

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of October 23rd, 2012 wherein the ministry determined that the appellant is currently married and residing with her spouse who meets the definition set out in section 1 and 1.1 Employment and Assistance for Persons with Disabilities Act (EAPWDA) and therefore the appellant is not eligible for disability assistance as a single recipient and must apply for income assistance for a family unit as set out in section 5 Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Furthermore, the ministry determined that:

- the relationship demonstrates financial dependence or interdependence, and
- social and familial interdependence, consistent with a marriage-like relationship

as set out in section 1.1(2)(b) EAPWDA.

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Act (EAPDWA), section 1, 1.1
Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 5

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- An anonymous letter received by the ministry on July 16th, 2012
- A letter, not dated, and with the signature blacked out received by the ministry July 10th, 2012.
- Letter dated September 7th, 2012 from the manager of trailer court where the appellant resides.
- ICBC Temporary Operating Permit (TOP) dated June 22nd, 2012 issued for a vehicle registered in the name of the appellant and the appellant's alleged spouse (Mr. A) at the same address -in another community.
- Telus bill for March 2012 in Mr. A's name with an address in another community.
- BC Hydro bill for February 2012 in Mr. A's name with an address in another community.
- Medical Service Plan statement in name of appellant's spouse (alleged) with an address in another community.
- Three (3) prescription receipts dated November 2012, January 2012 and March 2012 in Mr. A's name with an address in another community.
- Three (3) site rental receipts in Mr. A's name for period of December 2011 to February 2012.

The appellant lives in a trailer court and is receiving disability assistance as a single person. The ministry received an anonymous letter stating that Mr. A is residing with her in the trailer. The ministry met with the appellant and the appellant advised the worker that she is divorced and that Mr. A. lives in another community. The ministry contacted the trailer park manager and on September 7th, 2012 the ministry received a letter from the park manager advising the appellant has been receiving disability assistance for the rent since she moved into the trailer park and that the Mr. A came with her. The manager further stated that she did not know when Mr. A "let his place go" but confirmed that he has been living and receiving his mail at the trailer park for over a year. The appellant denied the allegation stating that she is divorced from her husband and submitted prescription receipts, utility bills and a Medical Service Plan statement showing that her ex-spouse (Mr. A) resided in another community. The ministry position is that this information is dated; that living circumstances can change on a monthly basis and that there is no information on the appellant's file that indicates the appellant is divorced. In addition, the ministry found the appellant and Mr. A display financial interdependence as they share ownership in a motor vehicle to which a TOP was issued on June 22nd, 2012. The ministry also determined the appellant and Mr. A also display social interdependence as they are portrayed as a couple in the community. The ministry has determined the appellant is residing with Mr. A and is not eligible for disability assistance as a single recipient and must apply for assistance on behalf of the family.

Prior to the hearing commencing the appellant submitted the following documents for consideration:

1. Seven (7) letters from residents of the trailer park who all say that the appellant and Mr. A do not live together in the appellant's trailer. Some letters do state that Mr. A does visit with the appellant.

The panel finds these letters contain information or evidence that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

2. Rent receipts in the name of Mr. A covering the period of April 2012 to September 2012.

The panel finds this submission contains information or evidence that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

3. Letter dated November 6th, 2012 from a front desk clerk (on hotel letterhead) stating that Mr. A had been a registered guest at the hotel from Sunday night through to Friday morning from September 24th, 2012 to present date (date of letter).

The panel finds this submission contains information or evidence that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

At the hearing the appellant introduced a rent receipt in the appellant's name for the period of October 27th, 2012 to November 27th, 2012. The difference between this receipt and the others listed under #2 above is that under the category of "people" this receipt indicates "1" and the others listed above indicate "2".

The ministry raised no objection to this receipt being accepted by the panel as new evidence.

The panel finds this submission contains information or evidence that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

The ministry did not call any witnesses and the appellant called one witness, Mr. A.

At the hearing the appellant acknowledged that she and Mr. A (witness) are married but do not reside together in the appellant's trailer.

At the hearing the witness (Mr. A) testified that he and his wife do not reside together. He testified that between August 2011 and March 2012 he resided in another community; from March 2012 to September 2012 he had his own accommodation (rented room) in the same community as his wife; from mid-September to November he was living from Sunday to Friday in another community where the accommodation was paid for by another agency and on the weekends during that period of time he stayed at his wife's trailer as he didn't have anywhere else to stay; and in early November he moved back into his former rental accommodation. The witness also testified that in 2005 he and his wife secured a loan to purchase a vehicle and that the vehicle is in his possession and that he is making the payments on that loan. He testified that the bank would not permit his wife's name to be removed from the vehicle registration until the loan is repaid.

The panel finds testimony from the appellant's witness contains information or evidence that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA)

The appellant testified that she is still married to Mr. A (the witness) but that they do not reside together. The appellant acknowledged that Mr. A does visit her on a regular basis as she still takes care of their dogs and he likes to see them all the time and that he also comes to visit their children. The appellant testified that she believes she knows the author of the anonymous letter(s); that they do not get along and this person also called Work Safe BC (WCB) to complain to them about her spouse. The appellant stated the author of the letter(s) and the park manager get along quite well and, in her opinion, will do whatever they can to make life uncomfortable to those with whom they do not get along. The appellant testified that the park has a manager who is assisted by another person; that the park manager is employed outside the park and is generally away from 7am until 8pm daily. The appellant testified that she has only spoken to the park manager 2 or 3 times over the period of the last year and a half. The appellant testified when the mail is delivered to the complex it goes into an open and unsecured box; that sometimes it is sorted by the assistant but it is left in the box to be shuffled and examined by anyone. The appellant testified that the Telus bill is in Mr. A's name because she cannot get a phone in her own name. When the appellant moved into the trailer park the phone was in her mom's name and then last December her mother asked that the appellant change it over to Mr. A's name. The appellant stated the telephone bill is paid by the ministry directly to Telus; that the ministry is aware of her situation and has been paying this bill for several months. The appellant testified that, as well, the ministry also pays her propane bill and her rent direct.

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The ministry did not have any questions for either the appellant or the appellant's witness.

At the hearing the ministry relied on the facts in the reconsideration decision and stated it was the ministry's position that Mr. A was residing with her and continued to do so on the weekends from September to November when he was in the other community during the week.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision wherein the ministry determined that the appellant is not eligible for disability assistance as a single recipient because the ministry has determined the appellant is married and residing with her spouse (Mr. A) who meets the definition set out in section 1 and 1.1 EAPWDA and therefore the appellant is not eligible for disability assistance as a single recipient and must apply for income assistance for a family unit as set out in section 5 EAPWDR.

The legislation considered: EAPWDA

Interpretation

Section (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;

Meaning of "spouse"

Section 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.

Disability assistance and supplements

Section 5 - Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

EAPWDR

Applicant requirements

Section 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.

At the hearing the appellant argued that Mr. A is not residing with her that staying over on a weekend is not residing. The appellant argued that residency is the issue on this matter and that the ministry has relied on two anonymous letters and a letter from a park manager who is employed off site to determine that Mr. A is residing with the appellant. The appellant argued that the park manager stated that Mr. A receives his mail at this location but the park manager does not sort the mail; that the mail is sorted by her assistant and that she is mistaken. The appellant argued that seven letters from residents and former residents have all stated that Mr. A does not reside with the appellant but that he does visit her frequently. The appellant argued the rent receipts and the letter from Mr. A's landlord support her position that he has his own residence.

At the hearing the ministry relied on the facts in the reconsideration decision. The ministry argued that the anonymous letters; the letter from the park manager and the fact that Mr. A testified that he was staying with the appellant on the weekends from September through to November demonstrates that he was residing with the appellant.

Section 5 EAPWDA sets out that the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it and section 1 EAPWDA provides definitions for a family unit, dependant and spouse.

The panel finds the definition for a dependant is the issue in this matter; section 1 EAPWDA defines a dependant as, "in relation to another person, means anyone who resides with the other person, and who is the spouse of the other person". The panel finds the appellant has acknowledged that she is married and therefore her and Mr. A meet the definition of "spouse" set out in section 1.1 EAPWDA. The panel notes that the appellant disputes that Mr. A resides with her. The appellant has provided, as evidence, seven letters from residents and former residents of the trailer park who all state that the appellant and Mr. A do not reside together; rental receipts from Mr. A's landlord covering the period from April to September 2012 and a letter from Mr. A's landlord. The ministry's evidence is two letters which both state that the appellant and Mr. A are living together and a letter from the trailer park manager which also states that the appellant and Mr. A have resided together in the appellant's trailer for over a year and that he (Mr. A) receives his mail at this address as well.

The panel gives sufficient weight to the rental receipts and the letter from Mr. A's landlord which states that Mr. A rented a room from him from April 2012 to September 2012; to the letter from the desk clerk which is all supported by the letters from the residents and former residents of trailer park. The panel gives little weight to the letters sent to the ministry. The evidence before the panel supports the appellant's position that, although the appellant is still married, the Mr. A does not reside with her at the trailer park. The panel finds the ministry's decision to determine that the appellant and Mr. A reside together in the appellant's trailer in the trailer park was not reasonable.

In reference to the ministry's determination that the relationship demonstrates financial dependence or interdependence the ministry argued that the appellant and her spouse display financial dependence as they share ownership in a vehicle. As evidence the ministry submitted a TOP which shows the vehicle is registered in both names.

The appellant does not dispute that the vehicle is registered in both names as this was done when the vehicle was purchased several years ago. The appellant argued that Mr. A has possession of the vehicle and makes the payments on the bank loan. The appellant argued the bank will not permit her to remove her name from the vehicle registration until the loan is fully paid and the lien removed.

The panel accepts the appellant's testimony and finds the appellant's explanation reasonable. The panel finds the ministry's decision to determine that the appellant and Mr. A have resided together for the previous 3

months or 9 months of the previous 12 months which demonstrates financial dependence or interdependence because there is a vehicle registered in both names was not reasonable.

In relation to the ministry's determination that the relationship between the appellant and Mr. A demonstrates social and familial interdependence, the ministry argued the park manager stated the appellant and Mr. A "have been living together in our park for over a year" demonstrates that this portrays a social and familial interdependence and that, in the ministry's opinion, are portrayed as a couple to the members of the community". The ministry provided no further evidence in support of this position.

At the hearing the appellant and Mr. A both testified that they are married and that Mr. A does visit her but dispute the ministry's opinion that they are residing together. The appellant agrees that both are seen together at the appellant's trailer as Mr. A visits his animals quite often. The appellant's position is also supported by statements provided.

The panel finds there is no evidence that supports that the appellant and Mr. A do anything more than get along with each other and can be seen together, on occasion, at the appellant's trailer.

The panel finds the ministry's decision that the appellant and Mr. A have resided together for the previous 3 months or 9 months of the previous 12 months which demonstrates a relationship of social or familial interdependence was not reasonable.

The panel finds the ministry's decision is not supported by the evidence and the panel's decision is made in favor of the appellant. Therefore, the panel rescinds the ministry's decision pursuant to Section 24(1)(a) and Section 24(2)(b) of the Employment and Assistance Act.