

PART C – Decision under Appeal

The decision at appeal is the ministry of Social Development (ministry) reconsideration decision of May 7, 2013. In their decision the ministry denied the appellant's request for disability assistance as a single person. The ministry found that the evidence showed the appellant to be living with her spouse in circumstances which indicated that her application for disability assistance should have been made on behalf of her entire family, not as a single person, per the definitions set out in the Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 1, 1.1, 3.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 1, 1.1, 3.

PART E – Summary of Facts

The documents before the ministry at reconsideration included:

- A request for reconsideration dated April 26, 2013.
- Rent receipts made out to the appellant and her male companion from a guest house for December 21-30, 2012.
- Ministry of Housing and Social Development intent to rent form signed by the appellant dated November 1, 2012.
- Two letters dated January 4, 2012 from a guest house to Ministry of Housing and Social Development stating that the appellant and her male companion are behind in their rent and must evict the guest house by noon on January 4, 2012 unless rent is paid immediately.
- One month notice to end tenancy for unpaid rent dated February 28, 2013, sent to appellant and her male companion by the landlord.
- Ten day notice to end tenancy for unpaid rent dated April 2, 2013 sent to the appellant and her male companion by the landlord.
- A note from the appellant's male companion (no date) stating that he is not the appellant's girlfriend and that he is only someone who helps pay the rent.
- A note from the appellant (no date) stating that she does not have a relationship with her male companion but she has been in a relationship on and off for 8 years with another person.
- A written submission from the appellant of 35 small pages unsigned and not dated that are extremely hard to read and understand but do not confirm the appellant's relationship with her male companion.

The appellant did not attend the hearing. The panel received confirmation from the Tribunal that the appellant had been notified of the date, time and location of the hearing on June 6, 2013. The panel allowed 15 minutes grace time for the appellant's arrival, but she did not attend the hearing. Accordingly, under s. 86(b) of the Employment and Assistance Regulation, the panel heard the appeal in the appellant's absence.

The appellant's advocate attended the hearing but could not speak on behalf of the appellant as there was no signed document by the appellant giving the advocate permission to speak on behalf of the appellant at the hearing.

When the appellant filed her Notice of Appeal on May 23, 2013 she wrote that the ministry should not rely on the testimony of one person, namely the landlord, when there is animosity between the appellant and the landlord. She states that she did the household chores for both herself and her male companion not out of affection but of self serving necessity. The appellant also states that she has not had contact with her boyfriend in over a month which should indicate the lack of a familial relationship.

At the hearing the ministry restated the position as set out in the reconsideration decision reaffirming that the appellant and her male companion have resided together for the last year starting December 2011. The ministry stated that at the time the appellant applied for assistance she was a single person, but the ministry determined that she was living with a male companion and the relationship meets the definition of 'spouse' and the male companion meets the definition of a 'dependent'. The ministry stated that there is proof that there is financial dependence or interdependence as well as a social and familial interdependence as the male companion paid the electricity bills, the appellant paid some bills and the appellant taught the male companion budgeting and how to shop. The

appellant told the ministry that she would manage his financial affairs if he was in the hospital. The ministry clarified that the appellant and her male companion attended the ministry office together on April 4, 2013 and confirmed to the ministry that they were in a relationship. On April 5, 2013 the appellant and her male companion again came to the ministry office together and said they were not in a relationship. The ministry stated that the appellant's landlord confirmed that the appellant and her male companion are seen in the community as a couple and that they display affection toward each other.

The ministry concluded that since the appellant and her male companion live together they meet the definition of "spouse" and the appellant's male companion meets the definition of "dependant" the ministry denied the appellant's request for disability assistance as a single recipient as she is in a marriage-like relationship.

Based on the documents before us and on the testimony of the ministry at the hearing, the panel makes the following findings of facts:

1. The appellant and her male companion have lived together for more than a year starting on December 2011.
2. A letter from the guest house dated January 4, 2012 states appellant and her male companion were residing at the guest house in suite 13.
3. The one month (February 28, 2013) and the 10 day (April 2, 2013) notice to end tenancy for unpaid rent issued by the landlord has the names of the appellant and her male companion on the notice.
4. The appellant and her male companion attended the ministry office on April 4, 2013 and told the ministry that they were in a relationship.
5. The landlord confirmed with the ministry on April 5, 9 and 24 2013 that the appellant and her male companion had not moved out of the suite they were renting.
6. The appellant did not provide the ministry with a new address separate from her male companion.

PART F – Reasons for Panel Decision

At issue is whether the ministry's decision at reconsideration to deny the appellant's request for disability assistance as a single person was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The legislation relevant to this appeal is found in the Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 1, 1.1,3.

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;

"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;

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

"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;

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.

Eligibility of a family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act and the regulations, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act or the regulations.

The appellant argues that she has not had contact with her male companion for over a month and therefore that should indicate the lack of a familial relationship and therefore she should be considered a single person.

The ministry argues that the appellant and her male companion meet the definition of spouse as stated in the EAPWDA 1.1(1) and that they confirmed to the ministry on April 4, 2013 that they were in a relationship.

The panel finds that the ministry reasonably determined that the EAPWDA 1.1 definition of spouse was met. The appellant and her male companion have resided together for the last year and the relationship demonstrates financial interdependence and social and familial interdependence. With regard to the social and familial interdependence the appellant stated that she cares for her male companion as he has post traumatic stress disorder and does not know how to care for himself. As well the appellant stated that she has been teaching him how to grocery shop and budgeting. The appellant also stated that she would look after her male companion if he was hospitalized. The landlord stated to the ministry that the appellant and her male companion are known in the community as a couple and he has seen them affectionate with each other in public. The appellant's male companion told the ministry that he and the appellant were in a relationship and the appellant was his "girlfriend" and "wife". The appellant and her male companion have a financial interdependence with each other as they share the rent and bills.

The appellant and her male companion have resided together for the last year and the relationship meets the definition of "spouse" therefore the male companion meets the definition of "dependant" as stated in the EAPWDA 1(1) and 2(b).

The panel finds that the ministry was reasonable to conclude that the appellant's male companion meets the definition of spouse and he is part of the appellant's family unit. The appellant must then apply for disability assistance as a family unit in order for the ministry to determine ongoing eligibility of the appellant for disability assistance.

The panel finds that the ministry was reasonable to conclude that the appellant must apply for disability assistance as a family unit. The evidence before the panel indicates a strong degree of financial interdependence as well as social and familial interdependence between the appellant and her male companion. The panel finds the ministry's reconsideration decision is reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the ministry's decision.