



### **PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision of April 30, 2012, denying the appellant income assistance as a single person because the ministry determined that the appellant was part of a family unit as defined in Section 1(1) of the Employment and Assistance for Persons with Disabilities Act and that the appellant and the person with whom she was residing were spouses of each other for the purposes of the Act as defined in Section 1.1 of the Act.

### **PART D – Relevant Legislation**

Section 1 and 1.1 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA)

Section 5 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)

## PART E – Summary of Facts

The ministry representative on introducing himself asked for the hearing to be adjourned because he had received the notice of the appeal and the appeal record on at 4:15 p.m. the day before the hearing due to an administrative error at the ministry and he did not have sufficient time to study the appeal record. The panel chair confirmed that a notice of hearing had been faxed to the ministry on May 25, 2012 and in accordance with the responsibilities granted under section 22(6) of Employment and Assistance Act (EAA) the panel chair ruled that the hearing would continue. The panel chair also ruled, in accordance with section 22(6) of the EAA, that the panel would recess for about a half hour to give the ministry representative an opportunity to review the appeal record further. The ministry representative indicated his agreement with the chair's rulings and, after the recess, the hearing resumed.

The evidence before the ministry at reconsideration includes:

- A residential tenancy agreement signed by the appellant and another person (hereafter referred to as "person A") on March 28, 2008 indicating that the appellant and person A will occupy a rental premises for a 1-year period in a BC city (hereafter referred to as "city A") at a rent of \$650 per month.
- A residential tenancy agreement signed by the appellant on August 20, 2009, with the appellant's mother as landlord, indicating that the appellant will occupy a rental premises on a month-to-month basis in city A at a rent of \$625 per month.
- A residential tenancy agreement signed by the appellant and person A on November 9, 2009 indicating that the appellant and person A will occupy a rental premises for a 1-year period in city A at a rent of \$700 per month.
- A BC Ministry of Human Resources shelter information form filled out by the appellant indicating that she and one other adult will share a total rent of \$700 a month for the premises indicated above but with a start date of December 1, 2009.
- A letter from the ministry to the appellant dated March 9, 2012, asking the appellant to meet with the ministry on March 20, 2012 to review her eligibility for assistance and come to the meeting with the documents requested by the ministry, including bank statements.
- A letter from the ministry to the appellant dated March 21, 2012, indicating that the appellant had not contacted the ministry as requested and scheduled a meeting with the ministry on April 2, 2012.
- Bank statements for an account under the appellant's name provided to the ministry with the appellant's consent on April 2, 2012 indicating transactions for March 1-8, 2012, February 1-16, 2012, January 1-9, 2012, and December 7-30, 2011.
- Copies of two receipts each indicating a sum of \$700 received from the appellant: one receipt for Rent – April, made out on March 28, 2012 and the other receipt for Rent – March, made out on February 28, 2012.
- An invoice on the appellant's account for cable services due September 12, 2010; and an invoice on



the appellant's account for hydro services due June 16, 2010.

- A letter from the ministry to the appellant dated April 2, 2012 indicating that the appellant is no longer eligible for income assistance because the ministry determined the appellant has been in a dependency relationship with person A since October 2009.
- A letter from the appellant's advocate submitted with the appellant's request for consideration.

In the "Background" section of the letter, the advocate points out: in 2008 the appellant asked person A (whom the advocate refers to as the appellant's "roommate,") to share a residence and rent with her as she could not afford the rent on her own; they moved into a 2-bedroom rental for 1 year, sharing the rent equally and had no joint bank account in that year; they lived as single people and as roommates, each dating other people; the appellant was designated a Person with Disabilities (PWD) in 2010 after a mental health breakdown and the appellant's mother took her to all her medical appointments; person A "began to do a lot of shopping and bill payments" for the appellant as she was unable to do so because of anxiety due to her mental breakdown; as the appellant was unable to do banking, the appellant and person A arranged for a joint bank account so that Person A could have access to the money for rent and groceries; the advocate contends that without such access both the appellant and person A risked eviction for not paying their rent; from the initial rental they moved to a 3-bedroom unit which they shared with a third person. They subsequently had to find a new rental quickly, as the 3-bedroom unit was being sold and the only unit available at the time was a 1-bedroom unit at \$700 a month.

In the "Discussion" section of her letter, the advocate makes the following further points: there was no dependency between the appellant and person A as both filed taxes as single people and were not considered a couple by the Canada Revenue Agency; nor did their families or friends consider them a couple. The advocate also contends that the ministry's shelter benefits are not sufficient to pay for shelter and this forces people on limited incomes to share accommodation but this does not mean that two persons such as the appellant and person A sharing accommodation are in a dependency or marriage-like relationship. The advocate argues the appellant and person A are not in a social or familial relationship; they do not date, do not shop together, do not cook together, do not attend family events or other social events together. The advocate contends that the fact that person A shops for the appellant does not indicate a dependency relationship, as "it is common for roommates to shop for one another."

The advocate concludes by repeating her contention that the appellant and person A are not in a marriage-like relationship, they only live together out of economic necessity, the appellant is not financially interdependent on person A; nor does she have a social or familiar relationship with person A.

The advocate's letter in support of the appellant's request for reconsideration contains two letters of support, one from the appellant's mother and the other from person A. The appellant's mother states that the appellant and person A have never dated and have never looked upon one another as potential partners. She states that the appellant and person A have separate areas in their current rental where they sleep and keep their possessions. Person A does not spend holidays at the house of the appellant's mother, nor does person A exchange gifts with the appellant's mother or do his laundry at her home as her daughter does. She writes: "...if not for [person A] in the house for her

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[the appellant] who would make sure she has food and that her bills are being paid she ... [would] end up living in the street.”

Person A's letter states that in their first residence together person A and the appellant each paid half the rent. In their current residence the appellant has her own room and person A has a hide-a-bed in the dining room area. They each have their own friends and date different people but not one another. Person A writes “we [the appellant and I] have remained good friends but never more than friends.” He goes on to state: Because of [the appellant's] medical issues I help her with anything I can to make things easier for her. Because she does not like crowds of people and sometimes she won't even leave the apartment. I help her with groceries, dropping off the rent cheque, and helping her to get her Doctor's appointments . . . . When any money was lent between us it was always paid back, without exception.” He adds that they do not cook for one another, do not eat one another's food, though they sometimes eat together. “We do not anything that trusted roommates would not do,” he writes. He states that when they learned that they should not have a joint account, the account was closed.

- The ministry's reconsideration decision of April 30, 2012 in which the ministry notes that the appellant and person A shared a joint bank account which was opened prior to October 2009, as confirmed by the bank and by the appellant and by person A when they attended the ministry office on April 2, 2012.

At the hearing, the appellant's advocate handed out a 3-page document provided as notes to her presentation at the hearing. The presentation and document repeated information and arguments made by the appellant in the letter submitted by the advocate with the appellant's request for reconsideration and as such were accepted by the panel as argument but not as new evidence.

Also at the hearing, in answer to a question from the panel, person A, who appeared before the panel as a witness for the appellant, explained why there appeared to be no record in the bank statements provided by the appellant of a regular monthly transfer of half the rent money from person A to the appellant's account. Person A explained that when he was short of money to pay his share of the rent, the appellant would pay it all or a disproportionate amount of it that month, trusting him to pay what was owing back to her gradually, and over the following months person A would repay his debt to her by purchasing groceries or other items. This process of repayment went on continuously in their living arrangement over the years they have shared rentals together, so that if either the appellant or person A paid a disproportionate share of the expenses, the other would get paid back over time. Person A stated that he and the appellant kept track together of expenses and purchases so that neither of them ever felt that the other was paying more than a fair share of the expenses in the long run.

At the hearing person A also stated that he attended the meeting of April 2, 2012 that the ministry asked the appellant to attend only because he was requested by the ministry to be present at the meeting, not because he was supporting the appellant. He told the panel that the ministry asked him to be there to “talk with him about his income assistance being cut off.”

The panel found that person A's account of the financial arrangement between himself and the appellant as well as his stated reason for attending the meeting at the ministry of April 2, 2012 with the appellant contained information in support of the information and records that were before the



minister when the decision being appealed was made; and therefore the panel determined that the oral testimony was admissible as evidence in accordance with the Employment and Assistance Act (EAA), Section 22 (4). The ministry representative at the hearing had no objection to the admission of the new evidence.

Apart from the statements of person A above, the panel finds that the statements made at the hearing by the witnesses contained no new information or arguments but repeated and emphasized the information and arguments presented in their letters submitted with the appellant's request for reconsideration. The appellant relied at the hearing on her advocate as well as the witnesses to present information regarding her relationship with person A but she indicated that she agreed with everything said at the hearing by the advocate and the two witnesses, as well as the information and arguments presented in their letters.

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## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision denying the appellant income assistance as a single person was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence. The ministry determined that the appellant was part of a family unit as defined in Section 1(1) of the Employment and Assistance for Persons with Disabilities Act and that the appellant and the person with whom she was residing were spouses of each other for the purposes of the Act as defined in Section 1.1 of the Act.

### **Section 1 of the of the Employment and Assistance for Persons with Disabilities Act (EAPWDA)**

#### **Interpretation**

**1** (1) In this Act:

**"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;

**"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.

**Section 5 of the Employment and Assistance for Persons with Disabilities Regulation (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.

The panel notes that Section 5 of the of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sets out the criteria for a family unit to be eligible for income assistance, specifying that to be eligible 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.

Under Section 1.1 of the of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) a family unit is defined as an applicant or his recipient and his or her dependents. A dependant is defined as anyone who resides with the person and who is the spouse of the person, a dependant child of the person, or indicates a parental responsibility for the person's dependent child.

Under Section 1.1(2) (EAPWDA), 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.

With respect to section 1.1(2)(a) (EAPWDA) the ministry points out, and it is not contested by the appellant, that the appellant and person A meet the conditions of this section in that they have resided together since March 2008. This is supported by the evidence of the tenancy agreements signed by the appellant and person A as well as evidence provided by the appellant to confirm the appellant and person A shared rental costs for the rental for which the appellant signed an agreement on August 20, 2009, though the agreement for this rental was not signed by person A. In the light of this evidence the panel finds that the ministry's decision that the appellant and person A meet the conditions of section 1.1(2) (a) (EAPWDA) is reasonably supported by the evidence.

With respect to section 1.1(2)(b)(i) (EAPWDA) the ministry contends that the appellant and person A demonstrate financial dependence or interdependence. In support of its position the ministry notes that as confirmed by their bank and by the appellant on April 2, 2012, the appellant and person A shared a joint bank account which was open prior to October 2009. The ministry also indicated that a review of the appellant's recent bank records (December 2011 – March 2012) does not reflect a sharing of rent and utility expenses. These bank records do not reflect a 50/50 shared rent or utilities expenses where person A transfers his share of the rent or utilities expenses to the appellant's account. The appellant and person A contend that they do share expenses equally and have always done so but that this is worked out reciprocally on an ongoing basis, according to an arrangement between them whereby each of them makes up for any shortfall by repaying the other over a period of time through purchases of groceries and other items and by direct payment. The panel finds that while there is no documented evidence submitted for such an arrangement, if there were such evidence it would be evidence for financial dependence or interdependence in that one person in the arrangement relies on the other to carry him or her financially through the month or through several months. The panel finds, further, there is no documented evidence provided that in the joint account held by the appellant and person A there was a 50/50 sharing of expenses and no evidence in the appellant's bank records from December 2011 – March 2012 for a 50/50 sharing of expenses. The panel therefore finds that the ministry's decision that the appellant and person A meet the conditions of section 1.1(2)(b)(i) (EAPWDA) is reasonably supported by the evidence.

With respect to section 1.1(2)(b)(ii) EAPWDA, the ministry contends as part of its position that a relationship of social and familial interdependence is indicated by person A's attendance at the ministry office to provide support for the appellant during the meeting with the ministry on April 2, 2012. At the hearing person A maintained that he attended the meeting only because he was requested to do so by the ministry, not to support the appellant. The ministry representative at the hearing stated that he felt it was likely that the appellant had been invited to the meeting, but he



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contended that there were strong reasons remaining to support the ministry's position with respect to section 1.1(2)(b)(ii) EAPWDA. The ministry contends in its reconsideration decision that the letters of support from the appellant's advocate, from the appellant's mother and from person A all indicate a relationship of social and familial interdependence consistent with a marriage-like relationship. The ministry in its reconsideration decision cites as evidence for social and familial independence statements by the appellant's advocate, by her mother and by person A that person A bought groceries for the appellant and ensured that she paid her bills and attended medical appointments.

The appellant's advocate contends that there is no relationship of social and familial interdependence between the appellant and person A. As noted above, she states it is common for roommates to shop for one another. Helping a roommate by shopping for her when one is already going to the store to shop "is just the right thing to do," she writes. If person A did not to shop for the appellant, she would not have any food to eat because she is unable to shop for herself due to her mental disability. A similar position is taken by person A in his letter submitted with the appellant's request for consideration. In that letter he states that he helps her with shopping, with bill payment, with attending medical appointments. He writes: Because of [the appellant's] medical issues I help her with anything I can to make things easier for her."

The appellant's advocate as well as the appellant's mother and person A all state that the appellant and person A live together because of financial necessity not because they are in a marriage-like relationship; on their own they would not be able to afford the high rents of most units in the city. The appellant's advocate writes that the appellant and person A are not considered a couple by anyone who knows them. The appellant and person A "do not attend social functions together and do not share life events or holidays." Person A writes that he does not date and has never dated the appellant. He sleeps separately from her in a hide-a-bed in the dining room area. The appellant's mother makes similar statements. She writes that the appellant and person A "have never dated and have never looked upon each other as potential partners."

The panel finds that there is strong evidence in the letters of the advocate, the appellant's mother and person A to support the reasonableness of the ministry's position that the appellant and person A are in a relationship of social and familial interdependence consistent with a marriage-like relationship. In his letter in support of the appellant's request for consideration person A shows a caring and supportive relationship with the appellant. He states that he helps her with anything he can do to make things easier for her, and the evidence shows he helps her by shopping for her groceries, making sure she gets to appointments and pays her bills. The panel finds that this is not indicative of a relationship between mere "roommates" living together because they were forced to do so out of financial necessity but reflects a relationship of social and familial interdependence, consistent with a marriage-like relationship.

Furthermore, regarding the contention of the advocate, the appellant's mother and person A that the appellant and person A are not in a social and filial relationship because they do not date and have never dated one another and they sleep in separate beds, the panel notes in order to meet the provisions of section 1.1(2)(b)(ii) EAPWDA it is not required that a couple residing together are in a romantic or sexual relationship, only that they are in a relationship of social and familial interdependence consistent with a marriage-like relationship. The panel finds that the ministry's decision that the appellant and person A meet the conditions of section 1.1(2)(b)(ii) (EAPWDA) is reasonably supported by the evidence. As the panel finds that the appellant and person A meet all



the provisions of section 1.1(2) EAPWDA, the panel finds that the ministry's decision that the appellant and person A are spouses of each other for the purposes of the act who reside together and are therefore dependants for the purposes of the act is reasonable. Therefore the panel finds that the ministry's decision that the appellant is not eligible for income assistance as a single person and must apply for assistance as part of the entire family unit is reasonably supported by the evidence, and the panel confirms the ministry's decision.