

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 7, 2013 wherein the ministry denied the appellant's request for disability assistance pursuant to section 5 of the Employment Assistance for Persons with Disabilities Regulation after determining that the appellant applied for disability assistance as a sole recipient instead of applying on behalf of her entire family unit which includes her spouse who is a dependant as defined in sections 1 and 1.1.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, Sections 1 and 1.1
Employment and Assistance for Persons with Disabilities Regulation, Section 5

PART E – Summary of Facts

From February 2003 through to May 2012 the appellant's spouse was on the appellant's assistance file. In May 2012 the appellant advised the ministry that her spouse moved out and he was removed from her file.

On November 8, 2012 the ministry learned that the appellant's former spouse was again living with the appellant. This information was reaffirmed on January 3, 2013 and February 12, 2013 with the appellant's local housing society.

On February 14, 2013 the ministry advised the appellant that she was ineligible for assistance until eligibility could be determined for her and her spouse. The appellant requested a reconsideration. On reconsideration the appellant advised that her spouse "comes and goes" to get some of his belongings, and that she does not receive money from her spouse. In response, the ministry contacted the appellant's local housing society who confirmed that the appellant's rent was still based on the spouse's pension income. The housing society's executive director further confirmed that, to the best of her knowledge, the appellant's spouse was still residing in the home with the appellant and that her living situation had not changed. As such the ministry confirmed its decision.

The evidence before the ministry included a typed statement from the appellant which states:

- That the individual referred to as her spouse is in fact her spouse as defined by section 1.1(1)(a) of the Act;
- That she is not a dependant of her spouse because she does not reside with her spouse;
- That her spouse is not a dependant of hers because he does not reside with the appellant; and
- That the appellant is unaware of any changes to her eligibility to receive disability benefits pursuant to the legislation.

The evidence also included a hand written statement from the appellant in which she expresses frustration that her worker will not listen to her assertions that she does, in fact, live alone. She emphasizes that her spouse "comes and goes" to obtain his belongings and "that's it."

Additionally, the evidence before the ministry included two rental calculation letters dated August 30, 2011 and September 6, 2012 from the local housing society. The letter dated August 30, 2011 is addressed to the appellant and her spouse. The letter dated September 6, 2012 is redacted on the addressee line but appears to be addressed to the appellant and her spouse.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry reasonably concluded that the appellant is ineligible for income assistance pursuant to section 5 of the EAPWD Regulation due to the fact that she did not apply for assistance on behalf of her entire family unit.

Employment and Assistance for Persons with Disabilities Act:

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 role for the person's dependent child;

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

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

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.

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's position is that the appellant does not meet the eligibility criteria as she has a spouse with whom she lives with, yet she did not apply on behalf of her entire family unit.

The appellant's position is that she does meet the eligibility criteria because, despite the fact that she has a spouse, her spouse does not reside with her on a regular basis and neither of them is dependent on the other financially.

The ministry does not accept the appellant's evidence that she and her spouse do not reside together. The ministry says that it relies instead on the information provided by the appellant's landlord. The ministry says that the landlord and/or the housing society is a reliable source of information, that it has done house visits and confirmed that the spouse is still living with the appellant. The ministry says that the appellant's rent is based on the spouse's income and that it is unlikely that the appellant would continue to pay rent at a higher rate if the spouse were not actually living there. The ministry also says that the appellant has been given an opportunity to confirm that the spouse is no longer living with her but she has not done so, either with the ministry or with her local housing society.

Applying the legislation to the facts of this case, the appellant concedes to the ministry that she has a spouse (as defined in section 1.1). As a spouse, this individual is also considered a dependant as defined in section 1 if they reside together. Furthermore, as a dependant, the appellant's spouse is part of her family unit as also defined in section 1.

Applying section 5 of the Regulation to the facts of this case, the appellant has an obligation to make an application for disability assistance on behalf of her entire family unit.

Notwithstanding the appellant's contention that her spouse does not reside with her, the appellant does not dispute that she has a spouse and that she pays rent at the higher amount as a result. The panel agrees that it is unlikely that the appellant would continue to pay rent at a higher rate if the spouse were not actually living with the appellant. Further, the panel finds that the appellant has not provided any supporting evidence to establish that she resides alone. To the contrary, the appellant's

landlord established that the appellant resides with her spouse. In the circumstances, the legislation requires the appellant to apply for assistance on behalf of her entire family unit.

The panel therefore finds that that ministry reasonably concluded that the appellant is not eligible for income assistance due to the fact that she did not apply for assistance on behalf of her entire family unit. Accordingly, the panel finds that the ministry's decision was a reasonable application of the legislation and confirms the decision pursuant to section 24(1)(b) and 24(2)(a) of the Employment and Assistance Act.