

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry's") Reconsideration Decisions dated January 29 and February 14, 2013 which denied the appellants application for disability assistance due to failure to apply for assistance on behalf of the entire family unit as required by section 5(1) of the *Employment and Assistance for Persons with Disabilities Regulation*.

In particular, the Reconsideration Decisions state that the appellants meet the definition of spouse under section 1.1(2) of the *Employment and Assistance Act* as they have resided together for at least the previous three consecutive months or 9 of the previous 12 months and their relationship demonstrates financial dependence or interdependence and social and familiar interdependence consistent with a marriage like relationship resulting in their ineligibility for disability assistance as sole recipients.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 1 and 1.1
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 5

PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- The requests for reconsideration dated January 25, 2013 (Appellant A) and January 28, 2013 (Appellant B) in which the appellants state that the appellants are both designated as Persons with Disability (PWD) and that they live in the same residence as roommates so that they can have a residence where their disabilities can be accommodated. The appellants share gas and transportation to travel to medical appointments and shopping but they buy their own groceries, pay for their own laundry, do not spend time with each other's families and do not attend community and social functions together. The request for reconsiderations state that the appellants share a residence and other tasks only in order to accommodate their disabilities and that they do not have a relationship consistent with a marriage-like relationship. The request for reconsiderations also states that Appellant A had major surgery where his leg was amputated just above the knee and during this difficult time questions from the ministry were referred to Appellant B as Appellant A was not in a mental state to properly answer any questions. Appellant B also states that she is openly gay and has a lady friend and both appellants state that they are roommates solely for the purpose of sharing rent and have been in this situation for a long time. The requests for reconsideration also state that the appellants both know each other's health issues and both know what the other one needs if an emergency arises.
- Letter from a doctor dated October 16, 2012 regarding Appellant B indicating that a ramp with rails and two grab bars for the bathroom are required for Appellant A (the "2012 Medical Equipment Request").
- Form from a health facility indicating that Appellant B had a medical appointment on May 14, 2011 and handwritten note from Appellant B indicating that gas for the trip to the medical appointment was paid for by Appellant A and that Appellant B did not put any money out of pocket for the trip (the "Medical Appointment Note").
- Ministry Shelter Information form for the appellants with rent receipt for November 2012 ("Shelter Information").

In his Notice of Appeal, Appellant A states that the Ministry made its decision from misinformed information that was taken out of context. In her Notice of Appeal, Appellant B states that the Ministry is wrong and lied.

Admissibility of New Information

With her Notice of Appeal, Appellant B provided a letter from a physician dated January 18, 2013 stating that she has multiple serious medical and psychological concerns including severe COPD/asthma, hypertension, chronic low back pain and panic attacks. The physician also states that she cannot live alone and he recommends she continue to live with her current room mate ("Doctor's Letter January 18, 2013")

Before the hearing, Appellant A provided a letter from a physician dated January 19, 2013 stating that

he has many serious medical concerns including diabetes, hypertension, peripheral vascular disease, joint replacement and now a recent right leg above knee amputation. The physician also states that he really cannot manage living on his own and he recommends that Appellant A continue to live with his current room mate ("Doctor's Letter January 19, 2013")

Before the hearing, Appellant A provided a letter from a hospital social worker dated March 12, 2013 stating that Appellant A was a patient at a hospital from December 13, 2012 to January 15, 2013 (the "Social Worker Letter"). The social worker states that she assisted him to begin the process to find alternate housing, assisted him with completing an application for subsidized housing and in that process, learned that Appellant B was his roommate. The social worker states that Appellant A presented his relationship with Appellant B as a platonic friendship and not as common law partners.

At the hearing, Appellant A provided a government low income tax credit notice for year 2009 for information processed as of October 9, 2010 indicating that Appellant A had an amount owing of \$1,190.50 ("Tax Credit Form"), a letter from Canada Revenue Agency dated October 4, 2010 stating that a review of the appellant's marital status was conducted and they have reversed the previous marital status adjustment ("CRA Form") and three pages of handwritten notes regarding communications his medical conditions and communications with the Ministry ("Handwritten Notes").

At the hearing, Appellant A provided the following oral evidence:

- the Ministry told them that he and Appellant B were common law and that in order to receive disability assistance they would have to apply as common law, so they did
- that he and Appellant B continued to communicate with the Ministry to demonstrate that they did not have a common law relationship
- that on or around July 10, 2010, the Ministry asked the appellants to consolidate their doctors appointments to save costs, so they made every effort to do so, including asking for one reimbursement
- that on July 7, 2011, he and Appellant B borrowed a vehicle to travel to their medical appointments and travelled together to save gas money
- that he was in hospital and needed help and only had a pay and talk phone and the only person he could ask for help to speak to his physician and the Ministry was his roommate, Appellant B
- that in December 2012 Appellant B was in dire straits and did not have any money, so he lent her some money which she has to pay back
- that while he was in hospital having his leg amputated, he asked his roommate, Appellant B to pick up his cheque from the Ministry
- that he asked his landlord to come and pick him up from the hospital but the landlord was unable to do so, so he asked Appellant B to come and pick him up as she is the only other person that could do so
- that contrary to the statement in the Reconsideration Decision that he acknowledged that he was in a common law relationship with Appellant B on January 22, 2013, he denies the accuracy of this statement in the Reconsideration Decision
- that he has never had a common law relationship with anyone and that he does not want to be tied to anyone

At the hearing, Appellant B provided the following oral evidence:

- when she applied for PWD designation, Appellant A was already on PWD and at the time of application, the Ministry bullied them in to signing the application as common law and that although they signed the forms in order to receive disability assistance, they continued to dispute their common law status until finally the Ministry separated her file on or about July 15, 2010
- that Canada Revenue Agency had also had them listed as common law but on review their files were separated
- that she and Appellant B help each other with their health problems and that by living as roommates they can afford a better place to live
- that their residence has two bedrooms at opposite sides of the residence and that she has one bedroom and Appellant A has the other bedroom, but that they share the kitchen, living room and bathroom;
- that she has a girlfriend of approximately seven years, that the girlfriend works as a fruit picker, traveling around, and only visits part time
- that contrary to the statement in the Reconsideration Decision that she acknowledged that she was in a common law relationship with Appellant A on January 22, 2013, she denies the accuracy of this statement in the Reconsideration Decision

At the hearing, the appellants' advocate provided written submissions that contained submissions and arguments and also referred to the appellants' new oral and documentary evidence (the "Submissions"). The advocate also provided oral evidence regarding the appellants' circumstances and position.

The Ministry did not object to the admissibility of the Doctor's Letter January 18, 2013, the Doctor's Letter January 19, 2013, the Social Worker Letter, Tax Credit Form, CRA Form, Handwritten Notes, Submissions, or the oral evidence of the appellants or their advocate. The panel admitted the Doctor's Letter January 18, 2013, the Doctor's Letter January 19, 2013, the Social Worker Letter, Tax Credit Form, CRA Form, Handwritten Notes, Submissions as well as the appellants and advocate's oral evidence, pursuant to Section 22(4) of the EAA, as providing further detail of the appellants' medical conditions and relationship with each other and being in support of information that was before the Ministry at reconsideration.

The Ministry did not provide any further written submissions before the hearing and relied on the Reconsideration Decision. The Ministry representative reviewed the Reconsideration Decision. The Ministry representative also stated that when the Ministry asked the appellants in early July 2010 to coordinate their trips for medical appointments that was because they were classified as common law; that on January 22, 2013 the appellants advised the Ministry that they were in a common law relationship, and there is a pattern of financial dependence.

Based on the documents, the panel's finding of facts are as follows:

- The appellants both have Persons with Disability ("PWD") designation;
- The appellants have been living together in the same residence for several years;

- On February 28, 2007, Appellant B was added to Appellant A's Ministry file;
- From February 28, 2007 to July 15, 2010 the appellants received disability assistance as a common law couple;
- On July 15, 2010, the Ministry separated the appellants files and they received disability assistance as sole recipients until the time they were denied assistance in 2013;
- The appellants do not share finances and contribute equally to the household bills;
- The appellants try to coordinate their medical appointments and to share the cost of traveling to and from their respective medical appointments when possible; and
- Appellant B has a girlfriend of approximately seven and a half years.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the Ministry's Reconsideration Decisions where the Ministry determined that the appellants meet the definition of spouse and have a relationship consistent with a marriage like relationship as defined in section 1.1 of the EAA and are ineligible for disability assistance as sole recipients as they failed to apply for the disability assistance on behalf of the family unit as required by EAPWDR section 5.

The relevant sections of the legislation are as follows:

EAPWDA

Section 1

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;

"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;

"spouse" has the meaning in section 1.1;

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.

EAPWDR

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.

Panel Decision

In the Submissions and at the hearing, the appellants' advocate argued that the Reconsideration Decision was unreasonable because it failed to take into account the defining effect of the appellants' disabilities on their relationship and as such, discriminated against the appellant on the basis of their disability in violation of the *BC Human Rights Code*.

The panel's jurisdiction is limited to a determination of whether the ministry's Reconsideration Decision was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances. The panel does not have the jurisdiction to determine whether there is a violation of the *BC Human Rights Code*.

The Ministry's position is that the appellants are spouses for the purposes of EAPWDA as they have acknowledged to the minister that they are residing together in a marriage-like relationship pursuant to EAPWDA section 1.1(1)(b). The Ministry's position is that on January 17, 2013 Appellant B told the Ministry, in a telephone call, that Appellant A was her spouse, and that on January 22, 2013 the appellants both advised the Ministry that they were common law. In addition, the Reconsideration Decision indicates that the appellants were previously receiving disability assistance as a common law couple.

The appellants are adamant that they never acknowledged to the Ministry that they were a common law couple and deny making any statements to the Ministry on January 17 or January 22, 2013 in which they admitted that they were a common law couple. The panel accepts the appellants' evidence in this regard and notes that the Doctor's Letter January 18, 2013, the Social Worker Letter,

and the Doctor's Letter January 19, 2013 all indicate that the appellants have presented to their physician and the social worker as room mates, not as a common law couple, which is also consistent with their evidence to the Ministry and at the hearing.

In addition, the appellants state that they advised the Ministry that they were room mates only and the Ministry's note that on December 27 and 28, 2012 that Appellant B indicated that she was staying at a hotel near the hospital to visit Appellant A, her room mate, is also consistent with the appellants' evidence.

Although the appellants received disability assistance as common law from February 28, 2007 to July 15, 2010, the panel accepts the appellants' testimony that they completed the disability assistance application forms as directed while continuing to dispute their status as a common law couple until the Ministry separated their files on July 15, 2010. The panel finds that the appellants' evidence in this regard is supported by the Tax Credit Form and the CRA Note which also indicate that their marital status was reviewed by the federal government and their marital status was separated. The panel notes that while the definitions of spouse and the test for common law status may be different between the Ministry and CRA, the panel gives the Tax Credit Form and CRA Note weight on the basis that these documents are consistent with the appellant's evidence as to their dispute of the Ministry's finding that they were a common law couple and the appellants' ongoing actions to have their status as single persons corrected.

EAPWDA section 1.1(2) states that two persons who reside together are spouses of each other for the purposes of this Act if (a) they have resided together for the previous three months or 9 of the previous 12 months, and (b) the minister is satisfied that the relationship demonstrates financial dependence or interdependence and social and familial interdependence consistent with a marriage like relationship.

The panel finds that the Ministry's Reconsideration Decision in which the Ministry determined that the appellants have resided together for the previous three months or 9 of the previous 12 months was reasonable and that the provisions of section 1.1(2)(a) of the EAPWDA are met. However, the panel finds that the Ministry's Reconsideration Decision that EAPWDA section 1.1(2)(b) was met was not reasonable and that the facts do not reasonably demonstrate that the appellants have a relationship that demonstrates financial dependence or interdependence and social and familial interdependence consistent with a marriage like relationship.

Although the Ministry states that the appellants' actions in traveling together to medical appointments and sharing transportation costs demonstrates financial dependence or interdependence consistent with a marriage like relationship, the panel accepts the appellants' evidence that these actions were taken first at the direction of the Ministry and also because that is what room mates often do when traveling together. In addition, the panel accepts the appellants' evidence that given Appellant A's disabilities, Appellant B provides help that is more consistent with the type of help a paid caregiver might provide, such as doing laundry, helping him get in and out of his wheelchair, and filling water jugs.

The panel gives sufficient weight to the fact that to the extent their disabilities permit, the appellants lead separate lives and are not interdependent in that they each pay an equal share of household rent and expenses, they each have a separate bedroom, they do not have a joint bank account and

that when Appellant B spends time with her family, Appellant A does his own activities and does not participate with Appellant A and her family.

In the Reconsideration Decision, the Ministry states that section 1.1(2)(b)(ii) does not require that a couple residing together need to be in a sexual or romantic relationship and that they only need to have a relationship of social and familial interdependence that is consistent with a marriage like relationship. While the legislation does not require that a couple have a sexual or romantic relationship, the fact that Appellant B is openly gay and has been involved in a part-time relationship with another woman for over seven years further supports the appellants' evidence that their relationship is more consistent with a room mate type relationship than a marriage like relationship. The panel finds that any financial interdependence is limited to reasonable interdependence in light of their disabilities.

The Ministry argues that the appellants application together for subsidized housing on December 31, 2012 further demonstrates a relationship consistent with a marriage like relationship but the panel finds that the appellants' evidence that they continue to reside together because they can afford a better quality of housing together than living separately and can help each other with their disabilities, is reasonable. This is further supported by the Doctor's Letter January 18, 2013 and the Doctor's Letter January 19, 2013 in which the physician states that neither of the appellants can reasonably manage on their own and recommends that they continue to reside with their room mates.

The Ministry's also points to the fact that on October 25, 2012 Appellant B dealt with the Ministry on behalf of Appellant A to obtain a wheelchair ramp and grab bars on behalf of Appellant B, and that on January 15, 2013 and Appellant A paid Appellant B's hotel bill and that Appellant B picked up Appellant A's assistance cheque. The appellants however, argue that the Ministry has failed to recognize the care-giving nature of their relationship and that it has been the key to managing their otherwise precarious disabilities.

The panel accepts the appellants' evidence that the appellants, as friends and room mates assist each other in dealing with both the Ministry, medical professionals and other communications as may be necessary when medical issues and/or emergencies arise and that the Ministry's determination that this demonstrates a pattern of interdependence that is consistent with a marriage-like relationship is not reasonable. The panel accepts that as Appellant A was in the hospital as a result of a medical surgery and there was no one else who could pick up his cheque, that it was reasonable that he would ask Appellant B to pick it up for him and that Appellant B would do so. The panel finds that in general, the fact that Appellant A and Appellant B assist each other with some activities is entirely reasonable given their disabilities and is not indicative of social and familiar interdependence that is consistent with a marriage-like relationship.

Conclusion

In conclusion, the panel finds that the Ministry's Reconsideration Decisions were not reasonably supported by the evidence or a reasonable application of the legislation in the appellants' circumstances and the panel's decision is made in favor of the appellants. Therefore, the panel rescinds the Ministry's Reconsideration Decisions pursuant to Section 24(1)(a) and (b) and Section 24(2)(b) of the Employment and Assistance Act.