

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated March 27, 2012 wherein the ministry decided that the appellant was ineligible for income assistance. The basis for the decision was the ministry's finding that the relationship between the appellant and person X satisfied the criteria set out in section 1.1(2) of the *Employment and Assistance Act* (EAA) 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. The ministry also determined that the appellant has acknowledged residing together in a marriage-like relationship and therefore person X is the appellant's spouse within the meaning of 1.1(1)(b) of the EAA. Accordingly, the ministry found that the appellant failed to apply for assistance on behalf of her entire family unit as required by section 5(1) of the *Employment and Assistance Regulation*.

PART D – Relevant Legislation

Employment and Assistance Act (EAA),
Section 1 [definitions of "dependant" and "family unit"]
Section 1.1 [meaning of "spouse"]

Employment and Assistance Regulation (EAR)
Section 5

PART E – Summary of Facts

Neither the appellant nor the ministry attended the appeal hearing. After confirming that both parties had been notified of the hearing, the panel proceeded with the hearing in accordance with section 86(b) of the EAR.

The evidence before the ministry at the time of the reconsideration decision included the following:

- A Request for Reconsideration form including information from a ministry worker and a brief written submission from the appellant, signed by the appellant on March 20, 2012.
- A Residential Tenancy Agreement (the tenancy agreement) listing the appellant and X as tenants, and 4 minor children as other occupants. The commencement date for the tenancy is given as September 27, 2011.
- An ICBC Owner's Certificate of Insurance for a vehicle owned by the appellant, with an effective date of February 21, 2012. The appellant has identified X as the principle operator. The appellant's declared address is the same as for the residence in the tenancy agreement.
- Documentation for rental of a truck in January, 2012 by X, whereon X has provided the same street address as the residence in the tenancy agreement.

In the Request for Reconsideration, the appellant wrote that her relationship with X is "on again + off again", and that she never knows when he will be in the home. The appellant thought that if she only claimed for herself and the children then the ministry would not be taken advantage of for the times X was not in the home. The appellant reported that X had not worked since June 2011 and that he does not support the family. She provided contact information for a social worker who she said could corroborate her information, and also provided contact information for an individual who she said would verify that X is not always living with the appellant. The appellant said that she would have X added to her file immediately.

In her Notice of Appeal, the appellant wrote that she is adding X to her file, and that she has all the information that has been requested. She acknowledged that she'd been advised she'd been denied assistance as a single parent.

The panel assessed the appellant's submission in her Notice of Appeal as being written testimony in support of the information that was before the ministry at the time of its reconsideration decision, and admitted it as evidence in accordance with section 22(4) of the *Employment and Assistance Act*.

In the Request for Reconsideration, the ministry worker referred to the tenancy agreement and said that the property manager had verbally confirmed that X lives there. The ministry worker advised that the appellant's previous landlord also verbally confirmed that X resided with the appellant from April 2011 to September 2011. The ministry worker also referred to evidence of the appellant's vehicle registration showing X as principle operator of the vehicle at the same address, and the vehicle rental receipts in X's name listing the same address.

In the reconsideration decision, the ministry said that X had in the past been on the appellant's income assistance file as her spouse, and that three of the appellant's children have X's last name.

PART F – Reasons for Panel Decision

The issue on appeal is the whether the ministry's reconsideration decision which found that the appellant was ineligible for income assistance on the basis that she and X are spouses and that the appellant had failed to apply on behalf of her family unit was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation is as follows:

EAA

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income 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 income 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;

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.

EAR**Applicant requirements**

- 5 (1) 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.
- (2) A child who is not residing with his or her parent is not eligible to receive assistance unless, after reasonable efforts by the minister to have the parent assume responsibility for the financial support of the child, the minister decides to grant income assistance to the child.

The appellant's position, as expressed in the Request for Reconsideration and the Notice of Appeal, is that the appellant and X only live together periodically, that she never knows for sure when he will be home, and that the appellant thought she was saving the ministry money by not including X in her application. She says that X does not support the family. She confirms that she is taking steps to have X included in her family unit.

The ministry's position, as provided in the reconsideration decision, is that the appellant acknowledges that she and X live together in a marriage-like relationship. The ministry also says that the evidence demonstrates that the appellant and X are spouses of each other and that they demonstrate social, familial and financial interdependence consistent with a marriage-like relationship. The ministry contends that in order for the appellant to be eligible for income assistance she must apply on behalf of her entire family unit, and that she must add X to her income assistance file.

The appellant's evidence is that she lives with X "off and on" but that X does not support the family. In the panel's view this falls somewhat short of an acknowledgement by the appellant that she and X reside together in a marriage-like relationship as contemplated by EAA section 1.1(1). However, the evidence of the tenancy agreement in both the appellant's and X's name, the evidence of the current property manager and the previous landlord, the appellant's acknowledgement that she and X do live together and that he does not always work, the evidence of the vehicle insurance certificate and the truck rental receipts, and the evidence that three of the appellant's children share X's last name taken as a whole support the ministry's conclusion that the appellant and X have lived together for the relevant time period in a relationship demonstrating financial, social and familial interdependence consistent with a marriage-like relationship. Accordingly, the panel finds that the ministry reasonably decided that the appellant and X are spouses as defined in EAA section 1.1(2).

Section 5(1) of the EAR requires that, subject to the exceptions set out in paragraphs (a) and (b), in order for a family unit to be eligible for income assistance, an adult in the family unit must apply on behalf of the family unit. There is no evidence that the exceptions in paragraphs (a) and (b) apply in the instant case.

Based on the definition of "dependant", it's clear that the appellant and X are dependants of each other. Based on the definitions of "applicant" and "recipient", the appellant and X, along with the children, form a "family unit". The evidence supports the conclusion that the appellant has been receiving income assistance as a single parent with dependent children 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 income assistance since she had not applied on behalf of the family unit as required by section 5(1) of the EAR was reasonably supported by the evidence.

Accordingly, the panel confirms the ministry's decision.