

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated May 10, 2013 which denied the appellant's application for income 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 Regulation*

In particular, the reconsideration decision states that the appellant and TS 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 Act* (EAA) section 1 and 1.1  
*Employment and Assistance Regulation* (EAR) section 5

## PART E – Summary of Facts

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

- 1) The appellant's Request for Reconsideration dated April 26, 2013 (RFR) stating that his friend TS has been his roommate but has not and never will be his girlfriend. The appellant states that TS has now moved out and that he has a new male roommate. The appellant also states that his landlord was lying about his relationship with TS and he is in arbitration with him after the landlord tried to evict him for nonpayment of rent;
- 2) Handwritten letter from the appellant stating that TS is not his girlfriend that she is only someone who helps him pay the rent and that they both have separate beds and he has another girlfriend;
- 3) TS's personal bank assessment with bank balance as at April 5, 2013;
- 4) Handwritten letter from TS stating that she is the appellant's friend but not his girlfriend and that she is in a relationship with another man;
- 5) 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 2, 2013;
- 6) Shelter Information dated January 11, 2012 for TS Utility bill dated January 7, 2013 indicating that her portion of the rent is \$375 and the total rent is \$750;
- 7) Handwritten letter from TS, undated stating that on January 21, 2012 she and the appellant were shy \$30 each on support;
- 8) Shelter Information dated December 23, 2011 for the appellant indicating that the appellant's portion of rent is \$600 per month and the total rent is \$1,344 per month;
- 9) Credit card slips for TS for payment of a room from December 12-23, 2011 and from December 23-30, 2011;
- 10) Letter from a hotel manager dated January 4, 2012 stating that the appellant and TS were residing at a hotel and their accommodation was only paid until December 30, 2011 the Friday before and that they have been told to vacate by noon today unless the hotel is paid \$350 plus \$42 HST for a total of \$390.

In his Notice of Appeal the appellant states that he disagrees with the ministry's contention that he and TS are in a common-law relationship and should be on the same ministry file. The appellant states that he "*...is aware that our landlord has claimed otherwise, but the allegation is without foundation and the result of arbitration with the landlord*".

The appellant did not attend the hearing. Having confirmed that the appellant was notified of the hearing, the panel proceeded with the hearing pursuant to EAA section 86(b).

The ministry relied on the reconsideration decision and submitted no new information.

## PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision which held that the appellant is not eligible for income assistance for failure to apply for assistance on behalf of his entire family unit as required by *Employment and Assistance Regulation* section 5 and because he and TS meet the definition of spouse and have a relationship consistent with a marriage like relationship as defined in section 1.1 of the *Employment and Assistance Act*.

The relevant sections of the legislation are as follows:

### **EAA Section 1**

Interpretation

**1** (1) In this Act:

"**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.

#### **EAR Section 5**

##### **Applicant requirements**

5 For a family unit to be eligible for income 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.

##### EAA section 1.1(1)(b) – acknowledgement of marriage-like relationship

The ministry's position is that the appellant and TS are spouses for the purposes of EAA as the appellant acknowledged to the ministry that they were residing together in a marriage-like relationship pursuant to EAA section 1.1(1)(b).

In particular, the ministry states that on January 11, 2012 the appellant and TS moved into a residence together. On March 19, 2013 the appellant asked the ministry that rent be stopped on his file until he was able to find new accommodations. On April 4, 2013 the appellant requested assistance with rent stating that he and TS had received an eviction notice but that the landlord had decided to let the appellant and TS stay if the rent was paid. The ministry states that during the conversation, the appellant states that TS was his girlfriend and he was asking that rent be paid for her as well. The ministry advised the appellant that TS would have to attend the office herself to request that her rent be paid. The ministry states that the appellant was questioned several times about his use of the word "girlfriend" and that the appellant confirmed that he was in a relationship with TS and she was his girlfriend. The ministry worker issued the rent cheque for April 2012 and mailed a payment for the appellant's electric bill.

The ministry also states that in a subsequent interview of TS, she reported that although she has now moved out, during the time you lived together she did all the housework, paid the entire electricity bill for both of you, that she would visit you in the hospital if you were hospitalized and would help you manage your affairs and was teaching you how to grocery shop and budget your money. The ministry's position is that this further confirms that the appellant and TS were residing together in a marriage-like relationship.

The appellant's position, as set out in the RFR and his Notice of Appeal is that he and TS were just roommates, that they both have separate relationships, and that they never have been and never will be in a relationship.

##### *Panel Decision*

The panel accepts the information in the ministry's reconsideration decision that the appellant told the ministry that TS was his girlfriend and that they were in a relationship. Although the appellant later stated that he only gave that information to expedite the rent cheque release, the evidence of the

appellant's landlord that the appellant and TS presented as a couple and were seen embracing in the community more consistently supports the appellant's initial statement to the ministry that TS was his girlfriend. While the panel acknowledges that both the appellant and TS have provided handwritten letters to the ministry denying that they are in a relationship with each other and that they are both in relationships with other people, the appellant did not provide any documentation from his girlfriend to confirm this other relationship nor did he provide any information from TS's boyfriend to confirm her relationship with someone other than him.

The panel finds that the ministry's decision which found that the appellant and TS had acknowledged to the minister that they were residing in a marriage-like relationship was reasonable.

#### EAA section 1.1(2)(a) – length of residence together

The ministry's position is that the appellant and TS moved into one residence in January 2012 and lived there until April 2013 when they received an eviction notice in both of their names. While the appellant advised the ministry that TS had moved out following the decision to deny income assistance, the appellant's landlord advised that TS continued to live with the appellant. While the appellant advised the landlord was lying because the appellant had taken him to arbitration, the appellant had not provided any information to confirm that TS was no longer residing with him. The ministry's position is that as the appellant and TS have resided together for more than nine of the previous 12 months, the provisions of EAA section 1.1(2)(a) have been met.

In addition the ministry states that the appellant and TS had previously lived at another residence together from December 21, 2011.

The appellant's position is that he and TS were roommates during the time they resided together and have not and will never be in a relationship.

#### *Panel Decision*

The panel finds that the appellant and TS resided together at a hotel in December 2011 for which TS paid the rent for both herself and the appellant. After leaving the hotel the appellant and TS moved into a residence together from January 2012 until April 2013. As the appellant and TS resided together for more than nine of the previous 12 months the panel finds that the ministry's determination that EAA section 1.1(2)(a) was met was reasonable.

#### EAA section 1.1(2)(b)(i) – financial dependence or interdependence

The ministry states that on April 4, 2013 the appellant requested the ministry issue assistance on TS's behalf to pay her portion of the rent. The ministry worker spoke to TS on April 24, 2013 regarding the nature of her relationship with the appellant and she stated that she pays the entire electricity bill for the residence, that she had been teaching the appellant about budgeting. The ministry also states that in December 2011, TS paid \$392 to cover the cost for both she and the appellant to stay at a hotel for the week of December 23 to 30, 2011. The ministry's position is that the provisions of EAA section 1.1(2)(b)(i) have been met as a relationship of financial dependence or interdependence has been demonstrated.

The appellant's position is that he and TS were roommates and shared the rent but did not have a

relationship of financial dependence or interdependence.

### *Panel Decision*

The panel finds that the information demonstrates that the appellants had a relationship of financial interdependence in that the appellant took steps to deal with the ministry in respect of TS's assistance issuance. In addition, TS acted on behalf of both herself and the appellant in paying the entire electricity bill and in taking steps to teach the appellant about budgeting. In addition the letter from the hotel manager indicates that the appellant and TS were living at the hotel as a couple and TS's credit card slips confirm that she paid the hotel cost for both herself and the appellant.

Accordingly, the panel finds that the ministry's determination that the relationship demonstrates financial dependence or interdependence pursuant to EAA section 1.1(2)(b)(i) was reasonable.

### EAA section 1.1(2)(b)(ii) – social and familial interdependence

The ministry's position is that the appellant and TS are in a relationship of social and familial interdependence that is consistent with a marriage-like relationship. The ministry's position is that EAA 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 financial dependence or interdependence, and social and familial interdependence that is consistent with a marriage-like relationship.

The ministry notes that the appellant and TS moved from the hotel where the hotel manager described TS as the appellant's "female companion" into their residence where they lived together for over one year. The ministry states that on April 5, 2013 the appellant attended the ministry office with TS at which time they both denied that they were in a relationship, and the appellant stated that he previously advised they were in a relationship as he was trying to expedite the rent cheque being released. The worker requested written declarations that the appellant and TS were not in a relationship and bank statements so a file review could be contemplated. The worker then contacted the landlord who confirmed that the appellant and TS presented as a couple in the community and that the appellant referred to TS as his wife on a regular basis. The landlord also stated that the police are called on a regular basis for domestic violence concerns and that an eviction notice was issued for failure to pay rent and unacceptable behaviour in the building including fighting and disturbing other tenants.

The ministry states that neither the appellant nor TS attended a scheduled appointment on April 9, 2013 to have their files combined and the ministry worker called the landlord who confirmed that the appellant and TS were observed embracing on the front steps.

On April 23, 2013, the ministry notes that the appellant had advised that he had not seen TS in four days and was not in a relationship with her. On April 24, 2013 the ministry worker again called the landlord who again advised that neither the appellant nor TS had left the residence as he sees them there every day. The landlord advised the ministry that he would "... *stand on any bench anywhere and verify to a judge*" that both the appellant and TS live at the same residence. The landlord also stated that he has witnessed the appellant and TS coming home together from grocery shopping and showing affection in public and that they are dealing with the arbitration as a couple.

On April 24, 2013 a ministry assistant supervisor spoke to TS at which time TS stated that she was

not in a relationship with the appellant and no longer had keys to the residence she had shared with the appellant. TS advised the ministry that the landlord is lying to the ministry. At the same time however, the ministry states that TS advised the ministry that she does all the housework, that she pays the entire electricity bill for both of you, that she would visit you in the hospital if you were hospitalized and would help you manage your affairs. The ministry states that TS also reported that she was teaching you how to grocery shop and budget your money. TS reported that you and she fought as roommates, not as a couple and that she has now moved out and she believed that you had another roommate.

The appellant's position is that he and TS were just roommates and he is adamant that they were not in a relationship. The appellant's position is that his landlord is lying about his relationship with TS because the appellant has taken the landlord to arbitration so the ministry should not consider the landlord's evidence to be credible.

#### *Panel Decision*

While the appellant and TS have both provided written statements that they are not in a relationship with each other and are in relationships with other people, the appellant has not provided documentation from either of these other people confirming those other relationships. The evidence demonstrates that the appellant and TS lived together for over one year in two separate residence, moving from one to the other together, TS was described as the appellant's "female companion" by the hotel manger and the recent landlord is adamant that they presented as a couple and were seen embracing publicly.

While the appellant states that the landlord's evidence should not be accepted, the panel finds that the ministry's determination that the landlord's characterization of the appellant's relationship with TS is consistent with the appellant's statement to the ministry of April 4, 2013 that TS was his girlfriend and is consistent with the remarks of TS made on April 24, 2013 indicating that she feels a sense of responsibility for the appellant's well being. In addition, TS advised the ministry assistant supervisor that the appellant and she would argue over household duties, which supports the landlord's statement that the two of them were involved in domestic disputes. The panel finds that the ministry's determination that the appellant and TS had a relationship of social and familial interdependence and met the provisions of EAA section 1.1(2)(b)(ii) was reasonable.

#### *Conclusion*

The panel finds that the ministry's reconsideration decision which found that the TS met the definition of spouse under section 1.1 of the EAA, and was considered the appellant's dependent and must be included in his family unit was reasonable. The panel also finds that the ministry's determination that the appellant was not eligible for income assistance as he had not applied for assistance on behalf of the entire family unit as required by EAR section 5 was reasonably supported by the evidence and a reasonable application of the legislation in the appellant's circumstances. Therefore, the panel confirms the ministry's reconsideration decision.