

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 22, 2013 which found that the appellant is not eligible for assistance as a single parent since she is residing with a "dependant" with whom she must be assessed as one family unit, pursuant to Sections 1 and 4 of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 5
Employment and Assistance Act (EAA), Sections 1, 1.1 and 4

PART E – Summary of Facts

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

- 1) Fax dated December 19, 2012 from an advocate to the ministry stating in part a request for the supporting evidence that the appellant's landlord confirmed that the appellant is residing at the residence since September 2012 and sharing common living area;
- 2) Fax dated January 11, 2013 from an advocate to the ministry stating in part that on December 19, 2012 a fax request was made to provide the advocate with the information referred to in the Request for Reconsideration for the appellant, in particular that the landlord confirmed that the appellant is residing at the residence since September 2012 and sharing common living area; and,
- 3) Request for Reconsideration- Reasons prepared by an advocate on behalf of the appellant, dated January 18, 2012 and a replacement copy dated January 22, 2013.

At the hearing, the appellant provided additional documents as follows:

- 1) Letter, undated, from the father of the appellant's youngest children stating in part that the letter is to support his "kids and step kids." The appellant rents her own space upstairs and the kitchen downstairs has own entrance to have own fridge, stove cupboards. The father of the older children lives downstairs and has his own separate area, own kitchen entrance, fridge, stove, and bathroom. He does not help the appellant at all in any way. They do not share bills, laundry, food, or kids' activities at all. He has been present when the ministry tried to make the father of the older children say that he was dependent on the appellant. The appellant and the father of the older children are not dependent on each other and the father of the older children is with someone else;
- 2) Letter dated January 28, 2013 from the other tenant stating in part that he lives at the residence, lower suite, by himself completely, and the two other separate tenants. The appellant and her kids live upstairs alone and do their own stuff without the father of the older children. He witnesses this daily. They do not share anything at all. The appellant has her own bathroom, laundry, kitchen (own entrance), oven, fridge, entrance and vehicle with a very busy life. The father of the older children has his own room and bathroom, and he and the father of the older children share a stove and fridge. He has witnessed several phone calls by the ministry accusing the father of the older children of dependency on the appellant. This is untrue. He was present when the landlord told the ministry that the appellant and the father of the older children are separate. The ministry has been trying to get the father of the older children to say that the appellant is helping him, but this is causing problems between them; and,
- 3) First 3 pages of a 6-page Residential Tenancy Agreement between the landlord and the appellant for her current residence starting on August 31, 2012 on a month-to-month basis. The appellant is to pay the rent of \$1,800 on the first day of each month, with the tenants to be responsible for paying heat, electric, cable and the utility bill.

The ministry objected to the admissibility of the letters because the ministry had not previously seen them and the Residential Tenancy Agreement because it does not add any information. The panel reviewed the documents and admitted them, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail relating to the appellant's current residence and being in support of information that was before the ministry on reconsideration.

In the most recent Request for Reconsideration dated January 22, 2013, the advocate stated that the ministry advised on January 21, 2013 that the information that the advocate was requesting, regarding the sharing of common living area, was from a conversation that the ministry had with the appellant's landlord. The information that the landlord had disclosed was that there is only one kitchen in the house. The appellant stated that she does not share her residence with the father of the older children and she does not reside with him. The landlord has confirmed that there are 3 separate tenancies in the house. There are separate Intent to Rent forms for separate tenancies. The appellant has her own separate residence on the upper floor of the house which has 3 bedrooms and 2 bathrooms. The lower floor units have a separate entry. The father of the older children rents one of the downstairs units. All 3 tenants use the same kitchen which is equipped for

multi-users. The appellant stated that her food is separate from the food of the father of the older children and she cooks and eats separately from him.

In her Notice of Appeal, the appellant stated that the ministry was not honest about discussions with the landlord even though the appellant was present. The appellant stated that the landlord told the ministry by phone several times that the appellant is separate from the father of the older children completely.

At the hearing, the appellant stated that she was "kicked off" assistance in November 2012 for being in a "dependent" relationship with the father of the older children. The appellant stated that the ministry had a conversation with her landlord in October 2012, while she was present, and the landlord confirmed that she and the father of the older children are not sharing a residence. The appellant stated that her landlord wrote a letter, after talking with his lawyer, stating that she and the father of the older children do not share a residence and the letter was provided to the ministry. The appellant stated that she does not have a copy of the letter and now the ministry is saying it did not receive the letter. The appellant stated that she thought it was settled but then the next day the ministry said that since the father of the older children is the biological father of two of her children, the ministry considers her to be in a dependent relationship with him. The appellant stated that this does not make sense because she lives with her children on the second level where they have their own bedroom and bathroom. The appellant stated that the ministry called the landlord a couple of times when she was present and the landlord confirmed that she and the father of the older children do not share the residence.

The appellant stated that she and the father of the older children got together around 1999/2000 but they discontinued their relationship in 2002 due to personal issues. The appellant stated that she and the father of the older children have lived at the same address because he wants to be near the children, but they have always maintained separate residences. The appellant stated that she is legally married to another man that she met at the end of 2002, that he is the father of her youngest children, but they are currently separated. The appellant stated that over the past 12 years she never had problems with the ministry regarding living at the same address as the father of the older children. The appellant stated that the landlord has become so upset with all the calls from the ministry, that he will no longer talk to the appellant and he wants her to leave.

The appellant stated that she has her own entrance to the residence, her own bathroom, and her own cupboards in the kitchen. There are two entrances to the residence, at the front and back, and she uses the entrance and parking at the back while the father of the older children uses the parking and entrance at the front. The appellant stated that the father of the older children does not use the laundry facilities at the house but takes his laundry to a laundromat. There is a large kitchen with an island counter that runs down the middle with cupboards and appliances on each side, so that she uses one side and he uses the other. She and the father of the older children do not eat together or share food. The appellant stated that he has his own friends and new relationships, that he spends most of his time with the other tenant in the house, and she does not socialize with the father of the older children. The appellant stated that she is a busy mother taking her children to various community events, sometimes with her mother or father or sister. The appellant stated that the father of the older children also spends time with the children but she is not there with them. The appellant stated that the father of the older children has Persons With Disabilities (PWD) designation so he does not spend that much time with the children and that, mentally, he cannot parent them.

The ministry relied on the reconsideration decision. The appellant is the recipient of income assistance as a single parent with dependent children. The appellant moved to a new residence as of September 1, 2012 and has lived in the same house as the father of the older children since September 1, 2012. He is the biological father of the appellant's oldest children. In a telephone conversation with the ministry, the appellant's landlord advised the ministry that there is only one kitchen in the whole house and it is shared with all the tenants. At the hearing, the ministry clarified that the notes made in the appellant's file indicate that the ministry asked the landlord to describe the layout of the house. The landlord said that it is a split level house with a main floor and an upstairs and no basement. The 3 bedrooms are located upstairs. There are 3 bathrooms, with one

being an ensuite. On the main floor are the laundry, den, living and family rooms and one kitchen, with a front and back entry. There are no separate suites and there are shared common spaces, including the living and family rooms, laundry, kitchen, yard, and parking, which are jointly used spaces. The ministry stated that the appellant and the father of the older children have moved into the house together, live together and parent the children together. In response to a question, the ministry stated that the difference in the past has been that the ministry had confirmed that there have been separate self-contained units at the address and not one house, or common living area.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for assistance as a single parent since she is residing with a "dependant" with whom she must be assessed as one family unit, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Section 5 of the Employment and Assistance Regulation (EAR) provides:

Applicant requirements

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. . . .

Section 4 of the Employment and Assistance Act (EAA) provides:

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

Section 1(1) of the EAA provides definitions as follows:

"family unit" to mean "...an applicant or recipient and his or her dependants"

"dependant", in relation to a person, to mean 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.

"spouse" has the meaning in section 1.1

Section 1.1 of the EAA provides:

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 ministry points out that Section 1 of the EAA defines "family unit" to include an applicant or recipient and his or her dependants, and the definition of "dependant" includes a person who resides with the person and indicates a parental responsibility for the person's dependent child. The ministry argues that the father of the

appellant's older children is the biological father and the appellant does not dispute that he indicates a parental responsibility for the children. The ministry argues that the appellant resides with the father of the older children since they share the same kitchen and other common living areas and these are not separate self-contained suites. The ministry argues that the fact that the landlord completed separate "Intent to Rent" forms for each of the 3 adults living in the residence has no impact. The ministry argues that the third tenant is not a "dependant" because although he also shares the kitchen, he is not a spouse and there is no indication that he has any parental responsibility to the appellant's dependent children. The ministry argues that since the father of the older children falls within the definition of "dependant", he must be included as part of the appellant's family unit for the purposes of administering income assistance while he is residing with the appellant.

The appellant's position is that she does not share her residence with the father of the older children and she does not "reside" with him. The appellant argues that the landlord has confirmed that there are 3 separate tenancies in the house and has completed three separate Intent to Rent forms for these separate tenancies. The appellant argues that she and her children have their own separate space on the upper floor of the house which has 3 bedrooms and 2 bathrooms and that she and the father of the older children use separate entrances to the house. The appellant argues that even though all 3 tenants use the same kitchen, it is set up for multi-users and is divided by an island counter down the middle. The appellant argues that she and the father of the older children in no way live together since they do not share food and she cooks and eats separately from him, they do not socialize or spend time together, and they use different rooms of the house.

The legislation requires that income assistance is provided to a "family unit" which is defined in Section 1(1) of the EAA as the recipient and her 'dependants.' Section 1 of the EAA provides three different options for falling within the definition of "dependant." While the ministry may have at one time considered whether the father of the older children is the appellant's "spouse" under sub-paragraph (a) and the further definition under Section 1.1 of the EAA, which requires evidence that the relationship between the parties demonstrates financial, social and familial interdependence consistent with a marriage-like relationship, that is not the issue on this appeal. Rather, the ministry considered the appellant's relationship with the father of the older children as the biological father of her dependent children under paragraph (c) and argues that he indicates a parental responsibility for them. While the appellant stated that the father of the older children is not mentally capable of parenting the children, the appellant also stated that he has chosen to live at the same address with the appellant and the children since 2002 because he wants to be near the children, that he identifies himself as their father, and that he spends time with them on his own, without the appellant present. Therefore, the panel finds that the ministry reasonably concluded that the father of the older children indicates a parental responsibility for the appellant's dependent children.

The other requirement of the definition of "dependant" is that the person "resides" with the appellant. The normal meaning of 'reside' is to have one's permanent home in a particular place and the appellant does not dispute that she and the father of the older children have lived at the same address since September 1, 2012. The panel finds that the ministry reasonably determined that having 3 separate tenant relationships with the landlord, as set out in 3 Intent to Rent forms, is not conclusive of separate residences. While the kitchen space may be divided by an island counter, there is no wall dividing the living spaces into two distinct self-contained units, and there are common hallways to bedrooms and bathrooms and the other living spaces of the one single dwelling unit. The panel finds that there is no requirement that the appellant and the father of the older children have an interdependent relationship to meet the definition of "dependant" as set out in Section 1(1)(c) of the EAA and that, since they live in the same single dwelling unit, they "reside" together. The panel finds that the ministry reasonably concluded that the father of the older children is the appellant's "dependant" and, therefore, part of her family unit for the purposes of her eligibility for income assistance.

The Panel finds that the ministry decision was a reasonable application of the applicable enactment in the appellant's circumstances and confirms the decision.