

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (ministry) reconsideration decision of January 22, 2013, which denied the appellant assistance as a sole recipient of disability assistance. The ministry determined that the appellant, his biological children aged 10 and 12, and their mother have all lived together in the same house since September 1, 2012, and that both the appellant and the children's mother have indicated parental responsibility for these children. The ministry therefore determined that the relationship meets the definition of "dependant", as set out in section 1 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), and therefore must be assessed as one family unit for the purposes of assistance.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 1.

PART E – Summary of Facts

Information and records before the ministry at the time of reconsideration include the following:

- A copy of ministry Shelter Information form signed by the appellant's Landlord August 25, 2012.
- A copy of the appellant's Request for Reconsideration dated December 17, 2012.
- A copy of a fax from the appellant's advocate to the ministry dated December 19, 2012, requesting a copy of information the ministry relied on when making its original decision.
- A copy of a fax from the appellant's advocate to the ministry dated January 11, 2013, once again requesting a copy of the same information it previously requested on December 18, 2012.
- A copy of a submission from the appellant's advocate to the ministry dated January 18, 2013.
- A copy of a submission from the appellant's advocate to the ministry dated January 22, 2013.
- A faxed copy of a note from the appellant to the ministry sent January 22, 2013.

Ministry records indicate that the appellant has been the sole recipient of disability assistance since September 2006. The appellant moved into his current residence September 1, 2012, and is sharing a house with two other adults and six children. The ministry Shelter Information form dated August 25, 2012, indicates that the total rent for the house in which the appellant resides is \$1800.00 per month and that appellant's share of the rent is \$500.00, plus utilities. Ministry records further indicate that the appellant is the biological father of two of the children living in the house (aged 10 and 12) and that the appellant is providing parental responsibilities to these children. In conversation with the appellant's landlord the ministry was informed that there is one kitchen in the house which is shared with all tenants.

In section 3 of the appellant's Request for Reconsideration dated December 17, 2012, his advocate requested additional time to receive requested evidence from the ministry, and time to respond to the request. This request was granted by the ministry.

Two subsequent written requests were made to the ministry by the appellant's advocate for the above noted evidence, the first on December 18, 2012, and the second on January 11, 2013. The evidence the advocate was requesting from the ministry was in regards to a statement made by the ministry in its original decision, "Your landlord confirmed that you are residing at the residence since September 2012, and sharing common living area".

The record indicates that the ministry contacted the appellant's advocate January 21, 2013, to respond to the request, and advised that the statement was based on a conversation it had with the appellant's landlord.

A second contact with the advocate was made by the ministry January 21, 2013, to confirm if there was any additional information expected, and the advocate advised the ministry to proceed with the reconsideration decision. The ministry confirmed with the advocate that the appellant's landlord advised the ministry that the house only has one kitchen which is shared by all tenants.

The following was provided in the advocate's submission of January 18, 2013:

- A summary of the reasons for the ministry's original decision.
- Argument as to why the advocate believes the ministry's decision not to provide the appellant assistance as a sole recipient was unreasonable.

The following was provided in the advocate's submission of January 22, 2013:

- Chronological history of the advocate's dealings with the ministry since opening their file with the appellant December 17, 2012, up to and including January 21, 2013, the date they received verbal confirmation in relation to their previous requests for documental evidence regarding the appellant's request for reconsideration.
- Argument as to why the advocate believes the ministry's decision not to provide the appellant assistance as a sole recipient was unreasonable.

Under the heading Reasons for Appeal section of the appellant's Notice of Appeal dated January 23, 2013, he states that he lives in his own house, not with the mother of his two children. He states that he has his own stuff and his own phone number. The mother of his two children has her own family, and he is not with her any more.

The appellant did not attend the hearing. The panel received confirmation from the Tribunal that the appellant had been duly notified of the date, time, and call in instructions for the hearing held on February 9, 2013. Accordingly, under 86(b) of the Employment and Assistance Regulation, the panel heard the appeal in the appellant's absence.

At the hearing the ministry stood by the record and in response to questions from the panel provided an expanded description of the appellant's living accommodation and clarification with regards to the legislation the ministry relied upon in arriving at their reconsideration decision.

The ministry stated that the appellant's landlord indicated in a telephone conversation that the appellant's house is a typical split level home which does not have any self contained suites. The house has 3 bedrooms, two bathrooms and a laundry up, and a kitchen, den and family room and two more bedrooms down. The house has one front door and one back door.

As to the legislation the ministry relied upon in arriving at their decision, the ministry reported that extra legislation was inadvertently included with the reconsideration decision and that the only legislation the ministry relied upon was section 1 of EAPWDA.

Findings of Fact

- The appellant has been the sole recipient of disability assistance since September 2006.
- The appellant moved into his current residence September 1, 2012, and is sharing a house with two other adults and six children.
- The appellant is the biological father of two of the children living in the house (aged 10 and 12).
- Both the appellant and his children's mother acknowledge that they are providing parental responsibilities to their two children.
- The total rent for the house in which the appellant resides is \$1800.00 per month, and the appellant's share of the rent is \$500.00, plus utilities.
- The appellant's landlord has verbally confirmed to the ministry that there are no self contained suites in the appellant's house and there is only one kitchen which is shared with all tenants.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's decision to deny the appellant assistance as a sole recipient of disability assistance. The ministry determined the appellant, his biological children aged 10 and 12, and their mother have all lived together in the same house since September 1, 2012, and that both the appellant and the children's mother have indicated parental responsibility for those children. The ministry therefore determined that the relationship meets the definition of "dependant", and they must be assessed as one family unit for the purposes of assistance. In arriving at this decision the ministry relied upon the following legislation:

Employment and Assistance for Persons with Disabilities Act

Interpretation

1 (1) In this Act:

"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);

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

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

"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;

The ministry's position is that the appellant, his biological children aged 10 and 12, and their mother have all lived together in the same house since September 1, 2012, and that both the appellant and the children's mother indicate parental responsibility for those children. As a result this relationship meets the definition of "dependant", and they must be assessed as one family unit for assistance.

The appellant's position as presented in his advocate's submission is that he lives alone in a basement apartment located in the same house in which his two biological children and their mother also rent accommodation. The advocate acknowledges the house does have shared kitchen facilities, and that the appellant shares parental responsibilities with the mother of his two children. However it is the advocate's position that both the appellant's children and their mother live completely independently from him.

In the advocate's submission of January 22, 2013, she argues that the appellant does not share a residence with his two children and their mother, that there are three separate units in the house, one on the upper floor, and two units on the lower floor. The two units on the lower floor have a separate entrance and the appellant lives in one of the lower floor units, while the appellant's two children and their mother live in the upper floor unit. In support of this position the advocate argued that the ministry has separate "intent to rent" forms for the separate tenancies. While the advocate does acknowledge that all three of the adult tenants living in the house share a kitchen, she argued that the kitchen is equipped for multiple users and this does not establish that the appellant resides with his children and their mother. The advocate argued that it is not uncommon for separate tenants to share a kitchen and not be defined by the ministry as "resides with" each other, and furthermore sharing a kitchen with other tenants does not establish dependency. The advocate concludes by arguing that the ministry has failed to provide evidence to substantiate their decision to deny, and has not provided proof that the appellant resides with the mother of his two children.

The ministry argued that the appellant, his two children and their mother have all lived together in the same house since September 1, 2012. In conversation with the appellant's landlord the ministry was able to determine that the house is a typical split level home with no self contained suites. The house has 3 bedrooms, two bathrooms and a laundry up, and a kitchen, den and family room and two more bedrooms down. The house has one front door and one back door. The ministry further argued that the fact that the landlord may have completed separate "intent to rent" forms for each adult living in the house this has no impact, and as the appellant has resided in the same house with his two children aged 10 and 12, and their mother since September 1, 2012, the children have resided with him more than 50% of the time. Furthermore as both the appellant and the mother of his children indicate parental responsibility for those children and they reside all together in one house, their relationship meets the definition of "dependant" and therefore they must be assessed as a "family unit", for the purpose of assistance.

The panel finds that while the appellant and his advocate have argued that the house the appellant resides in has three separate suites, and that he lives independently in a suite with a separate entrance on the lower floor of the house, and that his children and their mother live in a separate suite on the upper floor of the house, this argument is not supported by the information provided to the ministry by the appellant's landlord. In a conversation with the ministry the appellant's landlord confirmed that the house is a typical split level home with no self contained suites. It has 3 bedrooms, two bathrooms and a laundry up, and one kitchen, den, family room, and two more bedrooms down. The landlord also confirmed that the house has one front door and one back door. As there is no reason to doubt the information provided to the ministry by the appellant's landlord the panel has placed greater weight on its evidence than that of the appellant and his advocate, and finds that the appellant, his two children, and their mother all live together in one house with no separate suites.

As to the appellant's argument regarding separate "intent to rent" agreements, the panel finds the only documental evidence contained in the record regarding the appellant's house rental is a ministry Shelter Information form. This form was signed by the appellant's landlord August 25, 2012, and indicates that three adults and six children will be living in the house as of September 1, 2012, and that the total monthly rent for the house is \$1800.00, with the appellant's share being \$500.00 per month. No other information was provided on this form which would support the advocate's argument

regarding separate units within the house, and the panel therefore finds that the ministry's position that having separate "intent to rent" agreements has no bearing on how many living units a given house might have is reasonably supported by the evidence.

Based on the information provided above the panel finds that as the appellant has lived in the same house as his two children and their mother since September 1, 2012, and both he and his children's mother indicate parental responsibility to their children, their relationship meets the defined term 'dependant', as set out above in EAPWDA section 1. As the appellant's two children are aged 10 and 12 they meet the defined term "child" set out above in EAPWDA section 1. As the appellant's two children are both under the age of 18 and have resided in their parent's place of residence for more than 50% of each month and relied on that parent for necessities of life, they meet the prescribed definition of "dependant child" as set out above in EAPWDA section 1. Finally, as the appellant his two children and their mother have met the defined terms noted above, together they also meet the defined term "family unit" as set out above in EAPWDA section 1 and must therefore be assessed as one family unit for the purpose of assistance.

For these reasons the panel finds that the ministry reasonably determined that the appellant is not eligible to receive assistance as a sole recipient of disability benefits and confirms the ministry's reconsideration decision.