

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated April 10, 2012, which held that the appellant is not eligible for income assistance due to failure to apply for income assistance on behalf of her entire family unit pursuant to Sections 1 and 1.1 of the *Employment and Assistance Act (EAA)* and Section 5 of the *Employment and Assistance Regulation (EAR)*. The ministry determined that the appellant's roommate is her spouse as defined in section 1.1 of the EAA and is therefore a part of the appellant's family unit. Therefore the appellant must include her roommate on her file to be eligible for income assistance.

PART D – Relevant Legislation

Employment and Assistance Act – EAA – Section 1
Employment and Assistance Act – EAA – Section 1.1
Employment and Assistance Regulation – EAR – Section 5 (1)

PART E – Summary of Facts

The evidence before the ministry at the reconsideration decision included:

- The appellant was in receipt of Income Assistance since July 2011;
- The appellant has been living with her roommate in a same residence for 12 years;
- Three letters from the ministry to the appellant dated March 7, March 19, and March 21, 2012 inviting the appellant to attend a meeting in order to produce documents relating to her tenancy agreement and bank account;
- A copy of the appellant's bank customer profile;
- A copy of the appellant's bank statement dated December 31, 2009;
- Appellant's statement of account from October 1, 2011 to March 7 2012;
- A void cheque indicating the appellant's account information;
- The appellant's confirmation of earnings dated March 7, 2012;
- A copy of personal member service changes signed by the appellant and her roommate on March 22, 2012;
- A note from the appellant's roommate dated March 18, 2012, indicating that the appellant has been renting a room from him for the amount of \$525 per month;
- Request for reconsideration dated March 26, 2012.

The appellant in the request for reconsideration stated that she has no means of support. The appellant said that she is looking for employment and needs assistance until she finds a job. The appellant further stated that her roommate is not her spouse; she said that "we are roommates and have been for many years". The appellant stated that the only reason she and her roommate had a joint bank account was that it made the running of the household easier and that her roommate didn't have an account. The appellant said that she recently removed her roommate's name from her bank account.

At the hearing, the appellant stated that she is not in relationship with her roommate. The appellant said that she needs assistance and without support she will be homeless. The appellant agreed that she had a joint account with her roommate; however, she said that this was to run the household easier. In regards to the note from her roommate, the appellant stated that she has been paying \$525 monthly for rent to her roommate.

The appellant further stated that she and her roommate have had other roommates who were contributing to the expenses and paying rent. The appellant said that currently her roommate's girlfriend lives with them and pays her portion of the rent.

The ministry stated the reconsideration decision is reasonable as the appellant has been living with her roommate for at least the previous 3 consecutive months and that the appellant had a joint account with her roommate. The ministry further stated that the only deposits to this joint account were the roommate's salary and the appellant's income assistance and that the household expenses such as grocery, vet, gasoline, cable TV, and hydro were withdrawn from this account. The ministry further submitted that there is no evidence before the ministry that a 3rd person has been living in the appellant's residence or any deposits as rent contributions from the 3rd person were deposited into this joint account. The ministry submitted that the appellant's previous landlord and her current landlord confirmed that the appellant and her roommate are living like a husband and wife.

The appellant stated that she did not provide information about the 3rd roommate as no one asked her about it. The appellant said that the ministry's staff told her to remove her roommate from her bank account which she has done and presently the rent is paid from her roommate's account.

The panel finds that:

- The appellant and her roommate have been living together for the past 12 years;
- The appellant and her roommate had a joint account;
- There was no evidence before the ministry that another person was living with the appellant and her roommate.

PART F – Reasons for Panel Decision

The issue before the panel is the reasonableness of the ministry's reconsideration decision dated April 10, 2012, which held that the appellant is not eligible for income assistance due to failure to apply for income assistance on behalf of her entire family pursuant to Section 1 of the *Employment and Assistance Act EAA* and Section 5 of the *Employment and Assistance Regulation EAR*. The ministry determined that the appellant was living in a "marriage-like" relationship and the appellant should apply for income assistance for the entire family unit.

Pursuant to Section 1 of *EAA*, *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.

Section 1.1 of the *EAA* describes the meaning of "spouse" and states:

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.

Pursuant to Section 5 (1) of *EAR* 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 appellant's position is that she has not been living with her roommate as a couple. The appellant admitted that she had a joint account with her roommate but stated that this was only to assist in running the household smoothly. The appellant argued that the ministry's decision is unreasonable; she does not have any place to go and needs assistance until finding an employment.

The appellant argued that another person lived with her and her roommate and currently her roommate's girlfriend lives with them. The appellant stated she has hardly seen her landlord and the only time she saw her was last summer when the appellant invited the landlord to view their residence.

The ministry's position is that the reconsideration decision is reasonable as the appellant has been living with her roommate for about 12 years, they had a joint account together and the appellant's landlord confirmed that the appellant and her roommate live as a couple and no one else lives in their residence.

The appellant stated that currently the roommate's girlfriend is living with the appellant and her roommate and that the appellant pays 1/3 of the rent. However, the panel finds that there is no supporting evidence as to another person living in the appellant's residence. The panel accepts the evidence from the appellant's

current and previous landlords that the appellant and her roommate are the only tenants in the residence and they live as a couple.

Pursuant to Section 1.1 (2) (a) of the *EAA*, two people are spouses of each other if they have resided together for at least the previous 3 consecutive months. Therefore, the panel finds that the ministry reasonably determined that the criterion of Section 1.1(2)(a) was met.

In terms of social and familial interdependence, the appellant's landlord confirmed that the appellant and her roommate were the only tenants in the residence and the landlord, on two occasions, referred to the appellant and her roommate as husband and wife. The panel notes that there was no supporting evidence regarding another roommate living in the residence and contributing to the rent.

In terms of financial interdependence the panel notes that the appellant and her roommate had a joint bank account. Both of their incomes were deposited into this account. The purchases on the account such as vet, grocery, gasoline, and automotive show far more interdependency than one would reasonably expect in a strictly roommate relationship. Based on the evidence, the panel finds that the decision of the ministry concluding that appellant lives in a marriage-like relationship and that the roommate is the appellant's spouse is a reasonable decision.

Pursuant to Section 1 of the *EAA*, a spouse is also a dependant. Family unit means an applicant or a recipient and his or her dependants.

With respect to Section 5 of the *EAR*, subject to two exceptions, in order for a family unit to be eligible for income assistance, an adult must apply for the income assistance on behalf of the family unit. Based on the evidence the two exceptions do not apply in this case. Therefore, it was reasonable for the ministry to determine that the appellant should apply on behalf of her family unit.

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