

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of May 22<sup>nd</sup>, 2013 wherein the ministry determined that the appellant is residing in a dependent relationship as defined under section 1 Employment and Assistance for Persons with Disabilities Act (EAPWDA) and therefore is not eligible for disability assistance as a single parent. The appellant is also not eligible for disability assistance as a family unit because she has not satisfied the initial and continuing conditions of eligibility established under section 3 EAPWDA.

**PART D – Relevant Legislation**

Employment and Assistance For Persons with Disabilities Act (EAPDWA), Interpretation section 1 and 3.

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Application for birth certificate for appellant's child
- Maintenance Agreement filed with a court registry and date stamped March 13<sup>th</sup>, 2013.
- Family Maintenance Questionnaire and Referral dated November 28<sup>th</sup>, 2012.

The appellant has a Persons with Disabilities (PWD) designation and was in receipt of disability assistance as a single parent. The appellant had a baby in fall of 2012. The appellant and a male person rent a two bedroom suite reside together. On December 17<sup>th</sup>, 2010 they signed a Roommate Contract which states each person pays an equal amount of rent to landlord; each has a separate bedroom for privacy; share common areas; each is responsible for services listed in their name; each pays for their own food and personal hygiene products; share in the products and labor for the cleanliness of unit; and no drugs or alcohol are permitted in the residence at any time. The appellant and the male person consider themselves as only roommates. After the child was born the appellant informed the ministry (EAW) that she was not certain who the natural father of her child is but wished it to be her roommate. In the ministry's application for child maintenance the appellant's roommate stated he had been providing financial, physical and emotional support for the child and, he intended to continue in the future in accordance with Federal Child Support guidelines. On April 2, 2103 a Child Support Order was obtained. On April 15<sup>th</sup>, 2013 the ministry denied the appellant further disability assistance as a single parent as the ministry considers that the appellant is residing in a dependent relationship with her roommate as he continues to indicate a parental responsibility for the appellant's child. The appellant advised the ministry that she has never had a dependency relationship with this man and that they only conceived a child together.

Prior to the hearing the appellant submitted the following documents to the Employment and Assistance Appeal Tribunal (EAAT) be considered by the panel.

- Two page document dated April 20<sup>th</sup>, 2013 outlining the appellant's circumstances surrounding this appeal.
- Six page letter/statement dated June 7<sup>th</sup>, 2013 signed by appellant and addressed "To Whom It May Concern" providing some historical background on the appellant and the appellant's response on the statements made by the ministry in the Reconsideration decision.
- 4 page letter/statement by the appellant's roommate dated June 15<sup>th</sup>, 2013 with a copy of the "Roommate Contract" attached.

The ministry did not object to these documents being received by the panel for consideration.

The panel finds these documents do contain information relevant to the issue under appeal and that these documents do contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore are admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

At the hearing the appellant called one witness. The witness testified that he was renting a two bedroom unit when he got injured at work and needed to find a roommate to cut his cost so he looked for someone to rent the other bedroom in the suite. The witness testified he is not a dependant of the appellant, nor is she of him, in any way, shape or form and that neither have aspirations of becoming a "couple" in the future. The witness testified the appellant agreed to rent the other bedroom in the suite he was renting and they signed the "Roommate Contract". The witness testified that he and the appellant, who have a child together, live only as roommates with completely separate lives, separate finances with much different interests. The witness testified he does assist the appellant with the care of the child at night because the appellant takes nightly medications that make it difficult for her to awaken when the child is in need of attention. The witness testified this is a unique living arrangement and that he is only there for the betterment of the child who was accidentally

brought into this world. The witness testified that when the appellant learned of her pregnancy he drove her to medical appointments and helped financially with the cost of the prescription pills so that her pregnancy would go as good as humanly possible. The witness testified that, although he has never had a paternity test, he does accept the responsibilities of being the father and therefore agreed to make "child support" payments and not "spousal support" payments.

The panel finds the witness' testimony does contain information relevant to the issue under appeal and that this testimony contains information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

The appellant testified that when she moved into the same residence as her roommate they signed a "Roommate Contract" as this would protect each of them from being considered a spouse to/of each other under the definition of living in a common-law spousal relationship. The appellant testified that when she learned she was pregnant she thought her roommate was the father so he assisted her in transforming her bedroom into a partial nursery and by taking her to medical appointments, which he continues to do today. She testified that when the baby was born she remained in hospital for about a week and the baby went home with her roommate. The appellant testified that her roommate continues to drive her and the baby to medical appointments and is taking an active part (emotionally involved) in the raising of the baby. The appellant testified she was still having her prescribed medications adjusted from when she was in hospital so she did not comment on the sharing of expenses or the roommate's financial contributions because when she spoke to the EAW she did not feel she could properly comment on her roommate's financial situation. The appellant agreed with the statements made on the application for the child's birth certificate and with the statements on the Family Maintenance Assessment adding that the ministry informed her that if she wanted a DNA test done she would have to complete the necessary forms. The appellant testified that she was assured that if she cooperated with these matters – Family Maintenance Assessment – her disabilities would continue but warned that if she did not cooperate her benefits would be cut off. The appellant testified that the matter was discussed with her roommate who was willing to pay child support so a DNA test was not necessary. The appellant testified that her roommate agreed to the amount of \$255/month since he had been spending at least that amount each month on the child.

The panel finds the appellant's testimony does contain information relevant to the issue under appeal and that this testimony contains information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

The ministry relied on the facts as stated in the Reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration wherein the ministry determined that the appellant is residing in a "dependant" relationship as defined under section 1(1) EAPWDA and therefore is not eligible for disability assistance as a single parent, as the appellant has not applied for disability assistance as a family unit, and therefore she has not satisfied the initial and continuing conditions of eligibility established under section 3 EAPWDA.

The legislation considered: EAPWDA

### Interpretation

Section (1) In this Act:

"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;

"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);

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

### Eligibility of family unit

Section 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 ministry argued the appellant is no longer eligible for disability assistance as a single recipient because she is residing with a person who is defined as a dependant under section (1)(1) EAPWDA as one who indicates a parental responsibility for her dependent child. The ministry argued a family unit is also defined in EAPWDA as an applicant or recipient and his or her dependants. The ministry argued the appellant has not applied for disability assistance as a family unit. The ministry argued that the appellant and the roommate, who she listed on the birth certificate as the father of her child, live in the same residence and that the roommate indicated a parental responsibility for the appellant's dependant child both verbally and in writing by agreeing to the maintenance order for support and a Child Support Order of \$255 per month was issued. The ministry argued that the roommate acknowledges that he has been providing financial, physical and emotional support for the child since the child's birth and that he intends to continue to provide this support in the future in according to the Federal Child Support Guidelines.

The appellant argued that she and her roommate, whom she listed on the child's birth certificate as the father because she does not know the identity of the biological father, are only roommates and live at the same address. The appellant stated there is a contract to that effect and she is not in a dependent relationship with him (her roommate). The appellant argued that her roommate has accepted financial responsibility for her child

and that he does provide assistance to her with the child's care. The appellant argued that the roommate drives her to medical appointments because he has a vehicle and a driver's license and she does not. The appellant argued that the definition in the Act (EAPWDA) is intended for people who are living together in as a couple in a common-law relationship. The appellant argued that she and her roommate are not dependent on each other in any monetary or spousal way; each pays their own bills and each is free to establish an intimate relationship with another person with the hope of finding a permanent partner. The appellant argued that each is taking an active parental role in raising this child and are co-operating with each other (under the current circumstances) in an effort to ensure the needs to the child are effectively being met while her health issues are being treated and the medications being adjusted. The appellant argued her roommate has accepted responsibility for the child and not for her. The appellant argued the ministry is not interpreting her situation properly and is only trying to cut costs.

Section 3 EAPWDA sets out the criteria for a family unit to be eligible for disability assistance. Section 1(1) EAPWDA provides the definitions for EAPWDA and defines a family unit as an applicant or recipient of his or her dependants; and defines dependant as, 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.

The evidence before the panel is that the appellant was a recipient of disability assistance as a single parent when her file came under review. The evidence is that the appellant and her roommate moved into the same residence, a two bedroom suite, and signed a "Roommate Contract" to establish some governance on the residence. Each had their separate bedroom. When the appellant learned she was pregnant she informed the roommate that he was likely the father. The roommate assisted the appellant: by assisting in remodeling her bedroom to include a nursery; by driving her to prenatal appointments; and by providing financial support to pay for needed prescriptions during the pregnancy. After the baby was born the appellant and her baby occupied one bedroom and the roommate the other. Since the birth of the child, the roommate testified that he has continued to provide financial support for the child's needs even prior to the maintenance order being issued, and also looks after the child's needs at night as the mother (appellant), who is on medication and does not awaken easily to meet those needs, is sleeping. The appellant testified that her roommate takes an active part (emotionally involved) in raising the appellant's child.

The panel finds the evidence supports the ministry's position that the appellant's roommate meets the definition of being a dependant as defined section 1(1) EAPWDA as they reside together in the same residence and he provides parental guidance and support to the appellant's child.

The panel finds the evidence supports that the ministry reasonably determined the appellant's roommate is a dependant as defined under section 1(1) EAPWDA and therefore is considered part of the family unit. The panel finds the ministry's decision to determine the appellant is not eligible for disability assistance as a single parent as the appellant is residing with a person who indicates a parental responsibility for her dependant child was reasonable.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and accordingly confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.