

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 29, 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* (EAA) and that she has received an overpayment of assistance that she is liable to repay, pursuant to Section 27 of the EAA.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 5

Employment and Assistance Act (EAA), Sections 1, 1.1, 4 and 27

PART E – Summary of Facts

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

- 1) Residential Tenancy Agreement between the landlord and the appellant and two other adults, including the person who acknowledged that he is also the parent of the appellant's child ("the child's father"), with the tenancy commencing December 1, 2011;
- 2) Assignment of Maintenance Rights dated February 21, 2013, signed by the appellant and Notice of Assignment of Maintenance Rights addressed to the child's father at the same address as the appellant;
- 3) Child Support Agreement signed by the appellant July 8, 2013 and the child's father in which they both acknowledge that they are the parents of their young daughter and responsible for her support and that the child's father has a gross annual income in excess of \$60,000 and is required to pay \$585 per month in child support commencing July 5, 2013;
- 4) Letter marked received July 12, 2013 from the ministry to the child's father enclosing a draft agreement for his consideration;
- 5) Letter dated July 12, 2013 from the ministry to the B.C. provincial court enclosing a copy of the Child Support Agreement and requesting that it be filed with the court; and,
- 6) Request for Reconsideration- Reasons prepared by an advocate on behalf of the appellant, dated August 16, 2013 and attaching a letter dated August 11, 2013 from the other occupant at the appellant's address, a letter dated August 13, 2013 from the child's father, and a print out stamped by a bank February 18, 2013 listing the appellant's bank accounts as a savings (sole) and chequing account (joint).

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

- 1) Undated letter from the appellant's mother stating in part that the appellant separated completely from the child's father by the time the child was 3 years old. The appellant has solely supported herself and her daughter from that point on, with only some child support from the father that barely covered day care costs. When her landlord sold his place, the appellant was forced to move and uproot her daughter, who at this time revealed that she had been sexually abused by the day care provider's son. The appellant immediately removed her daughter from the situation and tried to give her the best level of stability. In order to remain in the district and keep her daughter in a good school and not uproot her in her already fragile state, the appellant was presented with the idea to room with another party and the child's father. They settled on a large house that provided each person with their own bedroom and bathroom, and they would share the kitchen and yard. The child's father works 6 to 7 days a week and when not working spends his weekends out of the house. They do their own laundry, make their own meals, and clean up their own rooms/ bathrooms. They take turns with the lawn mowing. Since the appellant had a chequing account, the other two tenants give her their share of the rent and she writes cheques to the landlord. The child's father is not a spouse or boyfriend of the appellant and, in her opinion, not much of a father as he is not involved in his daughter's life nor does he provide any care giving at all. He is "nothing but a tenant." The appellant makes all decisions when it comes to their daughter and is the primary provider other than what the child's father has to give her for child support;
- 2) Series of 14 photographs of rooms in the appellant's house, showing separate bedrooms upstairs for the other occupant, the child, and the child's father whose bedroom also includes space for a living area, the appellant's bedroom on the main floor, and separate bathrooms for the child's father, the other occupant and the appellant;
- 3) Notices of Assessment for the appellant from Revenue Canada for the years 2009, 2010, 2011 and 2012.
- 4) Receipts for child support paid by the child's father dated July 19, 2013 for \$300, August 2, 2013 for \$300, August 19, 2013 for \$250, and September 2, 2013 for \$200;
- 5) Bank Statements for July, August and September 2013 for the appellant's chequing and savings accounts;
- 6) Letter dated September 22, 2013 from the appellant's bookkeeper stating in part that she has been preparing the appellant's income tax returns for the past 5 years and during that time the appellant has gone from a common law relationship to a single parent. The appellant rented a room in a house with her ex-boyfriend along with another adult a few years ago due to her financial situation and her daughter's school and dance class proximity. The appellant lost her job over a year ago and was unable to obtain

another position so she remained in the shared accommodation situation because it was less expensive. She understands that the appellant's ex-boyfriend has paid child support to ensure that his daughter is taken care of but it is not his responsibility to feed, house and take care of the appellant even though they remain friends and under the same roof. From the times she has been to the appellant's house, she has observed that it is a shared accommodation situation with each person living separate and individual lives. The only common denominator in the house is the daughter of the appellant and the appellant's ex-boyfriend;

- 7) Letter dated September 25, 2013 from the appellant's young daughter stating in part that her mom and dad live with her but her dad does not have time for her. "Sometimes he is home before I go to bed and I can say good-night." When her dad was going out with a woman, she did not see him at all but after they broke up, she got to see him again at night sometimes before bed. She is thankful that her mom can take her to where she needs to go; and,
- 8) Letter dated September 25, 2013 from a social worker stating in part that she has known the appellant for 19 years and she is aware that the appellant is a single parent since her daughter turned 3 years old. The appellant is the primary parent and takes care of the daily needs of her daughter, such as taking her to school, helping her with her homework, taking her to her dance classes, providing her with meals and with discipline and guidance. She also knows the child's father and is aware that he has "minimal involvement" in his daughter's life.

The ministry did not object to the admissibility of any of the documents. 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 living circumstances of the appellant and her daughter and being in support of information that was before the ministry on reconsideration.

In the Request for Reconsideration, the advocate wrote that the appellant is a single mother of a dependent child and relies primarily on the ministry for financial support. In order to maintain her eligibility for income assistance, the appellant signed over her maintenance rights to the ministry on February 21, 2013 and the ministry determined that she was entitled to \$575 monthly in child support from the child's father, commencing on July 5, 2013. The appellant called the ministry on July 17, 2013 and was informed that her income assistance was being discontinued because it was determined that the child's father was her dependant. The appellant states that there is no dependency relationship between her and the child's father. While the father of the child allegedly states that he pays "most of the bills," this is factually incorrect. The appellant states that the bills in the house are divided equally between the appellant, the child's father, and the other party as they all pay equal portions of the bills. The rent of the house is \$1,800 and each pays \$600. The appellant and the child's father do not have joint bank accounts. There is no pooling of funds and the appellant and the child's father are financially independent. The household tasks such as cooking and cleaning are not shared. The appellant cleans her own dishes and her own room, and does her own laundry. The appellant and the other residents all cook and clean for themselves. The appellant, the child's father, and a third party all live in a house where each has his or her own bedroom. The appellant and the child's father do not reside on the same floor of the house; the appellant has her bedroom in the basement and the child's father has his bedroom on the upper level of the house. The kitchen in the house is a shared area, like a residence at university or a recovery facility.

In her Notice of Appeal, the appellant wrote that she disagrees with the ministry's reconsideration decision because she feels that the ministry has misconstrued her current living arrangement. The appellant wrote that the ministry has misapplied the legislation governing her matter.

At the hearing, the advocate stated that prior to the appellant's current living arrangement, she was fleeing from a situation where she discovered her daughter was being sexually abused by the daycare provider's son. The appellant is a single mother of a young daughter. The appellant decided that she needed to bring her daughter to a safe place where she could interact with friends she had before, and it is not easy to find an affordable place. The father of the child and another man both needed room-mates so they moved in together.

The appellant has her own bedroom on the main floor, with her own bathroom. The child's father and the other occupant have their own bedrooms upstairs, each with their own bathroom. The child's father also has a living room in his bedroom. The daughter also has her bedroom and a playroom upstairs. The appellant explained that she took the bedroom on the main floor because it was smaller and she wanted her daughter to have the bigger room. The kitchen in the house is shared and the duties are split up between the occupants of the house. The child's father and the other occupant eat in their rooms while the appellant and her daughter eat in the kitchen. They all cook individually. The advocate stated that the appellant does not have a relationship with the child's father and they are living together due to circumstances beyond the appellant's control. They do not have mutual friends. The advocate clarified that the updated bank statements are provided to show no payments are received from the child's father besides the child support payments. The Notices of Assessment are provided to show that the appellant receives a single person's income. The receipts were given to the child's father as he paid her cash for the child support payments in July, August and September since the appellant is "no longer with the ministry."

The advocate stated that the appellant made her living arrangement clear to the ministry on her shelter document and again when she provided an Assignment of Maintenance Rights. The advocate stated that living arrangements are evaluated by the ministry on a daily basis even though there may be no provision in legislation for them to do so. The advocate stated that the ministry required that the appellant sign an Assignment of Maintenance Rights and this caused a "rift" in her relationship with the child's father. The advocate explained that their relationship had been "cordial" but after the ministry became involved he was angry and anything he did before he does not do anymore. The advocate stated that the child's father refused to attend the hearing. He had been paying the appellant cash for child support as he was able and he thought the ministry was demanding too much and had warned him that if he did not pay the ministry would bring enforcement proceedings. There was never any contention about him being the father of the child. The advocate stated that one might think that the child's father would have some "role" as a parent since they are under the same roof, but he is living his independent life, as demonstrated in the letter from his daughter. The daughter feels neglected. The appellant drops their daughter off at school and picks her up, she takes her to her dance classes and every counseling appointment. The child's father does not support the counseling and thinks it's "a waste of time." The appellant stated that there have been times when she has asked the child's father to pick their daughter up from dance class and he has refused. He will not provide any extra money for their daughter's dance classes. The appellant stated that the BC Hydro payment is not reflected on the July bank statement because she fell behind on her bills. The original bank statement shows that her chequing account is joint and this is held with her mother who used to work at that bank and she used to help her out occasionally by transferring money into the account.

The ministry relied on the reconsideration decision. The appellant's file opened in February 2013. The appellant received assistance in the following amounts in 2013: February- \$945.58, March- \$945.58, April- \$774.60, May- \$774.60, June- \$774.60, and July- \$774.59.

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, and that she has received an overpayment of assistance that she is liable to repay, 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"

As of March 17, 2013 the definition of "dependant" read as follows

"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.

As of **March 18, 2013**, the definition read as follows:

"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.

"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.

Section 27 of the EAA provides:

Overpayments

- 27 (1) If income assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.
- (2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 17 (3) [reconsideration and appeal rights].

Ministry's position

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 argued that the tenancy agreement provided indicates that the appellant, the child's father, and a third individual moved into the appellant's current residence on December 1, 2011 and, while the appellant indicates that she and the child's father have separate rooms, the ministry is satisfied the child's father "resides" with the appellant because he lives at the appellant's residence.

The ministry pointed out that the appellant acknowledges that the child's father has signed the child's birth certificate and signed a child support agreement and the ministry argued that this establishes that the child's father has indicated a "parental responsibility" for the child. At the hearing, the ministry argued that the child's father also indicates a "parental role" for the child as negative inference can be drawn from the fact that there is no direct evidence from the father, but only from third parties making observations, and the social worker stated that he has "minimal involvement", not that he has "no involvement" with the child. The ministry argued that the evidence is that the child's father works 6 to 7 days per week, earning over \$60,000 per year, and he may simply not have much time to be involved with the child but he is not available to provide further information. The ministry argued that since the child's father resides with the appellant and indicates a parental responsibility or a parental role for the appellant's child, the child's father is considered a "dependant" under Section 1(1) of the EAA. The ministry argued that the child's father continuously met the definition of "dependant" since the appellant's file opened in February 2013. The ministry argued that since the child's father falls within the definition of "dependant", he must be included as part of the appellant's family unit for the purposes of assessing the family unit's ongoing eligibility for assistance.

The ministry argued that since the appellant did not apply for income assistance on behalf of her entire family unit, the family unit is not eligible for assistance, under section 5 of the EAR. The ministry argued that the appellant received assistance for the months of February through July 2013, totaling the amount of \$4,989.55, for which she was not eligible and this amount constitutes an overpayment which the appellant is required to repay to the ministry under section 27 of the EAA. At the hearing, the ministry argued that action is taken by the ministry when it is recognized that information provided about a recipient's living arrangement impacts eligibility and, if it is determined that the recipient was not eligible for assistance at any time, there is an obligation to repay these amounts to the ministry.

Appellant's position

The appellant's position is that her family unit does not include the child's father as he is not a "dependant" since he does not reside with her, he is not her spouse, and he does not indicate a parental responsibility or a parental role to their child. The advocate also argued that with respect to various terms in the legislation, such as "reside with", "reside together", "spouse", as well as what constitutes a "marriage-like relationship", they

should be given a fair interpretation with any difficulties in the language to be resolved in favour of the appellant, in accordance with the Supreme Court of Canada decision in *Rizzo & Rizzo Shoes Ltd., Re.*, 1998, 1 S.S.R. 27. The advocate also argued that, pursuant to section 8 of the *Interpretation Act*, RSBC 1996, c 238, the applicable legislation must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

The advocate argued that simply because the address for the appellant and the child's father is the same and the kitchen is shared, they do not invariably "reside" together as required by the EAA, as this situation is analogous to a university residence or recovery facility. The advocate argued that the appellant and the child's father do not reside on the same floor of the house since the appellant has her own bedroom in the basement and the child's father has his bedroom on the upper level of the house. The advocate argued that the appellant was in a frenzied situation when she entered into her current living arrangement and that there are effectively 3 separate dwelling units and 3 room-mates.

The appellant's position is that the child's father is not her spouse as defined in section 1.1 of the EAA since they do not have financial dependence or interdependence or social and familial interdependence consistent with a marriage-like relationship. The appellant argued that the allegation by the child's father that he pays "most of the bills" is factually incorrect since the bills in the house are divided equally between the appellant, the child's father, and the other occupant, that each pays \$600 per month for rent and the hydro bill is split amongst them. The advocate argued that the appellant and the child's father do not have joint bank accounts and there is no pooling of funds, as seen in the bank statements tendered. The advocate argued that the appellant and the child's father decided to rent rooms in the same house only because the appellant was leaving a situation where abuse had been discovered and the circumstances were beyond her control. The advocate argued that household tasks such as cooking and cleaning are not shared between the appellant and the child's father, they do not have mutual friends, and this independent behaviour is common among individuals that rent. The advocate pointed to the observations of the appellant's bookkeeper and mother, as set out in letters, that the appellant and the child's father live separate lives.

The appellant's position is that the child's father does not indicate a parental role for their child and that he also does not indicate a parental responsibility for their child; however, the advocate argued that the ministry applied an incorrect definition of "dependant" when it assessed whether the child's father indicated a parental responsibility for their child. The advocate argued that the words "role" and "responsibility" are related but they represent different concepts and that one may have some responsibilities associated with a particular role without necessarily assuming that role. The advocate argued that a "parental role" requires more than "parental responsibility" and that a parental role requires some input into the upbringing of the child. The advocate argued that there was never any contention with the paternity of the child but simply because the child's father signed the child's birth certificate several years ago and he is legally obligated to pay child support is insufficient for finding that he has taken on a "parental role." The advocate argued that the appellant has requested that the appellant be more involved, by picking up his daughter or taking her to counseling for example, but he has refused. The advocate argued that there is evidence from others that the child's father does not indicate a parental role or a parental responsibility and pointed to the letters from a social worker who observed that the child's father has "minimal involvement" in the child's life, and from the appellant's mother who stated that the child's father is "not much of a father" as he is not involved in his daughter's life nor does he provide any care giving at all. The advocate pointed to the letter from the young child that shows she feels neglected as she who wrote that when her dad was going out with a woman, she did not seem him at all but after they broke up, she got to see him again at night sometimes before bed.

The appellant's position is that the ministry was made aware of the appellant's living arrangement on at least two occasions, including at the time that eligibility was determined, and did not take action for several months. The advocate argued that the ministry's delay resulted in a claim for a large overpayment of close to \$5,000 which liability will cause undue hardship for a single mother and her daughter and is punitive in nature.

Panel decision

Pursuant to section 5 of the EAR, for a family unit to be eligible for income assistance, an adult in the family unit must apply for the income assistance on behalf of the family unit. "Family unit" is defined in Section 1(1) of the EAA as the recipient and her 'dependants' and the first part of the definition of "dependant" is "...anyone who resides with the person." 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 child's father have lived at the same address since December 1, 2011. While the appellant argued that she and the child's father have separate bedrooms and bathrooms and use the common areas such as the kitchen separately, there is no wall dividing the living spaces into distinct self-contained units, such as the case of a separate suite with its own entrance, and there are common hallways to bedrooms and bathrooms and the other living spaces of the one single dwelling unit. The panel finds that the ministry reasonably determined that the child's father "resides" with the appellant because he lives at the appellant's residence and at the same address.

Section 1 of the EAA provides three different options for falling within the second part of the definition of "dependant." While the ministry may have at one time considered whether the child's father 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 child's father under paragraph (c) and argued that he indicates a parental responsibility for her. When the appellant was assessed for eligibility for income assistance in February 2013, the panel finds that the ministry properly considered whether the child's father indicates a parental *responsibility* for the appellant's dependent child. The appellant acknowledged that paternity was never contentious, that the child's father has signed the child's birth certificate, he paid child support to the appellant voluntarily before the ministry got involved, and he has signed a child support agreement and has since paid child support pursuant to that agreement. Based on this evidence, the panel finds that the ministry reasonably determined that the child's father indicates a "parental responsibility" for the appellant's dependent child for the months of February and March 2013. Therefore, the panel finds that the ministry reasonably concluded that the child's father is the appellant's "dependant" and, therefore, part of her family unit for the purposes of her eligibility for income assistance for the months of February and March 2013.

However, the wording in paragraph (c) of the definition of "dependant" was amended on March 18, 2013 from "indicates a parental *responsibility* for the person's dependent child" to "indicates a parental *role* for the person's dependent child." Therefore, when the appellant was assessed for eligibility for income assistance in months subsequent to March 2013, the panel finds that the ministry improperly considered whether the child's father indicates a parental *responsibility* for the appellant's dependent child rather than whether the child's father indicates a parental *role* for the appellant's dependent child. The panel agrees with the advocate that the words "role" and "responsibility" are related but they represent different concepts and, without exploring arguments about the difference in these terms, finds that the ministry must apply the legislative language in effect at the time that eligibility is assessed. For the months of April through July 2013, therefore, the panel finds that the ministry must apply the amended definition to determine whether the child's father is the appellant's "dependant" and part of her family unit for the purposes of her eligibility for income assistance.

Conclusion

The panel finds that the ministry reasonably concluded that the appellant did not apply for income assistance on behalf of her entire family unit for the months of February and March 2013 and, therefore, the family unit is not eligible for assistance for these months pursuant to section 5 of the EAR. The panel finds that the ministry reasonably determined that the appellant received assistance for the months of February and March 2013 for which she was not eligible and this amount constitutes an overpayment which the appellant is required to repay to the ministry under section 27 of the EAA. The panel confirms the ministry's decision regarding the months of February and March 2013.

The panel finds that the ministry must apply the amended definition of "dependant" to determine whether the

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child's father is part of the appellant's family unit for the purposes of her ongoing eligibility for income assistance under section 4 of the EAA, for the months of April through July 2013. The Panel finds that the ministry decision with respect to the months of April through July 2013 was not a reasonable application of the applicable enactment in the appellant's circumstances and rescinds that part of the ministry's decision. Therefore, the decision is overturned and is referred back to the ministry for further consideration.