the appellant and his spouse.
6. According to a document from his bank in another municipality, dated February 22, 2012, the appellant has two accounts there which are solely in his name and four in joint ownership with some other person or persons, unnamed.
7. A further document from this same bank lacks any information as to the appellant's bank accounts there. This document bears a bank stamp of February 22, 2012 and a stamp indicating that it was received at the Ministry of Social Development in that municipality on February 23, 2012.

## PART F – Reasons for Panel Decision

The issue to be determined at appeal is whether the ministry's reconsideration decision was a reasonable application of the applicable enactment, namely the *EAA* and the *EAR*, in the circumstances of the appellant. In their decision the ministry denied the appellant's request for income assistance as a single person. The ministry found that the evidence showed the appellant to be living with his spouse in circumstances which indicated that his application for income assistance should have been made on behalf of his entire family, as per Section 5 of the *Employment and Assistance Regulation, EAR*, and not as a single person. The ministry found that the appellant's situation with his spouse conformed to the definitions set out in the *Employment and Assistance Act, EAA*, sections 1 (1) and 1.1 (1) and (2).

On a procedural matter. It was apparent to the panel and the appellant confirmed, that his English was somewhat limited, so the panel sought to discover if he understood the matters in the Record. It was clear, even through his sometimes halting English, that the appellant understood that his appeal had been rejected in part because he shared accommodation and bank accounts with his wife. He stated that he had passed all the papers in the Record to another person, fluent in Punjabi and English and that this person had assisted him in understanding the documents in the Record. His answers to questions regarding the shared bank accounts and shared ownership of his Life Insurance policy and other matters, though halting, indicated that he understood not only why the ministry had come to their decision at reconsideration, but also what it was that he was being questioned about, though several questions had to be posed more than once.

The legislation relevant to this appeal is found in the *EA*, Sections 1 (1) 1.1 (1) and (2) and in the *EAR*, Section 5 (1).

Section 1 of the *EA* deals with interpretation: In it "*applicant*" (appellant before us), "*means the person in a family unit who applies under this Act for income assistance, [ ], and includes (a) the person's spouse, if the spouse is a dependant,*" "*Dependant*", in relation to another person, means anyone who resides with the other person and who (a) is the spouse of the other person." "*Family unit*" means an applicant or a recipient and his or her dependants." "*spouse*" has the meaning in section 1.1."

Section 1.1. (1) states that, "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".

Section 1.1.(2) continues, "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."

Section 5 (1) of the *EAR* reads as follows: "For a family unit to be eligible for income assistance or a supplement, an adult in the family unit must apply for the income assistance or supplement on behalf of the family unit unless (a) the family unit does not include an adult, or (b) the spouse of an adult applicant has not reached 19 years of age, in which case that spouse must apply with the adult

*applicant.*"

The ministry at reconsideration looked firstly at the definition of spouse found at 1.1 (2) of the *EAA* which defines "spouse" based on the length of time of cohabitation. The ministry state that the appellant's landlord confirmed on January 11, 2012 that the appellant and his spouse had been residing together since 2010. The ministry recounted advice given by the appellant to a ministry worker on January 11, 2012, that he resided with his wife and child and that he was not divorced from his wife. The appellant's letter of January 30, 2012, sent to the ministry with the request for reconsideration indicates that he was then living at the same shared address. This led to the ministry's finding that the legislated definition of spouse had been met in the circumstances of the appellant.

In his letter seeking reconsideration the appellant stated that he had moved into the same residence as his spouse, even though they had earlier separated, on the advice of his physician. He stated that his blood pressure was very high and that he was suffering from depression and therefore his physician had asked the appellant's spouse to take him back so that his health would not worsen. He stated that, "just seeing known faces keeps me calm". However, when he filed his Notice of Appeal the appellant stated that he lives under the same roof as his wife for cultural reasons.

At the hearing the appellant confirmed that he has not divorced his spouse. He confirmed that he was still living in the same accommodation as his spouse. Nevertheless he maintained that he was single. He re-iterated the information given in his letter of January 30, 2012, that the only room in the residence that he shared with his wife was the kitchen. He re-iterated the information that he cooked for himself and showed a receipt in support of his statement in the above mentioned letter that he also shopped for himself. He spoke of being on good terms with the other occupant in the residence, namely their 18 year old son.

The representative from the ministry repeated the conclusions drawn by the ministry at reconsideration from the evidence before them. The representative stated that the appellant and his spouse may indeed be having marital difficulties and therefore living in separate bedrooms. This, he stated, did not necessarily indicate that they are separated. Even married couples, he said, could choose for various reasons to sleep in different rooms. The ministry's representative provided further information gained by the ministry in their conversation with the appellant's landlord on January 11, 2012. According to the representative, the landlord advised the ministry that an Immigrant Society had contacted the landlord and sought to have him alter the Shelter information so that it would show that the appellant did not share the residence with his spouse. This is information that was not on the Record, and the panel lacks any evidence that the appellant was party to any effort to falsify the Shelter information. We therefore, do not consider this information to be relevant to the appeal before us.

What is relevant in terms of the cohabitation of the appellant with his spouse is his evidence that he has been sharing accommodation with his spouse, and the un-contradicted evidence of the appellant's landlord that this sharing of accommodation dates back to 2010. This evidenced meets the required legislative periods as set out in 1.1.(2) (a) of the *EAA* and leads the panel to conclude that on this section of the legislation the ministry reasonably applied the *EAA* in the circumstances of the appellant.

The ministry at reconsideration then looked at the matter of financial dependence or interdependency. The ministry refers to the evidence of the appellant that he shares the cost of rent with his spouse, and the evidence in the December 21, 2011 Bank Profile from the bank in the municipality in which the appellant lives that his spouse is a co-account holder of both the appellant's personal chequing account and a Personal loan account. The ministry then refer to a Bank Profile of the same date which they say indicates that the appellant shares the following bank accounts: day to day banking, credit line, AC,RCL account, and investment account. There is no Bank Profile in the Record so showing. However, the document offered by the appellant at the hearing, from a bank in another municipality and stamped, February 22, 2012 does indicate that the appellant shares ownership of a Day to Day banking account, a Line of Credit, an AC RCL and an Investment account. The February statement shows that there are funds in two of these joint accounts, no funds in one and a deficit balance in the other.

When filing his Appeal the appellant provided a document from his insurance company, something promised in his letter of January 30, 2011 seeking reconsideration. This document shows that the appellant is the Primary Insured individual, that the ownership of the policy is shared between the appellant and his spouse, and that premiums had been paid up to February 22, 2012.

At the hearing the appellant spoke of wanting to cut off the name of his spouse from his bank accounts. His letter of January 30, 2011 when seeking reconsideration, speaks of "trying to separate our accounts". He was asked about the shared ownership with his wife of the Life Insurance policy and mentioned that he wanted to look after their 18 year old son and that she had played a part in providing funds for the premiums. Regarding the rental costs he shared with his spouse the appellant's testimony was that he had borrowed funds to cover his January and February share of the rent but had so far been unable to come up with funds to pay his share of the rent for March. He stated that he would not be able to return to work, thus earning a salary, until he got the permission of his doctor.

The representative from the ministry referred to the joint bank accounts and the shared ownership in the Life Insurance policy, together with the sharing of the rent for the residence, as indicators of financial interdependence. He told of difficulties faced by ministry workers when on January 11, 2012 they sought to ascertain how the appellant had been able to pay his portion of the rent in January and how he was able to pay the rent during those periods when he indicated his wife was not living in the house. According to the representative of the ministry the appellant either failed to answer questions or hung up the telephone.

The evidence before the panel indicates a strong degree of financial interdependence between the appellant and his spouse, such that the panel finds the ministry's conclusions on this matter to be a reasonable application of the relevant sections of the *EAA* in the circumstances of the appellant.

With regards to social and familial interdependence the ministry at reconsideration refers to the appellant's evidence given to a ministry worker on September 11, 2011 that he and his spouse were not separated or divorced, his inability to confirm the status of his relationship in January 2012 and his failure to deny to a ministry worker that he was still married. They therefore conclude that the legislated requirement of section 1.1. (2) (b) (ii) had been met.

The appellant at the hearing was clear that he had separated from his spouse six years ago, that he did not wish to divorce her, did not plan to re-marry, that in his culture there was no divorce, that he did not wish to be involved in quarrels and that he found such situations distressing. He agreed that he has been living in the same residence as his spouse, though sharing only the kitchen of the residence. He stated that his brothers and sisters both in this province and in another province knew that he and his spouse were separated, though sharing the same residence. He said that they had no problems with his situation. He says that his answer to anyone who inquires as to his marital status is that he is "single".

The panel finds that there is clearly confusion as to when the appellant separated from his spouse. At the hearing he spoke of this separation occurring 6 years ago, in 2006. When he applied for income assistance in December 2011, he stated that he had separated from his spouse in October 2011. The appellant at the hearing was adamant that he regards himself as "single". The panel lacks evidence, beyond the statement of the appellant that in the Punjabi culture there is no divorce. The panel also notes that there is no mention of culture in the January 30, 2012 letter sent by the appellant when seeking reconsideration. His testimony as to the information he has given to his siblings is that he and his spouse are separated but still sharing a home. In the face of such evidence and in the circumstances of the appellant the panel finds that the ministry's conclusions regarding Section 1.1 (2) (b) are a reasonable application of the legislation.

The ministry finally point out that section 5 of the *EAR* requires that a person is required to apply for assistance on behalf of the entire family unit. They state that the appellant failed to do so and that he needs to do so in order for the ministry to consider his request. They advise the appellant that as the individual with whom he shares a residence has been determined to meet the definition of spouse, she meets the definition of a dependent and is considered to be part of his family unit. Therefore, they conclude, she must be included in the appellant's application for Income Assistance.

The panel finds that on this the ministry's decision is a reasonable application of the *EAR* in the circumstances of the appellant.

Based on the analysis above, the panel finds that the ministry's application of the *EA* and *EAR* in the circumstances of the appellant was reasonable, and accordingly we confirm the ministry's decision.