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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated February 14, 2012 wherein the ministry decided that the appellant was not eligible for disability assistance. The basis for the decision was the ministry's finding that the relationship between the appellant and her boyfriend satisfied the criteria set out in section 1.1 of the *Employment and Assistance for Persons With Disabilities Act* with respect to the length of time of residing together, the degree of financial dependence or interdependence, and social and familial interdependence to establish that they are spouses of each other. Accordingly, the ministry found that the appellant failed to apply for assistance on behalf of her entire family unit as required by section 5 of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA),
section 1 *[definitions of "applicant", "dependant", "family unit", and "recipient"]*;
section 1.1 *[meaning of "spouse"]*.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR),
section 5 *[applicant requirements]*.

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PART E – Summary of Facts

The appellant did not attend the appeal hearing. After confirming that the appellant had been notified of the hearing, the panel proceeded with the hearing in accordance with section 86(b) of the Employment and Assistance Regulation.

Prior to the reconsideration decision that is the subject of this appeal, the appellant had been receiving disability assistance as a single parent with one dependent child. Her file was opened in April 2008.

In the reconsideration decision, the ministry determined that the appellant had been residing with her boyfriend V in a manner consistent with a marriage-like relationship for the previous 3 consecutive months, or 9 of the previous 12 months. The evidence before the minister at the time of the reconsideration decision included the following:

- Letters sent to the appellant on December 13, 2011 at her addresses in community A and community B advising her of her ineligibility for further disability assistance because of her failure to comply with the ministry's direction to provide verification of information, and because of the determination that her relationship with her boyfriend V fell under the definition of "spouse" in section 1.1 of the EAPWDA.

- An Employment and Assistance Request for Reconsideration form including information provided by a ministry worker, and signed by the ministry worker on January 16, 2012.

- The appellant's typewritten submission to the reconsideration officer dated February 1, 2012.

- Computer history records of notes of various telephone conversations between the ministry and the appellant including, among others:

  a) notes of a telephone conversation between a ministry supervisor and the appellant on January 11, 2012 in which the appellant says she is unhappy with the ministry's audit and complaining about inappropriate behaviour by the investigating officer on a previous phone call. The supervisor advised the appellant that the supervisor was sitting with the investigating officer during the referenced previous phone call, and that the investigating officer's alleged inappropriate behaviour did not occur. The appellant referred to her boyfriend V's home as "our" home then corrected herself "I mean his home." The appellant stated she is now 4 months pregnant with V's child and that she is living in V's legal suite, and that the new address has two hydro meters and that one is hers for the suite. The appellant stated she has a lawyer and advocate involved.
  b) a note referring to mail returned to the ministry September 16, 2011, and stating the appellant had asked that all mail be directed to her post office box, as appellant has difficulty at home with people picking up her mail.

- A Shelter Information form date-stamped as being received by the ministry on January 18, 2010. This form is meant to provide the ministry with details of the appellant's shelter arrangements. It indicated the appellant was renting a lower suite at an address in community A, but provided a mailing address for the appellant in nearby community B. It showed the appellant paying rent of $650 per month, with utilities included in the rental rate.

The address in community A is the residence of the appellant's father and step-mother (the appellant's parents). The form was ostensibly signed by the appellant's father as landlord on January 14, 2010. The landlord's signature is illegible. (A computer history record note on the appellant's file with the ministry, dated February 10, 2011, says that the appellant's explanation for the two addresses is that while she lives in community A, her boyfriend lives in community B and the post office box in community B is more convenient for her. The appellant also claimed that she suffers mail theft from her landlord in community A.)

- A hand-written rent receipt dated Sept 2011 ostensibly signed by the appellant's father, showing rents of $700 for each of September and October, and utilities charges of $50 for each of September and October, all for the appellant's declared address in community A. The signature itself is illegible.

- Shelter Information form identifying the basement of the appellant's boyfriend V's residence in community B submitted by the appellant on January 9, 2012 and apparently signed by the appellant's boyfriend V January 9, 2012. The signature itself is illegible. It identifies the amount of rent payable as $850 for the month of January, 2012, and a security deposit of $400.

- Condition Inspection Report for a residence in community C, dated July 1, 2009 and listing the appellant and her boyfriend V as tenants.

- A residential tenancy agreement dated January 15, 2010 for a residence in community D, listing the appellant and her boyfriend V as tenants, with the appellant using her boyfriend V's surname.

- A Small Claims Court Summons to a Payment Hearing, filed at the court registry on January 4, 2011, requiring the appellant and her boyfriend V to appear with respect to a claim for rent arrears for the residence in community D. The appellant's name is given showing her surname in brackets followed by V's surname.

- A December 21, 2010 Dispute Resolution order for the appellant and V to deliver vacant possession of the residence in community D to the landlord. The appellant's name is given showing her surname in brackets followed by V's surname.

- A business card left at the residence in community D showing the appellant using her boyfriend V's surname.

- Joint bank statements for the period March 21, 2011 to October 20, 2011in the name of the appellant and her boyfriend V.

- A bank profile from the appellant's bank, showing that on February 4, 2010 the appellant requested that her account be made joint with "spouse, [V]".

- An e-mail dated November 16, 2011 from the appellant's financial advisor verifying the appellant's boyfriend V as beneficiary on the appellant's application for a life insurance policy.

- Power of Attorney given by the appellant's boyfriend V to the appellant, appointing the appellant to enter into and endorse on V's behalf a Direct Loan Agreement with the federal Minister of Human Resources and Skills Development. The document was signed by V on July 18, 2011.

- A Home Owner Grant Consent for Release of Information in the appellant's name, signed by the appellant on June 3, 2011 for the residence owned by her boyfriend V in community B. At the bottom of the form is a handwritten notation stating "Property in the name of [the appellant's boyfriend V]. [The appellant] said her name is going to be put on title." There is no indication as to who wrote the handwritten notation or when it was written.

- A 2008 list of Minor Baseball executive members in community B, listing the appellant using her boyfriend V's surname.

- A Consent to Disclosure of Information form dated June 29, 2011 wherein the appellant authorized the ministry to disclose personal information about the appellant's eligibility for disability assistance to her boyfriend V, and authorizing her boyfriend V to pick up her disability cheques.

- An undated page from a draft physician's assessment report stamped as being received by the ministry on August 5, 2010, wherein it is stated that the appellant has a healthy minor daughter and that the appellant also takes care of her "partner's" minor daughter.

In the January 16, 2012 Request for Reconsideration, the ministry worker wrote that:

- regarding evidence of the appellant and her boyfriend V living together in a spousal/familial/dependency relationship, there have been several fraud allegations made by the public over a number of years to the effect that the appellant and her boyfriend V were living together as a couple at the home owned by V in community B. The worker stated that V's home suffered fire damage in January 2009, causing the appellant to subsequently reside with her boyfriend V in two rental residences, one in community C and one in community D pending reconstruction of V's home in community B.

- while the January 18, 2010 Shelter Information form shows the appellant rented the lower suite at the appellant's parent's residence in community A, both the appellant's parents and the appellant herself have informed the ministry worker that there is no lower suite at the appellant's parent's residence. The appellant's parents have both advised the ministry that they have not provided written documentation regarding the appellant's shelter and would not likely do so. There have been numerous times over the years that correspondence from the ministry, mailed to the appellant's address in community A, was returned as "moved" or "not at this address".

- the appellant and her boyfriend V applied for income assistance as a couple on June 24, 2009 but then advised the ministry on July 6, 2009 that they were not living together and that the boyfriend V would be moving to community C for employment. (The above-noted Condition Inspection Report of July 1, 2009 for the residence in community C lists the appellant and V as tenants.)

- the appellant and her boyfriend V then rented a residence in community D. (as evidenced by the above-noted residential tenancy agreement of January 15, 2010. A computer history record of a telephone conversation between the ministry and the appellant on January 19, 2011, says that the appellant's explanation for her being listed as a tenant is that she rented the residence for her boyfriend V as he moved from community C to community D. The appellant stated that she did not live full time at the residence in community D, but that she used the address 2 days per week due to her frequent medical appointments.)

- the landlord of the residence in community D was contacted by the ministry and the landlord advised that the appellant and her boyfriend V rented the residence together as a family with two children. The landlord stated there was no question that the appellant was living at the residence full time, that the appellant and V had presented themselves as a family, that the landlord had met the appellant as using V's surname, and did not know the appellant's actual surname until later. The appellant and V moved back to V's residence in community B in December 2010 once reconstruction was complete.

- the appellant confirmed in a doctor's report (noted above) that she parents her "partner's" daughter. The Ministry for Children and Family Development (MCFD) opened a Family Service File on June 13, 2008 in which V's daughter is shown as the appellant's step-daughter. The ministry contacted the social worker on the MCFD file. The social worker advised that the appellant was designated as step-mother because the appellant lives with V at V's home in community B, as confirmed by a visit to the home and an assessment done by MCFD.

- a second MCFD file was opened on June 13, 2008 as the appellant was caring for a teenage high school student in community B. The social worker advised the ministry that the appellant's home address was again confirmed as V's residence in community B. The social worker advised that MCFD again attended the residence in May 2011, that the appellant was still a resident there, that an assessment was done regarding the living situation, and that the appellant submitted documentation showing she had been caring for and supporting the teenage child and had applied for a Child Tax Benefit for the child. According to MCFD, as the appellant does not drive she would have to be residing in community B in order to parent this child.

- the appellant advised the ministry's Prevention and Loss Management Supervisor in a (undated, but presumably on or about January 11, 2012) telephone conversation that she and her boyfriend V had been a couple since 2004. The appellant stated that she and V had now broken up, but she was 4 months pregnant with V's child, and would be moving into V's legal basement suite in community B. (A computer history record dated January 11, 2012 shows that the ministry contacted the bylaw enforcement office of community B. The bylaw enforcement office advised that there is no legal suite at V's residence, and that a bylaw officer would be sent to the residence to confirm.)

- regarding evidence of financial dependence/interdependence, the appellant and her boyfriend V have a joint bank account together. The above-noted bank profile obtained by the ministry shows that the appellant made her account joint with her "spouse" V on February 4, 2010.

The appellant's explanation to the ministry was that she added V to her account to avoid a "hold" that would have been put on V's house insurance cheques if he had deposited them into his own bank account. The appellant advised the ministry in January 2011 that V would be removed from the account. V has advised the ministry that he is required to be on the appellant's account as he pays her Telus bill for her. The appellant has advised the ministry that she pays her Telus bill. The joint bank account statements show many payments for BC Hydro, cable bills, and Telus bills, that according to the Shelter Information form for the appellant's declared residence in community A, she should not have to pay if utilities are included in the rental rate. Also, the purported September/October 2011 rent receipt for the residence in community A shows the appellant pays $50 per month for hydro.

- the appellant recently applied for a life insurance policy naming her boyfriend V as the beneficiary. She also submitted a document to the ministry whereby she was applying for the Disability Homeowner Grant Tax Exemption, for V's house taxes. The appellant has made statements to ministry workers that her name was going to be put on title, and that her grandfather may hold a mortgage on the residence.

- the appellant is a member of the [community B] Minor Softball Association, located in community B. Her contact information is an e-mail address comprised of her first name and V's surname. A member of the community B Minor Softball Association was contacted by the ministry to confirm that the listed individual was in fact the appellant.

At the hearing before this panel, the ministry representative relied on the evidence that was before the ministry at the time of the reconsideration decision.

In her typewritten February 1, 2012 submission to the reconsideration officer, the appellant wrote that she cannot drive so "he" (presumably her boyfriend V) takes her to appointments when he is not working, helps her do her banking when she was sick and unable, and that with her bad credit she cannot get a cell phone, house phone, cable or hydro so her bills were in V's name. The appellant wrote that she was forced onto assistance when she got ill during pregnancy in 2008. She had been "with [V], he resided in [community D]," when she eventually became too ill to live on her own and moved in with her father and stepmother in community A on February 1, 2010. The appellant stated she could not live with her boyfriend V because he works, and when she is too ill to look after herself or her child the appellant needs the support her father can provide. The appellant advised that she and her boyfriend V have had joint custody and guardianship of her child since May 2009, that the child stays with V, and that an investigation of her relationship with V in July 2010 resulted in her continuing to remain eligible for disability assistance. She advised that she does stay at her boyfriend V's home from time to time when her parents are on holidays or if V is not working and can get the appellant to her appointments. She stated she periodically is unable to get herself out of bed to get to the bathroom by herself, and at those times cannot independently do grocery shopping or banking. Accordingly, the appellant wrote, she added her boyfriend V's name to her bank account so he could pay bills and get her rent money when needed. Her boyfriend V did not have access to online banking, so when the appellant started online banking herself she also started paying bills for V who would then repay her in cash. The appellant wrote that she does not drive and the closest bus stop is 2 km from her home, so she depends on her father, mother, step mother, V and friends to help her get from home to appointments. The appellant says she pays V and her friends to drive her, and that she does not depend on any one person more than another.

In her Notice of Appeal, dated February 21, 2012 the appellant wrote "My circumstances have changed and the information in the package is not correct. I request a hearing in person so I can have witness and cou[n]sel attend and provide proper information."

The panel admits the information provided by the appellant in her Notice of Appeal as being written testimony in support of the information and records that were before the ministry at the time of the reconsideration decision in accordance with section 22(4) of the *Employment and Assistance Act*.

The panel notes the many inconsistencies and contradictions in the evidence provided by the appellant – such as whether or not her parents' residence has a separate suite, whether she rents from her parents, and whether V's residence has a legal suite - and notes that despite the ministry having given the appellant many opportunities to provide additional evidence to clarify matters, she has not done so. Accordingly, the panel has decided to give little weight to her evidence.

Based on the preponderance of the evidence of the MCFD files, the inconsistencies in the evidence regarding the existence of any landlord/tenant relationship between the appellant and her parents for the residence in community A, the instances of mail being returned to the ministry from the residence in community A, the evidence that there is no legal suite at V's residence in community B, and the long history of co-habitation in multiple communities, the panel finds as a fact that the appellant and V have resided together for at least the applicable previous 3 consecutive months and for at least the applicable 9 of the previous 12 months.

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PART F – Reasons for Panel Decision

The issue for the panel to decide is the reasonableness of the ministry's decision that the appellant was not eligible for disability assistance on the basis that she had not applied for assistance on behalf of her family unit.

The relevant legislation is as follows:

EAPWDA

"applicant" means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit, and includes

(a) the person's spouse, if the spouse is a dependant, and

(b) the person's adult dependants;

"dependant", in relation to a person, means anyone who resides with the person and who

(a) is the spouse of the person,

(b) is a dependent child of the person, or

(c) indicates a parental responsibility for the person's dependent child;

"family unit" means an applicant or a recipient and his or her dependants;

"recipient" means the person in a family unit to or for whom disability assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

(a) the person's spouse, if the spouse is a dependant, and

(b) the person's adult dependants;

"spouse" has the meaning in section 1.1;

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.

EAPWDR

Applicant requirements

5 For a family unit to be eligible for disability assistance or a supplement, an adult in the family unit must apply for the disability 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.

According to the first page of the reconsideration decision, the appellant has been in receipt of disability assistance as a single parent with one dependent child since her file was opened in April 2008. However, the rest of the reconsideration decision refers to "income assistance", and concludes that "the minister is unable to approve your request for income assistance." The panel concludes that the ministry's numerous references to "income assistance" are in error, and should refer instead to "disability assistance". This conclusion is supported by the context of the bulk of the information and evidence before the panel.

The appellant's position, as stated in her submission of February 1, 2012 is that she had been living in community A rather than with her boyfriend V, and that her relationship with V is not one of dependence since she does not depend on any one person more than another. She feels the ministry's decision is not correct since she is disabled and has no means of financially supporting herself and her child, she is no longer in a relationship, and when she was in a relationship it was not a dependant relationship. She argues that the definition of "spouse" does not apply to her or to her previous relationship. In her Notice of Appeal she says that her circumstances have changed and that the information in the package is not correct.

The ministry representative argues that the evidence shows that the appellant has received disability benefits while living in a common law relationship with V. He says that the appellant's relationship with V satisfies the legislative criteria for a common law spousal relationship regarding the length of time they have lived together, the degree of financial dependence or interdependence, and the degree of social and familial interdependence.

The ministry representative points to the 2008 Executive List for the community B minor softball association, the July 2009 residential condition inspection form from community C, the 2010 tenancy agreement and other tenancy related documents from community D, the inconsistencies in the appellant's claims that she has been living at the residence of her parents in community A, and the frequently-returned mail from the appellant's declared address in community A as evidence that the appellant and V have been residing together since at least 2008. He submits that no withdrawal from the appellant's bank account demonstrates any payment of rent to the appellant's parents. The ministry representative also argued that the fact that the appellant's MCFD file shows no interruption of the appellant's address at V's residence in community B since at May 2011 as supporting the conclusion that the appellant and V had been residing together for the requisite amount of time to

satisfy the requirements of section 1.1 of the EAPWDA.

With respect to financial dependence and interdependence, the ministry representative points to the evidence of the joint bank account, into which V's house insurance payouts were deposited, and into which the appellant's disability assistance was deposited. Both parties had access to those funds. He also points to the appellant's own evidence that she often paid V's bills, and he often paid her bills. The ministry representative referred to the evidence of V being the beneficiary of the appellant's life insurance and of V giving the appellant power of attorney, and pointed to the appellant's application for a Home Owner Grant Tax Exemption on V's home as an example of a joint financial benefit shared by the two.

Regarding familial interdependence, the ministry representative refers to the appellant's own statements that V and the appellant have joint custody and guardianship of the appellant's daughter and that the appellant cares for V's daughter. The joint caring for V's daughter is supported by the evidence of the MCFD files and the page from the draft physician's report.

Regarding social interdependence, the ministry representative refers to the various tenancy documents, the softball association executive list, the business card, and her request to the bank to make her account joint with her "spouse" as evidence that the appellant and V have been holding themselves out in the community as spouses since at least 2008.

Based on the panel's finding with respect to residence, and the preponderance of the evidence showing financial dependence and interdependence as well as familial and social interdependence consistent with a marriage-like relationship, the panel finds that the ministry reasonably concluded that the appellant and V are spouses as defined by EAPWDA section 1.1.

Section 5 of the EAPWDR requires that, subject to the exceptions set out in paragraphs (a) and (b), in order for a family unit to be eligible for disability assistance, an adult in the family unit must apply on behalf of the family unit. The exceptions in paragraphs (a) and (b) don't apply to the instant case.

Based on the definition of "dependant", it's clear that the appellant and V are dependants of each other. Based on the definitions of "applicant" and "recipient", the appellant and V, along with the children, form a "family unit". The evidence supports the conclusion that the appellant has been receiving disability assistance as a single parent with a dependent child while she was a member of a larger family unit. The panel finds that the ministry's conclusion that the appellant was not eligible for disability assistance since she had not applied on behalf of the family unit as required by section 5 of the EAPWDR was reasonably supported by the evidence.

Accordingly, the panel confirms the ministry's decision.