

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development's (the ministry) reconsideration decision of August 30, 2012 in which the ministry denied the appellant's request to add his girlfriend (Miss X) to his file as a dependent spouse.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act sections 1,1.1, 2, 3, 4 and 5.  
Employment and Assistance for Persons with Disabilities Regulation section 5.

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included :

- A handwritten letter from Miss X stating that she has spoken with her mother and has been told that she is not allowed in her household and the mother's boyfriend has told her the same thing. The letter is date stamped by the ministry August 16, 2012.
- A handwritten letter to the ministry from the appellant explaining why he disagrees with the ministry denial and explaining that Miss X's mother refuses to support her financially in any way and will not allow her to live at home. He states that they have been living together for the last 18 months and living on \$286.00 a month and that in spite of all of this they have decided to live together for the rest of their lives.
- A request for reconsideration application completed by the appellant and dated August 16, 2012.

The appellant provided information to the panel with details about his initial contact with the ministry during which both he and Miss X completed the documentation required in order to add Miss X to his file. The ministry worker informed both applicants that if Miss X's mother did not want her living at home, she would be added to his file.

The appellant and Miss X have also been to the ministry of Children and Family Development (MCFD) to inquire about Miss X qualifying for a Youth Services Agreement. They were told that Miss X would have to live on her own in her own apartment in order to qualify for a Youth Services Agreement.

Miss X feels that this option is not the best one for her as she does not want to live on her own due to her past history of drug use and she credits the appellant with helping her to become drug free and stay off drugs.

The appellant and Miss X informed the panel that MCFD referred them to the Ministry of Social Development (MSD) and then they were referred back to MCFD by MSD.

Miss X provided testimony to the panel that in April of 2011, at the age of 15 she was voluntarily placed in care by her mother due to conflict between them and her stepfather. The care agreement was for a period of 3 months, during which time Miss X lived in foster care and it was during that time she and the appellant first met. Since the end of the foster care agreement Miss X has not lived at home with her mother as she has been told by her mother and step father that she is not allowed in their home. Miss X has asked her mother for a letter stating that she is not allowed to live at home and the mother has refused. Miss X wonders if her mother is already taking advantage of the Child Tax credit and the Family Bonus. Miss X was asked if there was a history of violence in her maternal home and she responded that her stepfather had been aggressive with her at one time and that her mother was aware of this and as a result, Miss X and her mother have decided together to communicate by telephone only when the stepfather is not present. Miss X informed the panel that if she was to move back to her Mother's home she would not have a separate bedroom but would have to share with a new baby. Since leaving foster care, she believes her MCFD file has been closed. Miss X began cohabitating with the appellant in June 2011 and has lived with him ever since. The appellant refers to Miss X as his fiancée and they both describe their relationship as committed, caring and a partnership with long term goals of marriage, and going back to school.

The appellant states that he has been supporting Miss X since June 2011 and would like to have her designated as his spouse so she can receive medical and dental benefits.

The ministry states that the appellant and Miss X cannot be spouses because Miss X, now age 17 is a child by definition under EAR section 1. In addition, a ministry caseworker telephoned Miss X's mother to inquire as to whether Miss X was welcome to come home to live. The mother stated that she was on maternity leave since Sept 2011 and was still on maternity leave and that if she had the money Miss X would be welcome home, however she can't currently support her.

The ministry states that it is the appellant and Miss X's responsibility to prove in writing that she is not welcome to live at home and they have not provided this documentation.

In addition the ministry states that the Family Bonus and Child Tax Benefits are tax free programs available to eligible parents to assist with raising children up to the age of 18 and therefore Miss X's mother has the resources available by applying for the FB/CTB to assist with the costs to financially support Miss X. The ministry also states that youth 16 to 18 years of age also have the ability to apply to MCFD for a Youth Services Agreement for additional supports.

In conclusion the ministry states that as Miss X's parent has indicated to the ministry that Miss X would be able to return home if she had the money to support her and there are supports available, specifically Family Bonus and Child Tax Benefit, the appellant's request for assistance to add Miss X as a dependent spouse is denied.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision to deny the appellant's request to add Miss X to his file as a spouse was a reasonable application of the legislation or reasonably supported by the evidence.

**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;

**"business day"** means a day other than Saturday or a holiday;

**"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;

**"dependent child"**, with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

**"dependent youth"** means a dependent child who has reached 16 years of age;

**"disability assistance"** means an amount for shelter and support provided under section 5 [*disability assistance and supplements*];

**"employment plan"** means a plan required under section 9 [*employment plan*] and includes an amended employment plan;

**"family unit"** means an applicant or a recipient and his or her dependants;

**"former Act"** means

- (a) the *Disability Benefits Program Act*, or
- (b) the *BC Benefits (Income Assistance) Act*;

**"hardship assistance"** means an amount for shelter and support provided under section 6 (1) [*hardship assistance*];

**"person with disabilities"** means a person designated under section 2 [*persons with disabilities*];

**"recipient"** means the person in a family unit to or for whom disability 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;

**"spouse"** has the meaning in section 1.1;

**"supplement"** means any form of assistance specified by regulation, other than disability assistance, hardship assistance or financial assistance provided under section 7 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded under this Act;

**"tribunal"** means the Employment and Assistance Appeal Tribunal established under section 19 of the *Employment and Assistance Act*.

(2) The Lieutenant Governor in Council may prescribe other circumstances in which a child is a dependent child of a parent for the purposes of this Act.

(3) For the purpose of the definition of "dependant", spouses do not reside apart by reason only that a spouse is employed or self-employed in a position that requires the spouse to be away from the residence of the family unit for periods longer than a day.

### **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.

### Persons with disabilities

2 (1) In this section:

**"assistive device"** means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

**"daily living activity"** has the prescribed meaning;

**"prescribed professional"** has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

### **Eligibility of family unit**

**3** For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and

(b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

### **Application of Act**

**4** To be eligible for disability assistance or hardship assistance under this Act, a family unit must include a person with disabilities.

## **Part 2 — Assistance**

### **Disability assistance and supplements**

**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.

Employment and Assistance for Persons with Disabilities Regulation:

### **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 ministry stands by its decision by stating that Miss X is a child by definition under EAPWDA and that a worker contacted Miss X's mother by phone and was told that if she had the money, Miss X would be allowed home but she did not have the money.

The ministry states that there are financial avenues available to the mother and she has an obligation to support her daughter until the age of 19. The ministry also states that the appellant and Miss X have not provided written evidence to confirm that Miss X is not allowed to live at home with her mother.

The appellant and Miss X state in writing that Miss X is not allowed to return home to live. They both state they have been told by Miss X's mother and her stepfather that she is not allowed to step foot on their property and that she cannot even visit her baby brother without supervision. They have been a couple residing together for the past year and a half and that Miss X has not lived at home since April of 2011 when her mother put her into care because they were not getting along. Once the 3 month foster care time was finished Miss X has not been living at home with her mother but has been living with the appellant.

The panel finds that by definition under EAPWDA, Section 1, Miss X is a child as she is an unmarried person under the age of 19.

The Panel finds that EAPWDR section 1.1 defines spouse as two persons who are married to each other or they have acknowledged to the minister that they are residing in a marriage like relationship. Section 2 states that two persons who reside together are spouses of each other for the purposes of this Act if they have resided together for at least the previous 3 months or 9 of the previous 12 months and if the minister is satisfied the relationship demonstrates financial interdependence and social and familial interdependence consistent with a marriage like relationship.

The panel finds that the appellant and Miss X meet the requirements set out in the legislation to qualify as spouses. There is no language in the legislation which indicates that a spouse must be over 19 years of age.

The panel finds that the appellant and Miss X have stated in writing that Miss X's mother and stepfather have told her she is not welcome to live with them at home. In the past year and a half, since the custody agreement ended, Miss X has not lived at home with her mother and has not been financially supported by her.

The panel finds that the oral evidence provided by the mother to the ministry staff, saying that Miss X is welcome to live at home but not now because she does not have any money does not show a



willingness on her part to assume any responsibility for her child, Miss X. The ministry states that there are financial options available to the mother but does not indicate whether she is already taking advantage of these options or not specifically Family Bonus and Child Tax Benefit. When taken in context with the oral testimony of Miss X and the appellant and the evidence that Miss X has not lived at home since she was placed in temporary care by her mother, the panel place more weight on Miss X's statements than on those of the mother.

EAPWDR section 5 states that for a family unit to be eligible for assistance or a supplement, an adult in the family must apply on behalf of the family unless 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 finds that the appellant and Miss X have done this as they applied together for her to be added to his file.

The panel finds that the appellant and Miss X have been diligent in applying for assistance both from MCFD and MSD. The appellant and Miss X have been referred from one ministry to another in their efforts to find a way to have enough support to live on.

The panel finds that the appellant and Miss X meet the requirements of EAPWDA and EAPWDR and are spouses according to the legislation.

The panel finds that the ministry decision to deny the appellant adding Miss X to his file as a spouse is not a reasonable application of the legislation and is not reasonably supported by the evidence. The panel rescinds the ministry decision.