

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 21 November 2012 which held that the appellant is ineligible for income assistance as a single parent due to residing in a dependency relationship as defined by section 1 of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 1

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the appellant's Request for Reconsideration dated 24 October 2012. The section prepared by the ministry states that the appellant currently lives with her child's father; she has named him as the father on the birth certificate, he is listed on the rental agreement and he is the respondent on her family maintenance referral. Under reason for request for reconsideration, the appellant writes that the person she lives with is just a roommate. He will not support them at all. She needs income to pay rent and take care of her two children. If she is cut off, she and her kids will be on the street. Other evidence:

- A copy of the first page of a residential tenancy agreement showing the appellant and another person (Mr. B) as joint tenants.
- A "To whom it may concern" note, signed by one of the landlords shown on the above residential tenancy agreement, stating that the appellant pays \$500 per month for rent; this includes laundry, hydro and heat. Her roommate is responsible for the other half of the rent (\$500).
- A bank "Customer Snapshot" dated to 4 October 2012, showing that the appellant has a primary checking account with the bank.
- A BC Birth Certificate for a child born in August 2012, showing the child's surname being the same as that of Mr. B.

In her Notice of Appeal dated 30 November 2012, the appellant writes:

"We are not together in a relationship. I can't lose this income. He will be moving out by Jan 1st, 2013 (He is moving out Jan 1st). He does not want anything to do with taking care of me and my family. We will be homeless if I don't get your help."

At the hearing, in her opening remarks and in answer to questions, the appellant gave the following evidence:

- The appellant has lived with Mr. B for over four years. Shortly after they became roommates the ministry investigated their situation and at that time determined that a common-law relationship did not exist.
- The ministry revisited this issue only when the ministry attempted to pursue child maintenance from Mr. B and found that this was not possible as Mr. B and the appellant shared the same address.
- During the course of living together, they slept in separate rooms. The baby was the result of a one-time event.
- Mr. B is much older than the appellant ("old enough to be my father") and there is no way that she would consider him to be someone with whom she would like to be in the long-term relationship.
- Mr. B is not in receipt of income assistance. He works and is often away for long stretches of time. He rarely eats at home and the groceries that the appellant buys are mostly for her and her children. If asked, Mr. B will occasionally pick up a few boxes of diapers for the baby but this is pretty much the extent of how much he helps her and her family out. She does not leave the baby alone with Mr. B as the baby has not been weaned from breast-feeding.
- Mr. B has his own social life, having had several girlfriends during the time that he and the appellant had been living together.
- The appellant submitted a note from their landlord dated 02 January 2013 confirming that

Mr. B has moved out of the residence.

The ministry stood by its decision at reconsideration.

The ministry objected to the admissibility of the statement by the appellant in her Notice of Appeal that Mr. B was moving out of their residence on 31 December 2012 and to the note from the landlord that he in fact had moved out: the ministry's position was that this information would not have changed the reconsideration decision as the ministry could act only on the basis of the circumstances that prevailed at that time. After giving due consideration to the argument made by the ministry, the panel finds that the new information provided by the appellant in her Notice of Appeal and at the hearing is in support of the information and records that were before the ministry at the time of reconsideration. In particular, the appellant's testimony about Mr. B's intention to leave and the fact that he did leave are in support of the appellant's statement in her Request for Reconsideration that he is just a roommate and that he will not support the appellant and her family. The panel therefore admits the new information as evidence pursuant to section 22(4) of the EAA.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry determination that the appellant is ineligible for income assistance as a single parent due to residing in a dependency relationship is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The applicable legislation is from the EAA:

Interpretation

1 (1) In this Act:

"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);

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

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.

The position of the ministry in its reconsideration decision is that the appellant does not dispute the fact that the father of her baby is residing with her. He resides with her and has a parental responsibility for the dependent child as he is the father and therefore meets the definition of "dependent." A "family unit" includes the recipient and his or her dependents. He therefore must be included as part of the appellant's family unit when assessing her eligibility for income assistance. At the hearing, the ministry also referred to the definition of spouse set out in section 1.1 (2) of the EAA:

the appellant and Mr. B have lived together for over 4 years, their sharing the rent is an indicator of financial interdependence and with the child there is a familial interdependence. Therefore the ministry argued that a spousal relationship existed.

The position of the appellant is that her relationship with Mr. B was simply that of a roommate. They shared the costs of rent as two roommates would. Otherwise their financial and social lives were separate. The appellant noted the difficulty of "proving they did not live common-law." The only difference between when the reconsideration decision was made and when the ministry reviewed her situation with Mr. B four years ago is the presence of the baby, and he did little to help out except bring home when asked a few boxes of diapers. As evidence of his lack of interest, he moved out as soon as he could give notice after his presence became an issue.

The panel will first address the ministry's argument that Mr. B is a "dependent" of the appellant under item (c) of the definition in the EAA, as he resided with her and is the father of the baby and therefore has a parental responsibility for the child. The panel notes this part of the definition of "dependent" in the EAA requires that the person (in this case Mr. B) not only resides with the other parent but also "indicates" his parental responsibility. To the panel, this suggests something more active than that of residing at the same address as the other parent; the panel takes "indicates" to mean "shows" or "demonstrates" parental responsibility. This would be through showing a personal, ongoing, dependable commitment to the child's care, with dependency arising from the sharing of responsibilities. The panel finds that, given the testimony of the appellant regarding the limited interest in and involvement of Mr. B in the baby's care, the ministry was not reasonable in determining that Mr. B was a dependent of the appellant under item (c) of the definition.

Both the ministry and the appellant presented argument regarding dependency arising from the definition of dependent in section 1(1) item (a) of the EAA ("is a spouse of the other person") and the definition of spouse in section 1.1 of the EAA. The panel notes that the reconsideration decision was based solely on the application of the item (c) definition and did not address the application of item (a). The panel finds that its mandate is strictly limited to the reasonableness of the ministry's decision regarding the application of item (c) and will not address the item (a) argument.

Based on the foregoing, the panel finds that the ministry's decision was not reasonably supported by the evidence. Accordingly, the panel rescinds the ministry's decision in favour of the appellant.