

**PART C – Decision under Appeal**

The reconsideration decision dated 26 June 2013 determined that the appellant was not eligible for income assistance as a single applicant with no dependants as the ministry determined she was living in a marriage-like relationship with another individual under s. 1.1 of the Employment and Assistance Act.

**PART D – Relevant Legislation**

Employment and Assistance Act (EAA), s. 1, 1.1 and 2.

## PART E – Summary of Facts

At the hearing, an observer and the co-tenant were allowed to be present at the request of the appellant and with her consent.

The evidence before the Ministry at reconsideration consisted of:

- The appellant received income assistance as a single person with no dependants since 2008 until and including April 2012 when she moved to another province.
- The appellant's assistance file in the other province was closed in February 2013.
- A Benefit Unit Summary from another province in the name of the appellant indicating an effective date of termination of 01/02/2013 and last benefit month of January 2013.
- A seven-page Application for Income Assistance dated 30 April 2013 by the appellant indicating she applied as a single person with no dependants.
- A two-page lease dated 15 January 2013 indicating that the appellant, jointly with another tenant (the co-tenant) are renting an apartment for \$750.00 / month.
- A two-page telecommunication bill dated 11 April 2013 in the name of the appellant for the unit described in the above-mentioned lease for an amount of over \$90.00.
- An ICBC Owner's Certificate of Insurance and Vehicle Licence dated 18 March 2013 for a vehicle owned by the appellant and the co-tenant of the apartment rented above and indicating the appellant as the principal operator.
- Bank accounts statements (9 pages) in the name of the appellant in 2013.
- A hand-written Notice of Eviction dated April 2013 with a file number identical to the appellant's file number at the ministry, by the co-tenant indicating that she will be evicted if she does not pay her portion of the rent and utilities for April and May 2013 as of 1 May 2013.
- A request for reconsideration dated 28 May 2013 by the appellant.
- An 11-page document titled "Submission to the Health Reconsideration Branch" dated 19 June 2013 prepared on behalf of the appellant indicating that:
  - In May 2012, the appellant went to another province with her friend with whom she was sharing accommodations (the co-tenant) as his mother fell ill.
  - Both the appellant and her co-tenant have been living together since 2007 or 2008.
  - Their relationship has financial interdependence that the appellant characterizes as "two roommates and friends who share accommodation and some resources arising from financial hardship and the mental and physical disability of" the appellant.
  - The co-tenant allowed the appellant to move with him because of her mental condition and wanted to give her a stable home.
  - The co-tenant moved out of his then accommodation and rented an apartment so that he and the appellant could "live in together in order to save money and provide stability for [the appellant]".
  - Over the next years, both "developed a mutually beneficial relationship of convenience, support and friendship" and the co-tenant "provided [the appellant] with significant assistance for her disability."
- Along with those submissions were attached the following documents:
  - A one-page letter by the appellant dated 16 June 2013 indicating she had an accident many years ago that caused her medical condition to deteriorate significantly, particularly in terms of brain damage and that she needs a room mate to help her otherwise she would end up on the streets, homeless.
  - A one-page letter by the appellant's co-tenant indicating that the relationship between him

and the appellant is based solely on her need for help and for the fact that accommodations in that city are very expensive and they can only afford such an apartment if they share. Further, even though it is a one-bedroom apartment, they sleep separately, the appellant using the bedroom and he using the living room that is converted into a bedroom. He also states that because the appellant has arthritis and found it difficult to move around in the city, he bought a cheap car for her but put both their names as owners until she can pay him back her share of the purchase and then he will remove his name from the car's ownership and insurance documents.

- An undated one-page letter from the appellant's mother stating that both the appellant and her co-tenant have lived together for years as friends, not in a marriage like relationship and they support each other. They mutually help each other with their respective issues and the appellant helps him by driving him as well as emotional support.
- An undated, one-page letter from a physician indicating that the appellant suffers from bipolar disorder and arthritis, that she is no longer able to work and that further tests and consultations are pending.
- A one-page letter from a local hospital dated 28 March 2013 indicating an appointment date, time and location for a MRI for the appellant.
- A one-page medical report by a physician dated 21 September 2011 indicating the appellant suffers from a medical condition "secondary to previous contusions".

In her Notice of Appeal dated 3 July 2013, the appellant indicates that the ministry decision does not reflect her actual relationship with her co-tenant who is her roommate.

At the hearing, the appellant testified that the eviction letter dated April 2013 by the co-tenant was not acted upon even though she couldn't pay her share of the rent as he was too worried to see her go back on the street. She also provided new evidence in writing.

As part of her written submission the new evidence consisted of:

- The appellant states that she met her roommate while both were living at her mother's house in 2007;
- The appellant was threatened with eviction from her mother's house while she was experiencing difficulties handling her estrangement from her ex-partner and lost custody of her child;
- The appellant's co-tenant left employment in early 2012 because of back pain and is supported by a stipend that he receives from his mother that his father left when he passed away;
- The co-tenant does occasionally date women but does not currently have a stable relationship;
- The co-tenant states that his mother suffered from bipolar disorder since he was a teenager and that this experience has made him more sympathetic of the appellant and better able to provide care for her.

The ministry did not object to the admissibility of this evidence. The panel determined this additional oral and documentary evidence was admissible under s. 22(4) of the EAA as in support of the record and the evidence before the minister at reconsideration however, the panel gave no weight to the eviction notice of April 2013, as it was not acted upon even though the appellant did not pay her share of the rent and given that the lease was under their two names.

The following documentary evidence was also presented by the appellant at the hearing:

- A 2-page "Medical Report – PPMB" dated 18 November 2010 signed by a medical practitioner stating the appellant suffers from bipolar disorder, she was under treatment and medication and

that she was "unable to consider any employment activities".

- A 1-page letter dated 18 July 2013 signed by the appellant's physician since the last 5 months stating that he has seen her roughly 6 times and that she is single, "not in a marriage-like relationship with her roommate". He states that because of her condition she needs significant assistance. He states that she often feels suicidal and that "she relies on the companionship of [the co-tenant] who helps by being present and offering friendship. In the past, living alone has triggered suicidal feelings. She also occasionally needs physical assistance and is unable to walk because of arthritis and during those times [the co-tenant] provides assistance with all the aspects of daily living including shopping, preparing food and taking medications. The support provided by [the co-tenant] is in my opinion necessary to help [the appellant] cope with her disabilities." He adds: "While I do not know [the appellant] personally, she presents socially as a single person and when I see her she is always alone."
- A 1-page Triage Assessment form from a health authority dated 3 July 2008 states that the appellant is "feeling suicidal, denies self harm" and that she was there the night before but was not seen.
- A 1-page Triage Assessment form from a health authority dated 19 December 2008 states that the appellant has "ongoing issues with anxiety" and that she went to her doctor that day with no relief and that she wants to talk to someone.
- A 2-page letter from the appellant dated 23 July 2013 reiterating her previous statements and the fact that she has only a friendship relationship with her co-tenant as she thinks it is more durable than a romantic relationship.
- A 2-page letter from the appellant's co-tenant dated 23 July 2013 confirms her statements and indicates he found that difficult to support her financially since they were back in the province but he prefers to do that than seeing her on the street.

The ministry did not object to the admissibility of this documentary evidence. The panel determined this additional documentary evidence was admissible under s. 22(4) of the EAA as in support of the record and the evidence before the minister at reconsideration and confirms the medical condition of the appellant as well as her and her co-tenant's previous evidence in more details.

The appellant also filed the first page of a letter from the Canada Revenue Agency dated 18 November 2011 to her co-tenant stating that after a review of his marital status and based on the information available, he is "still considered to be single" for their purpose. The ministry did not object to the admissibility of this letter. The panel determined that this additional documentary evidence was admissible under s. 22(4) of the EAA as it was in support of the records before the ministry at reconsideration as it dealt with the co-tenant family status but gave it little weight as it was rather an assessment that was made by a third party on information that was not known to the panel, for a purpose that was also unknown, and following criteria that were not presented in evidence.

The ministry does not dispute the evidence presented by the appellant but notes that the new evidence was not available to the reconsideration officer and thus, it was not considered. The panel has concerns about the physician letter dated 18 July 2013 as it appears to be based mainly on hearsay: he has known the appellant for only 5 months, having seen her approximately 6 times, presumably in his office as he has never met her co-tenant and states that when he sees her "she is always alone". Additionally, he indicates he does not know her personally but is satisfied she is single as "she presents socially as a single person". While the panel admitted this evidence, it must only give it limited weight.

## PART F – Reasons for Panel Decision

The issue under appeal in this case is whether the ministry's decision that the appellant was not eligible for income assistance as a single applicant with no dependants because the ministry determined she was living in a marriage-like relationship with another individual under s. 1.1 of the EAA was either a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation is section 1.1 of the EAA that states:

- 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.

The ministry argues that the appellant's relationship with her co-tenant is consistent with a marriage-like relationship because she has resided with him for the last 6 years, that they are financially interdependent because, for instance, they co-own a vehicle and her reported income is insufficient to cover her expenses in the previous 3 months. The ministry also argues that they have social and familial interdependence because the appellant moved to another province with her co-tenant to care for his mother and share a one-bedroom apartment at that location for approximately 9 months and now they are back in the province, still living together.

The appellant argues that she and her co-tenant are not in a marriage-like relationship because the reason why they live together is strictly her need for support given her disabilities and his ability to provide her with that support, given his sensitivity and background with respect to this type of medical condition. They have not and are not in any romantic relationship, sleeping in different rooms, do not consider themselves as a couple and are not perceived as such by their respective families. She argues that there is confirmation of this relationship from her family and from her physician in his letter. The only reason why they share accommodations and live together is because of her disabilities and that considering it as a marriage-like relationship would amount to discrimination based on disability. The appellant also refers to a decision of the Ontario Court of Appeal in the matter of *Falkiner v Ontario* [2002] O.J. No. 1771 where the court stated that "for the purpose of determining whether a relationship is spousal, cohabitation must mean more than spending time together. It must include interrelating with each other and with family, friends and the community as a couple. Second, it is wrong because for [the appellant] – and others like him – the interpretation of cohabitation must take account of his disability."

The panel notes that both the appellant and the ministry agree that she has resided with the co-

tenant for at least the previous 3 consecutive months and that their relationship demonstrates financial dependence and interdependence. For instance, one of the reasons they say they live together is because accommodations are expensive in the location where they live and they could not afford this type of apartment if they were not joining their respective resources. They also jointly own a vehicle while only the appellant can drive and the co-tenant now supports the appellant financially while her situation is clarified for presently she does not have any income and cannot contribute to the household or pay her share of the rent. The panel finds it was reasonable for the ministry to determine that they had been living together for at least the previous consecutive 3 months and that their relationship demonstrates financial dependence or interdependence consistent with marriage-like relationship, under s. 1.1(2)(a)(i) and (b)(i) of the EAA.

In terms of social and familial interdependence, the panel notes that while disability plays a significant role in the reasons why the appellant and her co-tenant live together, their relationship may still be consistent with social and familial interdependence. The appellant left the province uniquely for the purpose of following her co-tenant who needed to take care of his mother in difficult times and she provided assistance there while she was driving him to the hospital and providing him with much support, which is very consistent with social and familial relationship. Additionally, he does support her in terms of suicide prevention along with many other activities but the panel notes that the appellant did not present any evidence that he held professional credentials with respect to suicide and consequently the panel finds this is more consistent with a familial rather than a professional relationship. Further, she does support him as well, driving him around, often going shopping for necessities, which is also consistent with social and familial relationships. The appellant argues that she does not have a romantic or sexual relationship with her co-tenant and that he may date women from time to time and the panel accepts that evidence but notes that romantic or sexual relationship is not part of the definition of marriage-like relationship under s. 1.1 of the EAA, therefore this issue can only be one element of evidence, among many others, defining social and familial relationship but is not determinative, nor essential under the legislation.

The appellant raised the issue of liberal and benevolent interpretation of the legislation with the intent of providing, not denying the service. When making its decision the panel does consider this as very important and notices that the intent of the legislation is to provide the legislated level of income assistance to single people, to couples as well as to families and the determination of whether a family unit is composed of a single person or of two or more people must be based on the legislation and its intent; in this matter the issue is not whether the appellant is eligible for income assistance but rather whether she is eligible as a single person with no dependant as opposed to a family unit of two individuals.

Therefore, given that the evidence presented before the reconsideration officer and at the hearing is consistent with social and familial interdependence, the panel finds the ministry was reasonable in determining that the appellant's relationship with her co-tenant was consistent with a marriage-like relationship, according to s. 1.1(2) of the EAA.

The panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.