

PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development (ministry) dated June 20, 2012 that found that the appellant was not eligible for income assistance as a single person. The ministry determined that:

- the appellant is legally married to X ;
- the appellant and X reside with each other since October 2011;

The ministry therefore determined that in accordance with section 1 (1) of the Employment and Assistance Act and section 5 of the Employment and Assistance Regulation the appellant must apply for assistance on behalf of his entire family unit.

PART D – Relevant Legislation

EAA	Employment and Assistance Act - Section 1 (1) and Section 1.1 (1) and (2); and
EAR	Employment and Assistance Regulation - Section 5 (1).

PART E – Summary of Facts

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

- A “Notice of Eligibility” letter dated May 24, 2012 from the ministry to the appellant, which describes the findings of the ministry in response to the appellant’s application for income assistance as follows:
 - the appellant is currently married to X;
 - he has resided with X in at Location L from October 2011 to the date of the said letter, and that this arrangement is confirmed by a room and board rental agreement between the appellant and X;
 - the appellant is living in a social and familial interdependence relationship with his X as he shares child rearing responsibilities with X for their two biological children and two step children;
 - the appellant and X’s relationship demonstrates financial dependence or interdependence on each other;
 - the appellant has the full use of X’s vehicle; and
 - the appellant relies on X for his daily needs such as meals and housing.
- A letter from a nurse from a medical clinic that confirms that the appellant needs to reside in a reliable and clean (drug free) environment, such as the residence of X, for the success of the medical treatment that the appellant needs to receive;
- A room and board (shelter) agreement that confirms that the appellant has agreed to pay \$610.00 per month for room and board to X;
- A hand-written note, signed by the appellant and X, confirming the monthly amounts for the room and board actually paid by the appellant to X between October 2011 and May 2012; and
- An undated letter from the appellant that, *inter alia*, states that:
 - he is still married to X, but its “only on paper”;
 - he is taking care of his biological children when he is physically able to do so.
 - X would have to hire a babysitter or send his biological children to a day care for when X is at work, as the appellant is getting sick and fatigued to properly care and look after them;
 - X has a car that is generally always with her except for a few times when she allows the appellant to go and get his medicine every other week, and go to his appointments. The appellant gets rides with his friends as much if not more than the number of times he uses X’s vehicle. When the appellant uses X’s vehicle, he needs to supply the fuel. The vehicle is currently broken down;
 - Once in a while, X cooks meals for the appellant, but primarily the appellant has been preparing meals for himself;
 - he needs a “stable place” stay to be able to undertake certain medical treatment. Commencement of such medical treatment was approved only after his doctor had approved X’s home as such a “stable space”. The appellant has not been able to find an

- alternative stable accommodation, as he is not originally from BC.
- he has been separated from his spouse since June 30th, 2010 and living together in the same house as X is “*extremely unorthodox*”;
- he may have to stop his medical treatment and look for a job if his medical and financial assistance was discontinued; and
- he is in no condition to work as he is often fatigued and nauseated;

In his Notice of Appeal dated June 26, 2012, the appellant stated that:

- he and X are forced to be responsible for each other. However, in real life, each of them lead their personal, social and financial lives separately; and
- there is no just black and white in the relationship between him and X; there is also a gray area.

After reconsideration and prior to the hearing of the appeal, the panel received a written submission from the ministry dated July 19, 2012. Although the appellant did not receive this submission before the hearing, he consented to it being read in full by the ministry’s representative during the hearing. The ministry’s submission reviewed the oral and written information before the ministry at the time of reconsideration. The ministry presented no new evidence.

By way of new information, the appellant stated that his two biological children, aged 4 and 9, reside with him and X at the same location and both of them share child-rearing responsibility towards them. One of his stepchildren, who is 18 years of age, has moved out of the house, and the other stepchild, who is 16, now lives with his biological father on the same street. He does, however, come home to X once in a while for meals.

The appellant also stated that X trusts him with the use of her vehicle to go for his appointments and to collect his medicine, as he has a clean driving record. However, X requires the vehicle to go to and from work and therefore, for half the time, he has had to rely upon his friends for rides. Sometimes X goes with him to his appointments and to collect his medicine when she is explicitly requested to do so or when it is convenient for her in the context of her other commitments. With regard to meals, the appellant stated that X cooks meals for him once in a while, but at most times, he prepares meals for himself and his two biological children.

With regard to financial dependency, the appellant confirmed that he had not been paying the full amount of the room and board to X between October 2011 and May 2012 as often he bought food and other items for the house. During the past the past two months, however, he has started to pay the full amount due to X under the room and board (shelter) agreement. Apart from this, the appellant does not have any other financial dealings, such as a joint-bank account with X.

The panel finds that forgoing additional information provided by the appellant at the hearing is in support of the information and record that were before the ministry at the time of reconsideration. The panel therefore admits such information as additional evidence pursuant to section 22(4) of the EAA.

Based on the evidence described hereinbefore, the panel makes the following findings of fact:

- the appellant is legally married to X ;
- the appellant and X reside with each other at Location L since October 2011;
- the appellant and X have two dependant biological children who are unmarried persons under the age 19 years of age; and
- the biological children reside with the appellant and X at the same location and they both demonstrate parental responsibility towards their biological children.

PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of Reconsideration Decision of ministry dated June 20, 2012 that found that the appellant was not eligible for income assistance as a single person. The ministry determined that (i) the appellant is legally married to X (spouse); (ii) the appellant and X have resided with each other at Location L since October 2011. Therefore, the appellant must apply for assistance on behalf of his entire family unit. In the context of the reconsideration decision the relevant applicable law is set out in section 1.1, section 1.1 (1) of EAA and section 5 of EAR, which provide as follows:

Employment Assistance Act

Part 1 — Introductory Provisions

Interpretation

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;

"child" means an unmarried person under 19 years of age;

"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;

- (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.

Employment Assistance Regulation

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.

Against the backdrop of the said applicable law, at the hearing, the appellant argued that he has informed the ministry many times that although he is legally married to X, he does not consider her to be his wife, and their marriage is on paper only. As he is not originally from BC, he is forced to stay with X as she has agreed with his doctor to provide him a stable and drug free environment in which he can obtain his medical treatment. There were other options, but they were not stable or drug free. The ministry's representative argued that the verbal and written statements of the appellant as well as the documents provided by him to the ministry establish that the appellant is legally married to X and they have two biological dependent children towards whom they demonstrate parental responsibilities. All of them are living together at the same location where X is providing a safe and drug free environment for the appellant to receive the medical treatment that he needs. The ministry's representative further argued that, based on all such evidence before the ministry at the time of reconsideration, the ministry determined that the conduct of X towards the appellant demonstrates emotional support as well as financial interdependence.

Having regard to the submissions of the appellant and the ministry, the panel notes that the appellant has applied for income assistance under the EAA. It therefore clear that he falls within the definition of the word "*applicant*" set out in section 1.1 of the EAA. This section also prescribes several other definitions of the relevant words under applicable law including the following:

- the definition of the word "*applicant*" also means the applicant's "*spouse*", if the "*spouse*" is a "*dependent*".
- the word "*dependant*" means anyone who resides with the person who is the "*spouse*" of the applicant. The word "*spouse*" is described in section 1.1 (1) as two persons including persons of the same gender that are married to each other. As both the ministry and the appellant

acknowledge that the appellant is legally married to X, the panel finds that the ministry reasonably determined that X is the "*spouse*" of the appellant;

- the word "*dependant*" includes a dependant "*child*" of the applicant. The word "*child*" is described (in the same section) as a person under 19 years of age. It is acknowledged by both the appellant and the ministry that the appellant has two biological children living with him and X at the same residence, and both of them are unmarried persons under 19 years of age.
- the phrase "*family unit*" includes the "*applicant*" and his "*spouse*". In the light of the foregoing analysis and the findings of the facts made by the panel in Section E, the panel finds that the ministry reasonably determined that the "*family unit*" of the appellant comprises of the appellant, his "*spouse*" i.e. X to whom the appellant is legally married as well as his two biological children residing with them.

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 entire "*family unit*". As none of the two exceptions described in paragraphs (a) and (b) of section 5 (1) apply to the circumstances of the appellant, the panel finds that the ministry's determination that the appellant was not eligible for income assistance as a single person and must apply for income assistance on behalf of his entire "*family unit*" was reasonably supported by evidence.

The panel noted the unusual circumstances of the relationship between the appellant and X and finds that there is no discretion under the applicable law for the extenuating circumstances submitted by the appellant.

Therefore, the panel confirms the reconsideration decision of the minister.