

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated March 12, 2013 which held that the appellant was not eligible for disability assistance because she had not applied on behalf of the entire family unit under section 5 of the EAPWDR. The Ministry held that the appellant has a spouse within the meaning of the EAPWD Act because they have resided together for more than the previous 12 months and the relationship demonstrates a financial, social and familial interdependence consistent with a marriage-like relationship.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA)
Sections 1 (Definitions), 1.1 Meaning of "spouse", and 3 Eligibility of family unit

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)
Sections 1 (Definitions) and 5 Applicant requirements

PART E – SUMMARY OF FACTS

The evidence before the minister at reconsideration was:

- that the appellant is residing with another person and has done so for the past 10-12 years;
- the appellant is not married to the other person and denies that she is in a marriage-like relationship;
- the ministry decision reporting the appellant stated that the other person assists her with her daily living and that they have participated in leisure activities together;
- the ministry decision reporting the appellant and the other person are both listed on the city utility bills and the appellant confirmed that they are interdependent on each other to pay the bills;
- the appellant and the other person are listed as co-owners on the property in the BC Assessment role dated Sept. 24, 2012;
- the appellant and the other person are listed as co-owners and joint tenants since July 30, 1996; on the property title search conducted Sept. 24, 2012;
- the appellant and the other person are listed on the mortgage, renewed September 1, 2012 for a 5 year term;
- a Ministry Bank Profile document completed by the appellant's financial institution indicating the appellant holds a personal chequing account. It also indicates a shared mortgage, listing the other person; and
- an obituary / feature article published in a community newspaper in May 2011, for the appellant's parent listing the appellant and, in brackets behind the appellant's name, the other person's name, consistent with other family members listed.

Included with the Notice of Appeal were the following documents:

- a wedding invitation for the appellant's son for a wedding to take place in August of 2013. The invitation lists the appellant and the appellant's ex-husband separately, and the other parents, who are listed as Mr. & Mrs. (the appellant's friend is not mentioned on the invitation);
- a letter from the appellant's financial institution indicating the bank fees for rewriting the mortgage could be up to \$350 and that there would be additional fees for changing the title, discharging the current mortgage and registering a new mortgage; and
- handwritten notes listing the cost of appraisal (\$99 valuation, \$200 drive by, \$350 full appraisal), discharging and reregistering the mortgage (\$800+/-), and getting a letter from the other person on title agreeing to the release(\$75-\$100).

At the hearing, the appellant maintained that she was not in a common-law or any type of spousal relationship with her friend. She said that they had been in a relationship some ten to twelve years ago. They bought the house in 1996. They broke up in 1997 or 1998, but later became friends. She stressed that they were not now in a spousal relationship, and that the other person is simply a lodger.

Evidence on Financial Dependence or Interdependence

The appellant stated the other person pays rent to her, and that is the extent of her financial dependence on him. He has been a boarder, off and on, for ten years. His name is still on the mortgage because it would cost too much in fees for her to have the mortgage rewritten in her name only.

The appellant told the panel she holds a letter signed by the other person relinquishing all rights to the property in the event of her death so that the property would go to her son.

She stressed that the only joint bills are those related to the mortgage, namely water, sewer, property taxes and any other mortgage-related bills. The other person had the cable bill in his name but it was changed into the appellant's name last year.

In 2012, the appellant filed for bankruptcy and, as a result of the other person's name being on the mortgage, he too declared bankruptcy. The appellant reported at the time of the bankruptcy the other person had a loan in his name that he paid solely from his account at a different financial institution; it was not a shared debt.

The appellant holds that the ministry has misinterpreted what she has told them in the past, particularly with respect to the notion that her friend "supports" her. She says that what she meant was that he pays rent, but that is the extent of his financial support. She contends that when she said her friend pays rent the ministry interpreted this as her being in a common-law relationship. Some bills are paid directly by the ministry (hydro, gas), whereas the bills that the appellant receives she pays herself, from the money she receives from the ministry.

The appellant said she co-operated with this investigation by providing detailed banking information to the ministry.

She went on to say that her anxiety, depression and irritable bowel syndrome had worsened as a result of the necessity of going through the hearing process a second time. She has postponed some surgery in order to proceed through this process. While going through the first appeal she went on Fair Pharmacare, noting that if she was actually in a spousal relationship, she would have gone on her spouse's health care plan (he works for the local school district).

Evidence on Social and Familial Interdependence

The appellant stated the two sometimes go grocery shopping together but other person mostly buys his own groceries and fixes his own food. They do their laundry separately and are separately responsible for cleaning up after themselves. When asked how her friend supports her in their living arrangements, the appellant responded the only way he supports her is if she needs the bathroom for extended periods because of her medical condition; in these cases he uses the bathroom facilities at his workplace.

The appellant socializes with the other person as a friend, but says she socializes as much if not more with her other friends. When asked what activities the two of them do together socially, the appellant stated they go bowling and sometimes go grocery shopping.

The appellant states she has dated other men over the years while the other person has boarded with her, the most recent relationship ending last May. She says it is difficult for her to date or be in a relationship because of her health issues. The appellant is emphatic in her position that the other person does not support her emotionally as she would expect someone to do in a spousal relationship.

The appellant emphasized that she could not understand why her previous appeal, which had only been conducted last year and which concluded that she was not in a common-law relationship, was being contested again. She believed that the only new information that had come to attention of the ministry was a newspaper article containing the obituary of her parent. This newspaper article was published in the community where her parent resided, which is far away from where the appellant lives. The obituary article implies that the appellant is in a spousal relationship with her friend. The appellant stated that she had no hand in writing the obituary article, and that some family members had included this reference in order to make trouble for her, following a dispute at the time of her parent's death. She noted that the article included only the first names of all the other siblings' spouses but listed the first and surname of her friend and her siblings from a second marriage. Moreover, she said that an obituary is not a legal document.

The appellant cited the wedding invitation for her son's wedding, which does not include the name of her friend, but rather that of her ex-husband/father of her son. She maintains that she is not sleeping with her friend, nor does he support her financially or emotionally.

The question of how the appellant and the other person are viewed by friends and family is one the appellant said she faced in her previous appeal, at that time she submitted letters from friends and community members stating that the two were not viewed as a couple. She argues that she has already proven that she and her friend are not spouses. No such letters were submitted as part of this hearing.

The ministry acknowledged that the article containing the obituary article had been provided to it through the Provincial Loss Prevention Program, and that this was what had sparked the new inquiry. There followed a period which included several extensions, and during which much detailed information was reviewed.

The ministry noted that it did not have the documentation from the previous appeal, and that the current investigation was to be conducted on its own merits in order to be fair.

The panel determined the additional oral and documentary evidence was admissible under section 22(4) of the *Employment and Assistance Act* as the wedding invitation was in support of the appellant's argument at reconsideration that the appellant and the other person were not in a marriage-like relationship. The documents setting out the costs of changing the mortgage supported the appellant's argument at reconsideration that she could not afford to change the property title and mortgage.

The panel makes the following finds of fact.

- There is no dispute that the appellant and the other person have resided together for the majority of the last 10 years, and continually for more than the previous 12 months.
- The appellant and the other person are legally co-owners and joint tenants of the property in which they both reside; as listed as on the property title search.
- The oral evidence provided at the hearing, which was confirmed by the ministry, is that the only bills attached to the property title are in joint names (mortgage, property taxes, water and sewer).

PART F – REASONS FOR PANEL DECISION

The issue is whether the ministry's decision dated March 12, 2013 to find the appellant was not eligible for disability assistance because she is in a spousal relationship within section 1.1(2) of the *EAPWD Act* and has not applied for assistance on behalf of the entire family unit under section 5 of the *EAPWDR* is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides the following:

Employment and Assistance for Persons with Disabilities Act

Part 1 - Introductory Provisions

Interpretation

1 (1) In this Act:

"**applicant**" means the person in a family unit who applies under this Act for disability 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;

"**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;

(B.C. Reg. 193/2006)

"**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;

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.

(B.C Reg. 193/2006)

Employment and Assistance for Persons with Disabilities Regulation

PART 1 - INTERPRETATION

Definitions

1 (1) In this regulation:

"Act" means the *Employment and Assistance for Persons with Disabilities Act*;

"assistance" means disability assistance, hardship assistance or a supplement;

"minister", in relation to a power, duty or function that the minister has delegated under section 25 of the Act to another person, includes that other person;

"sole", in relation to an applicant or a recipient, means the applicant's or recipient's family unit includes no other applicant, recipient or adult dependant;

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.

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 has accepted that the appellant and the other person are not residing together in a marriage-like relationship as set out in the EAPWD Act section 1.1(1)(b).

The ministry argues the relationship is consistent with the definition of "spouse" under EAPWD Act section 1.1(2)(a) in that they have resided together for at least 9 of the previous 12 months and section 1.1(2)(b) in that the relationship demonstrates financial interdependence and a social and familial interdependence consistent with a marriage-like relationship based on a number of factors

including:

- the residence that the appellant and the other person have co-owned since 1996;
- the utility bills which are in both names;
- that the two have lived in the residence for the past 10-12 years;
- that the other person assists the appellant daily living activities;
- that they participate in leisure activities together; and
- that they are known in the community as a couple, as evidenced by the obituary.

The ministry stood by the reconsideration decision, stating that they had concluded the appellant was in a family unit.

The appellant argues that while she and the other person are friends, the relationship is primarily that of landlord and lodger. The appellant states the ministry misinterpreted information she provided to them, in particular with respect to the support she told the ministry she receives from the other person. The appellant argues the financial dependence is based the monthly rent payment she receives, which she needs to pay her bills.

Regardless of how the appellant characterizes the relationship with respect to the property, she and the other person are joint tenants on title, meaning if he dies, the property goes to her and conversely if she dies, the property goes to him. The appellant stated there was a letter wherein the other person relinquished his rights of ownership but it was not before the panel. Further, no banking records were submitted to demonstrate the rent was deposited regularly, or to show how the bills not paid directly by the ministry (hydro and gas) were paid. Given this, the panel finds the ministry's decision that the relationship demonstrates financial interdependence consistent with a marriage-like relationship is reasonably supported by the facts.

In determining whether the relationship constitutes a social and familial interdependence consistent with a marriage-like relationship, the ministry argues the other person assists the appellant with daily living activities, and that they are known in the community as a couple, as evidenced by the obituary, which lists the appellant and the other person as spouses and demonstrates that the community views them as a couple.

The appellant disputes this position arguing that her son's wedding invitation and absence of the other person's name on the invitation demonstrate that her immediate family do not consider the two of them a couple. Her son's wedding invitation, she argues, should be given more weight than an obituary article written in a community hundreds of kilometers away from where she lives by someone who is not a family member. The appellant also argues that some members of the family had included this reference in order to make trouble for her following a dispute at the time of her parent's death.

The newspaper obituary article was not written or distributed within the appellant's community; it was written to showcase the deceased's interesting family history by someone who was not a family member, and while there is no evidence as to how the information about the immediate family was obtained, or if it was checked before publishing, the information was likely supplied by a family member. There are irregularities in how the names were listed, as pointed out by the appellant.

The wedding invitation sets out the prospective groom's father and mother's names; it does not include the other person living in the mother's residence but nor does it include another name attached to the father. It is possible that both are single, or it may be a matter of style, listing only the actual parents. Without other evidentiary support it is a weak authority upon which to prove a lack of familial relationship. The panel finds neither the obituary article, nor the wedding invitation are determinative as to a spousal relationship.

The appellant argues that with the exception of the other person being prepared to go to his worksite or elsewhere to use bathroom facilities, she receives no other daily living support. Further, while the two do activities together such as bowling and sometimes going grocery shopping, she socializes as much if not more with other friends. If she was in a spousal relationship she contends she would be on the other person's Pharmacare plan.

The appellant argues that the two are not seen as a couple within the community, she points to evidence submitted to a previous hearing. The panel can only rely on the evidence and the appellant did not submit copies of those records submitted to the panel.

Given the obituary article, the social activities such as bowling and shopping, that they have resided together for many years; as well as the lack of documentary evidence supportive of both a landlord and lodger relationship and the appellant's argument that they are not seen as a couple in the community, the panel finds the ministry's decision that the relationship demonstrates a social and familial interdependence consistent with a marriage-like relationship is reasonably supported by the facts. The panel finds the ministry's determination that the appellant was not eligible for disability assistance because she is in a spousal relationship within section 1.1(2) of the EAPWD Act and has not applied for assistance on behalf of the entire family unit under section 5 of the EAPWDR was reasonably supported by the evidence as the panel found that the relationship between the appellant and the other person living in the residence demonstrates financial dependence or interdependence, and also demonstrates social and familial interdependence consistent with a marriage-like relationship, as set out in the EAPWD section 1.1(2)(b)(i) and (ii).

As a result to the foregoing, the panel finds the ministry's decision was reasonably supported by the evidence, and confirms the decision.