

### PART C – Decision under Appeal

The decision being appealed is the Ministry's September 17, 2012 reconsideration decision in which the Ministry determined that the Appellant, who was approved as a Person with Disabilities as a single person, was no longer eligible for assistance as a single person because he was living with his fiancé in a dependency/marriage-like relationship. Therefore, in accordance with the requirements in section 5 of the Employment and Assistance for Persons with Disabilities Regulation, the Ministry determined that the fiancé should be included as the Appellant's spouse in his family unit for the purposes of determining his assistance eligibility.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Sections 1, 1.1 and 3.

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

## PART E – Summary of Facts

The Appellant did not appear at the hearing. The Panel confirmed that the Appellant was notified of the hearing and then proceeded with the hearing under section 86(b) of the Employment and Assistance Regulation.

For its reconsideration decision the Ministry had the following evidence:

1. Information from its files indicating that:

- The Appellant was receiving assistance as a single person since September 2010.
- In January 2012, the Appellant was approved as a Person with Disabilities (“PWD”) and started receiving disability benefits as a single person.
- A Ministry data match review with the Canada Revenue Agency disclosed that the Appellant was residing with an individual later identified as his fiancé.
- A strata property Form K Notice of Tenant Responsibilities, dated April 26, 2010, listed the Appellant and a woman as tenants of a property. The Appellant identified that woman as his fiancé in conversations with the Ministry.
- Shelter Information form with the Appellant’s residential address and signed on February 10, 2012 by the owner. The Appellant identified the owner as his mother-in-law in conversations with the Ministry.
- On August 14, 2012, the Ministry contacted the owner of that residence who confirmed that she, her daughter and the Appellant lived there. The daughter’s name was the same as the one on the Form K tenancy document from April 2010.
- On August 15, 2012, the Ministry had phone conversations with the Appellant during which, according to the Ministry’s records, he referred to the owner listed in the Shelter Information Form, as his mother-in-law and landlord. He said she was the mother of his fiancé. The Appellant confirmed that he lived with his fiancé and his mother-in-law, and that they were his caregivers.
- The Appellant told the Ministry he and his fiancé would “break-up” if his living situation would impact his benefits.
- The Ministry advised the Appellant that his assistance could be re-assessed as a two unit family. It also advised the Appellant that spousal support may be reviewed if he separated from his fiancé.

2. Ministry adjudicator’s decision dated August 22, 2012 determining that the Appellant was no longer eligible for assistance as a single person because he confirmed that he was residing with his fiancé and was considered to be living in a dependency/marriage-like relationship.

3. Appellant’s request for reconsideration, dated September 4, 2012, in which he wrote that a Ministry staff person wrote a letter about the August 2012 phone call, but that letter was completely untrue. He also stated that the Ministry staff person made threats, swore at him and that she said that she did not care what disease he has, whether he was going to be crippled or whether he was dying. The Appellant stated that the way this person spoke to him was uncalled for and completely unprofessional. The Appellant also wrote that he never said “fiancé” or “mother-in-law” in that conversation. He stated that he said he would move to prove that the Ministry claims are untrue. He wrote that he found and was moving into a legal basement suite. The woman identified as his fiancé found a house to move into with friends. The Appellant submitted that that way it would be crystal clear that they have never been together as a married or common-law couple. The Appellant wrote that his move is already happening and will be completed immediately. The Appellant also stated that he will not be able to live without the help of the doctors, specialists, medications and treatment that the disability assistance provides.

In his notice of appeal, the Appellant wrote that the government has very strict laws about fraudulent documents or untrue statements in documents. The Appellant wrote that the Ministry representative committed fraud by lying in the documents about his case. The Appellant stated that he lives in a 4 level home with a basement floor, 1<sup>st</sup> floor, 2<sup>nd</sup> floor and an attic. He indicated that all units are split legally and are rented separately. The Appellant submitted that the Ministry documents and the case associated with it are void. He asked that his PWD benefits be reinstated as soon as possible.

Because the Appellant did not appear at the hearing, the Panel will consider the statements in his notice of appeal to be his submissions for this hearing.

At the hearing, the Ministry reviewed the information it had about the Appellant's circumstances and how it confirmed that the Appellant was living with a woman identified by the Ministry as his fiancé. The Ministry also explained that each person receiving assistance must complete a monthly report and provide information about any change in circumstances. The Ministry expected the Appellant to note in a report that his family unit included his fiancé with whom he was living. He did not do so.

The Panel makes the following findings of fact:

1. The Appellant started receiving income assistance in September 2010 as a single person.
2. The Appellant was approved as a PWD in January 2012 and started receiving disability assistance as a single person.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was no longer eligible for disability assistance as a single person because he was living with his fiancé in a dependency/marriage-like relationship. Therefore, in accordance with section 5 of the EAPWDR the Ministry determined that the fiancé should be included as the Appellant's spouse in his family unit for the purposes of determining his assistance eligibility.

The following sections of the EAPWDA apply to this appeal:

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.

“dependant”, in relation to another person, means anyone who resides with the other person and who (a) is the spouse of the other person, (b) is a dependent child of the other person, (c) indicates a parental responsibility for the other person's dependent child.

“spouse” has the meaning in section 1.1

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.

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 the regulations, and

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

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.

The following sections of the EAPWDR apply to this appeal:

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.

In its reconsideration decision, the Ministry indicated that it reviewed all of the information relevant to the Appellant's request for reconsideration. The Ministry submitted that based on the documents it had, the Appellant was living with someone since April 2010. In August 2012, the Appellant's landlord confirmed to the Ministry that the Appellant was living with her and her daughter. The Ministry referred to the Notice of Tenant Responsibilities dated April 26, 2010, listing the Appellant and that person as tenants occupying the same suite. The Ministry also submitted that the Appellant acknowledged a marriage-like relationship because he referred to this person as his fiancé and the landlord as his mother-in-law. The Ministry acknowledged that the Appellant disputed making those statements. But it also found there was no evidence that he did not make the statements when speaking to the Ministry's investigation officer. The Ministry noted that the Appellant also said that his fiancé would break up with him if his living situation impacted his benefits. According to the Ministry this demonstrated financial dependence between the Appellant and the woman, he called his fiancé. The Ministry further found that social dependence was also evident because they are viewed as a couple in the community with references to the woman as the Appellant's fiancé and plans for marriage.

The Ministry considered the Appellant's statement in his request for reconsideration, about moving to prove that the claims that he is in a marriage-like relationship to be untrue. However, the Ministry found that it had not received any notice of a move or new shelter information. Therefore, based on all of the information it had the Ministry concluded that because the Appellant resided with and acknowledged a marriage-like relationship with another person, he was not eligible for disability assistance as a single recipient. He must apply on behalf of himself and his fiancé.

The Ministry also noted the Appellant's statement that he will not be able to live without the help of his disability benefits. The Ministry pointed out that applying for assistance on behalf of his entire family does not change the Appellant's status as a PWD. The Ministry explained that one person with disability status in a family unit has a \$500 exemption. The Ministry also pointed out that, as of October 1, 2012, the Ministry is implementing new legislation for recipients of disability assistance, allowing them to earn up to \$800 per family unit. Asset limits are also increasing.

The Appellant disputes the information the Ministry cited regarding his contacts with the Ministry. He denied referring to anyone as his fiancé or as his mother-in law. In his request for reconsideration, he also denied being in a common law or marriage-like relationship. He submitted that he will be moving into or has moved into a basement suite; so that it would be crystal clear, there was no marriage-like relationship. The Appellant also asked to have his disability benefits reinstated as soon as possible. He needs the help of doctors, specialist, medications and treatments provided by disability assistance.

The definitions in the EAPWDA set out the basis on which the Ministry determined if the Appellant is eligible for assistance as a single person or as part of a family unit, that includes the woman the Ministry identified as his fiancé. In section 1, an applicant is defined as the person in the family unit who applies for assistance, and includes the person's spouse. There is no dispute in this case that the Appellant applied for assistance under section 5 of the EAPWDR and that he applied for and was approved as single person. The Appellant's position is that he has no dependants, and specifically no spouse. The Ministry's position is that he does have a dependant – a spouse as defined in the act; that is, the woman the Ministry referred to as his fiancé living with him in a dependent/marriage-like relationship.

In the EAPWDA, a dependant is defined as anyone who resides with the other person and who is the spouse of the other person. Under section 1.1 of the EAPWDA two persons are spouses of each other if they are married to each other or they acknowledge to the minister that they are residing together in a marriage-like relationship. The definition of spouse in the EAPWD also includes two persons who reside together if they have resided together for at least the previous 3 consecutive months, or 9 of the previous 12 months and the minister is satisfied that the relationship demonstrates financial dependence or interdependence, and social and familial interdependence consistent with a marriage-like relationship.

In this case, based on information from the Canada Revenue Agency that the Appellant was living with someone, the Ministry started to look into the Appellant's status as a single person receiving assistance. The Ministry determined that rental documents, conversations with the Appellant's landlord and even with the Appellant all confirmed that since April 2010 the Appellant was living with a woman the Ministry determined that the Appellant identified as his fiancé. In the rental document from 2010, the Appellant and this same woman were both named as tenants. Also, in August 2012 the Appellant's landlord confirmed to the Ministry that the Appellant and her daughter were living with her. The Ministry's records indicate that the Appellant referred to the landlord as his mother-in-law. The daughter's name is the same as the name of the tenant in the April 2010 rental document.

The Panel notes that the Appellant disputed calling the landlord's daughter his fiancé or the landlord his mother-in-law in conversations with the Ministry. In his request for reconsideration, he also denied living with this person in a common law or marriage-like relationship. He submitted that he would be moving into a one bedroom suite and that the woman the Ministry identified as his fiancé was moving in with friends. However, the Panel notes that the Appellant did not submit any evidence, such as a shelter form or tenancy agreement, demonstrating that he was living alone or even that he had moved. Also, he did not dispute that he has a fiancé or that he had lived with this person the Ministry identified as his fiancé starting in April 2010. He also did not dispute that he was living with this person and her mother in August 2012. He only denied referring to them in a certain way. In addition, the Ministry reasonably determined that the statement that the woman, the Ministry identified as the fiancé, would break up with the Appellant if his benefits are impacted, was evidence of financial dependence. Therefore, based on all the evidence, including the shelter and tenancy documents, the information the Ministry had from its contacts with the Appellant's landlord and with the Appellant, the Panel finds that the Ministry reasonably determined that the Appellant was living with this same woman as his spouse consistent with a common law or marriage-like relationship as defined in section 1.1 of the EAPWDA. The Ministry further reasonably determined that because the Appellant's family unit included the woman it referred to as his fiancé, in these circumstances he was no longer eligible for assistance as a single person.

The Panel confirms the reconsideration decision because it finds that the Ministry's decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments.