

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated May 15, 2012, which held that the appellant is not eligible for income assistance due to failure to apply for income assistance on behalf of his entire family unit pursuant to Sections 1 of the *Employment and Assistance Act (EAA)* and Section 5 (1) of the *Employment and Assistance Regulation (EAR)*. The ministry determined that the appellant's relationship with the mother of his children (Ms. B.) meets the definition of a dependent as defined in Section 1 of the EAA as she resides with the appellant and demonstrates a parental responsibility for the appellant's children. Therefore, Ms. B. must be considered part of the appellant family unit and must be included on the appellant's file in order for the appellant to be eligible for income assistance.

PART D – Relevant Legislation

*Employment and Assistance Act – EAA – Section 1*  
*Employment and Assistance Regulation – EAR – Section 5*

## PART E – Summary of Facts

The evidence before the ministry at the reconsideration decision included:

- Tenancy agreement signed by the appellant on June 28, 2010 for a tenancy starting on July 1, 2010 stating the rent includes only a maximum of 4 persons occupying the unit;
- One page of the Application for Tenancy indicating that the total number of persons occupying the home are the appellant, Ms. B. and three children;
- A letter from the residential managers stating that the appellant and Ms. B. have lived together in the residence with their three children since December 2010;
- Request for reconsideration dated April 18, 2012.

The appellant in the request for reconsideration stated that he did not apply as a family unit for income assistance as he is not in a common-law type relationship with Ms. B. The appellant further stated the Ms. B. is the mother of all but one of his children but they have never been in a common-law type relationship. The appellant submitted that he has full custody of his children since May/June of 2005. The appellant stated that he and Ms. B. do not live together, they don't have any finance dependence or interdependence with each other and the only thing they share is the fact that they are parents to the same children.

The appellant in the Notice of Appeal submitted the following:

- The managers of the residence have no proof that anyone beside the children lived with him since he moved to the residence in July 2010;
- Ms. B.'s name is on the application for tenancy because the appellant told the managers that she would be around looking after the children when he was at work. The appellant said that the residential managers told him that they would add Ms. B.'s name on the tenancy agreement for the insurance purpose in case of fire;
- Ms. B.'s name is not on the original rental agreement or on the mortgage agreement;
- The ministry assumed the appellant lives with Ms. B. based on false information provided by the managers of the residence;
- He cannot apply for the entire family unit because of a custody order from 2005 that states Ms. B. cannot reside with the children;
- Original tenancy agreement signed on June 28, 2010 by the appellant only;
- Ms. B. has never lived at this residence and she only went to the residence to watch the children when the appellant worked at night shifts;
- In the last 2 years the appellant has seen the managers 3 or 4 days and spoke with them about 50 times.

The appellant submitted a Family Case Conference record dated October 17, 2005 regarding the custody of his children and a letter from the residential managers to the appellant dated May 2011 regarding the appellant's children and their behavior in the complex. The appellant stated that he was not able to get a copy of the custody order. The ministry did not object to admitting the documents. The panel accepted the documents as being in support of the information before the ministry under section 22(4) of the Employment and Assistance Act (EAA) and therefore admitted the documents into evidence.

At the hearing, the appellant stated that he is not in relationship with Ms. B and the ministry made its decision based on assumptions. The appellant further stated that he could not apply for income assistance on behalf of his family including Ms. B. as she is not allowed to reside with the children because of a custody order. The appellant further submitted that he included Ms. B.'s name to the application for tenancy because the landlord told him it is an insurance liability if there is fire in the complex. The appellant said that Ms. B. resided in his home and looked after the children when he was working. The appellant said that he worked every night from 11 evening to 7 in the morning and that Ms. B. was at his residence while he was away. In response to the question that whether Ms. B. was going home after he came back from work, the appellant said that

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sometimes she did and sometimes she stayed at his residence the entire day. The appellant further stated that although he has not been working since February 17, 2012, Ms. B. has been at his home and stayed overnight couple of times a week looking after the children. The appellant further said that he did not submit Ms. B.'s pay stub to the ministry and it was done by Ms. B. and her mother.

The appellant said that Ms. B. does not drive and on days she stays at his home, when he wakes up in the morning, he sometimes takes her to her home and sometimes he doesn't. The appellant said that he does not have romantic relationship with Ms. B.

The ministry stated the reconsideration decision is reasonable as the appellant has been living with Ms. B for at least the previous 3 consecutive months or 9 months of the previous 12 months. The ministry submitted that the appellant signed an application for tenancy adding Ms. B.'s name to the tenancy contract and that the residential managers confirmed that the appellant and Ms. B. have been living together with their children since December 2010.

The appellant stated that he cannot apply for income assistance as a family unit because of the custody order dated 2005 prohibiting Ms. B. to reside with her children.

The panel finds that:

- Ms. B. has been living on and off with the appellant since December 2010;
- Ms. B. stayed overnight in the appellant's residence at least 5 nights a week when appellant was at work;
- Ms. B. lives at the appellant's residence couple of times a week when appellant is at home and not working;
- Ms. B. is the parent of two of the appellant's children and has a parental responsibility for them.

## PART F – Reasons for Panel Decision

The issue before the panel is the reasonableness of the ministry's reconsideration decision dated May 15, 2012, which held that the appellant is not eligible for income assistance due to failure to apply for income assistance on behalf of his 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.

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 in the Notice of Appeal dated May 22, 2012 submitted that the summary of "Facts" stated by the ministry in the reconsideration decision is not correct. The appellant stated that the landlord has no proof that anyone beside the children lived with him since he moved to the residence in July 2010 and questions the comments from the landlord indicating December 2010 as the start date for the residency. The appellant further argued that Ms. B.'s name is on the application for tenancy because the appellant told the managers that she would be around when he was working to look after the children. The appellant said that the managers of the residence told him that they would add Ms. B.'s name for the insurance purpose in case of fire. The appellant further submitted that Ms. B.'s name is not on the original rental agreement or on the mortgage agreement. The appellant stated that the managers assuming that Ms. B. is living with the appellant based on false information. The appellant said that he cannot apply as a family unit because of a custody order from 2005 that states Ms. B. cannot reside with the children. The appellant further submitted that the original tenancy agreement signed on June 28, 2010 by the appellant only. The appellant further submitted that he agreed with the landlord to add Ms. B.'s name to the application for tenancy for the purpose of insurance only. Ms. B. has never lived at this residence and she only went to the residence to watch the children when the appellant worked at night shifts. The appellant submitted that the ministry assumed he is in a common-law relationship based on false information from the managers. The appellant stated that in the last 2 years he has seen the managers 3 or 4 days and spoke with them about 50 times. The appellant submitted that he could not apply as a family unit because of custody order since 2005.

The ministry's position is that the reconsideration decision is reasonable as the appellant has been living with Ms. B. and the residential managers confirmed that the appellant and Ms. B. live as a couple with their children since December 2010. The ministry further submit that Ms. B. meets the definition of dependent under Section of the *EAA*; she is the mother of the appellant's children and has a parental responsibility for the appellant's children.

The appellant stated that he cannot apply for income assistance for the entire family as Ms. B. cannot reside with the children by the custody order. The appellant further argued that he does not romantic relationship with Ms. B. and does not want to have a common-law relationship with her. The appellant stated "I don't want responsibility calling her common law wife; she has long time issues that she has to deal with them".

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The panel accepts the evidence from the appellant's residential managers that the appellant, Ms. B. and their children are residing in the appellant's home.

With respect to Section 1 of the EAA, family unit means an applicant or a recipient and his or her 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.

The panel notes that the appellant stated that Ms. B. has been living in his residence for at least 5 days a week having responsibility to look after his children. In term of social and familial interdependence, the panel finds that Ms. B. is the biological mother of two of the appellant's children and she has submitted that she takes care of the children in the absence of the appellant. Ms. B.'s name is on the tenancy agreement. The panel accepts the managers' evidence that Ms. B. lives with the appellant. The evidence shows far more interdependency than one would reasonably expect in a strictly child care relationship.

Based on the evidence, the panel finds the ministry was reasonable to accept the managers' evidence together with the application for tenancy to conclude that the appellant and Ms. B. reside together and that the appellant's evidence regarding the care provided to the children by Ms. B. further establishes parental responsibility of Ms. B.

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. The appellant stated that he could not apply for income assistance as a family unit because of the custody order in place stating that Ms. B. cannot reside with the children. The panel finds that the fact the appellant cannot apply for income assistance on behalf of his entire family unit because of the custody order would not override the legislation requiring an adult to apply for income assistance on behalf of the entire 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 his entire family unit.

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