

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development (“the ministry”) dated 04 June 2013 that determined that the appellant is not eligible for income assistance because she failed to apply for assistance on behalf of her entire family unit as required under section 5(1) of the *Employment and Assistance Regulation*.

The ministry held that the appellant and her landlord are spouses of each other for the purposes of the *Employment and Assistance Act* as they have resided together for at least the previous 3 consecutive months and the minister is satisfied that their relationship demonstrates financial dependence or independence, and social and familial interdependence, consistent with a marriage-like relationship, thereby meeting the definition of “spouse” under section 1.1 of the Act. The ministry therefore found that the landlord is a dependant of the appellant under definition (a) of section 1 of the Act.

Furthermore, the ministry found that the appellant’s landlord indicates a parental responsibility for the appellant’s dependent child, and therefore the landlord is her dependant pursuant to definition (c) of section 1 of the Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 1 and 1.1.
Employment and Assistance Regulation (EAR), section 5(1).

PART E – Summary of Facts

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

1. From the ministry's files, as set out in the appellant's Request for Reconsideration:
 - 21 January 2011 – the appellant applied for income assistance as a single person; when asked, she declared no dependency relationship with her landlord.
 - 07 July 2011 – the ministry completed a Family Assessment. The appellant declared the baby's father was unknown, that her landlord acted as her birth coach during her son's birth and that her landlord wanted to act as a father figure to her son.
 - 18 April 2013 – the ministry completed a File Review. The appellant stated that she and her landlord do not have a dependency relationship; however she confirmed that she takes care of the house by paying the bills and purchasing groceries, that they will share meals and that her landlord will drive her to appointments. She stated that her landlord acts as a father figure to her son.

2. Subsequent to the above File Review, the following documents provided by the appellant:
 - An undated receipt for rent for April and the amount of \$550.
 - Account Statements from the appellant's bank for the months of January, February and March 2013 and the partial statement for April 2013. The first three statements show ABM bill payments for hydro and the cable company. The panel notes that the transactions shown are limited to ministry and Government of Canada deposits, ABM payments for hydro and cable, minimal debit card purchases, and large cash withdrawals, with no record of rent payments
 - A Registered Education Savings Plan (RESP) statement from another financial institution for the period 12 March 2012 to 31 December 2012, showing the appellant's son as the beneficiary and the appellant and her landlord as joint subscribers. The total value of the RESP at the end of the period was \$1185.06, including contributions of \$400 plus grants of \$160 in Canadian Education Savings Grants and \$600 from Canada Learning Bonds.

3. The appellant's Request for Reconsideration dated 21 May 2013, attached to which was attached a submission prepared with the assistance of an advocate and a Shelter Information Form and Residential Tenancy Agreement. The latter shelter documents are dated 20 May 2013 and show the appellant beginning a new tenancy at a different address beginning 01 June 2013, with a rent of \$700/month.
In the submission, the appellant provides the following background information:
 - She is the living at the landlord's residence since April 2010. When she applied for income assistance, she and the landlord were not in a relationship. She had moved into the residence as a roommate, not as the landlord's girlfriend.
 - The landlord is an old family friend; this is why she moved in with him and why he was the birth coach for her son's birth.
 - The living arrangements are that the landlord owns the residence. There are three bedrooms and residence, with the landlord having one bedroom and the appellant and her son sharing a bedroom. The son is under 2 years old and does not sleep through the night and still sleeps with the appellant. As the landlord being a family friend, he was very supportive in helping out the appellant to live somewhere she could afford. The payment arrangements for the appellant to rent at the residence were to pay the hydro and cable bills even though they are in the landlord's name.

- The RESP is in both the landlord and the appellant's names solely for the purpose that if something were to happen to her, the landlord is the only person in the appellant and her son's life that they are able to trust to make sure the money actually went to the son.
- Due to the lack of understanding of her situation, the appellant has decided to move residences, and attaches her new shelter information form.
- The appellant "submits that she considers herself at the time of applying and to this date to be a single person. She does not consider herself to be in a common law type relationship and she does not consider [her landlord] to be her spouse."

In her Notice of Appeal, dated 11 June 2013, and giving the landlord's address, the appellant states that: 1) She is a single mother with a two-year-old son who has seizures. 2) She cannot afford to live off her "C+B" [sic]. 3) Her circumstances have changed. 4) She is medically unable to work.

At the hearing, in her opening presentation and in answer to questions, the appellant gave the following evidence:

- She stated that when she went to the financial institution to set up the RESP, she was advised that it would be prudent to have another name on the account in case something happened to her. She does not have a Will for such an eventuality. The only person in her life that she trusts for something like this is the landlord, whom she has known since she was 8 years old. Her landlord has not contributed any funds to the RESP. Her contributions of \$400 have been made through scrimping and saving and collecting bottles, with the balance of the \$1185 value coming from government contributions.
- She explained that she was brought up in foster care. She does not trust her father, who lives in the same city, with anything to do with financial matters or her child's care. Her mother lives some distance away and is too busy to be of much help. Under these circumstances, she has no one else to turn to in the event of an emergency but her landlord, who also knows what to do in a crisis, having witnessed several episodes where the child had to be rushed to hospital.
- The appellant disputes having advised the ministry that her landlord acts as a "father figure" to her son. What she told the ministry, or at least meant to say, was that she wanted the landlord to be a male "role model" for her son.
- She stated that the landlord plays no role in the day-to-day upbringing of the child: for instance he does not feed, bathe, change or clean up after him.
- She stated that when she needs transportation to go to appointments, she will ask her landlord only as a "last resort," if her friend who provides regular rides or her father is not available and if public transit is not practical.
- The appellant stated that she does the cooking for herself and her son. The landlord prepares his own meals, but if there are leftovers from her meals she will make those available to him. They do not have meals together except by chance, when he comes home and she has food available to share. She shops for herself and her child and will do his shopping for him as well, though this is accounted for separately.
- She explained that due to bad experiences in the past, she does not use cheques and because of service charges, rarely uses her debit card, so she pays for almost everything, including her rent, in cash. She keeps receipts for everything.
- The appellant confirmed that her rent is \$550/month, but that there is no formal residential tenancy agreement covering their rental arrangement. She stated that the landlord tells her the amount for her to pay for hydro and cable and she pays him the balance of the \$550 in cash. She explained the variation in cable bills as resulting in long distance phone charges and her

occasional access to pay-for-view movies. She stated that she has her own cell phone, but it is on a pay-as-you-go plan with limited minutes.

- The appellant stated that she was unable to come up with the \$700 rent payment for her new tenancy that was to start on 01 June 2013. That arrangement has now been voided, and she has found a place at a lower rent (\$500/month) beginning on 01 July 2013. She presented a new Shelter Information Form, which she indicated had been recently submitted to and scanned at the ministry office.

The ministry stood by its position at reconsideration. The ministry representative objected to admitting the new Shelter Information Form as evidence, as she could not confirm that it had been submitted to the ministry and because it was not further to information before the ministry at reconsideration.

The panel finds the additional information provided by the appellant in her testimony at the hearing is in support of information that was before the ministry on reconsideration, as it clarifies the nature of her relationship with her landlord as described in the Request for Reconsideration. The new Shelter Information Form updates information before the ministry at reconsideration regarding her intention to change her residence. The panel therefore admits this new information as evidence pursuant to section 22(4) of the *EAA*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is not eligible for income assistance because she failed to apply for assistance on behalf of her entire family unit as required under section 5(1) of the EAR. More specifically, the issue is whether the following ministry determinations are reasonably supported by the evidence or are a reasonable application of the legislation in the circumstances of the appellant:

A) that the appellant and her landlord are spouses of each other for the purposes of the EAA as they have resided together for at least 3 consecutive months and the minister is satisfied that their relationship demonstrates financial dependence or independence, and social and familial interdependence, consistent with a marriage-like relationship, thereby meeting the definition of "spouse" under section 1.1 of the *EAA* and therefore that the landlord is a dependant of the appellant under definition (a) of section 1 of the *Act*.

B) that the appellant's landlord indicates a parental responsibility for the appellant's dependent child, and therefore the landlord is her dependent pursuant to definition (c) of section 1 of the *Act*.

The relevant legislation is from the *EAA*:

Interpretation

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income 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;

"family unit" means an applicant or a recipient and his or her 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 role for the person's dependent child;

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.

And from the EAR:

Applicant requirements

5 (1) 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.

The panel will consider each party's position regarding the reasonableness of the ministry's decision under the applicable dependency criteria at issue in this appeal.

Spousal relationship

Living arrangements

In the reconsideration decision, the ministry noted that the appellant has been living with her landlord at least since she reapplied for income assistance in January 2011. The ministry acknowledged that she had made preliminary arrangements to move to a new residence; however, at the time of reconsideration she was still residing with the landlord. Accordingly, the ministry found that she met the residency requirement for the purposes of sections 1 and 1.1 of the EAA. The appellant did not dispute this finding, and the panel finds that the ministry determination in this respect was reasonable.

Financial, social and familial dependence/interdependence

The position of the ministry is that the evidence indicates that the appellant and her landlord are in a financially dependent relationship. The ministry acknowledged that the landlord has written a rent receipt for April 2013, giving weight to the appellant's written statement that she pays her rent by paying utility bills. The fact that the appellant states that the landlord has been financially supportive, that she pays bills that are in his name through her account as her rent and that she has a joint RESP account for her son all indicate a financial relationship beyond that of roommates and consistent with a marriage-like relationship.

As to social and familial interdependence, the position of the ministry is that the appellant has advised the ministry on several occasions that the landlord was the birth coach when she had her son and that he acts in a father role. She also indicates that she takes care of the household, pays the bills, does the grocery shopping and the landlord drives her to appointments. The ministry found that this indicates her social and familial relationship is beyond that of roommates and is consistent with that of a marriage-like relationship.

The position of the appellant is that she is not financially dependent on her landlord. She pays the hydro and cable bills as part of her rent arrangement: she also pays the landlord the difference between \$550/month and whatever the Hydro and cable bills amount to, as the April rent receipt demonstrates. As to the RESP, the landlord agreed to his name being included on the account in

case anything happened to her, but has not contributed financially to the account. The appellant submits that none of this demonstrates financial dependence or interdependence consistent with a marriage like relationship.

Regarding social and familial interdependence, the position of the appellant is that their relationship is no more than what one would expect from a landlord/tenant relationship with two people, plus her child, living together under one roof. They do not socialize as a couple, either outside the home by going out together to movies or the like, or inside the home by watching movies together. They have meals together only by chance, and the landlord drives her to appointments only as a "last resort," when others that she can call upon are not available. She sees her landlord as a male role model for her son, not as a father figure, as the landlord is the only male in her son's life.

Panel findings

The panel is guided by the general principle that it is the responsibility of the applicant for, or recipient of, a public benefit to provide the information required to establish eligibility or continued eligibility. In denying a benefit, the ministry cannot act arbitrarily or on suspicion, only on fact or evidence. However, once evidence is available and the ministry makes a decision to deny a benefit, the onus rests with the applicant/recipient, either at reconsideration or on appeal, to provide the information and/or argument necessary to substantiate eligibility and demonstrate that the ministry's denial was unreasonable.

The panel notes that under the *EAA*, the test is not whether the minister is satisfied that the couple actually be in a "marriage-like relationship," but rather whether there is financial dependence or interdependence and social and familial interdependence consistent with such a relationship.

In reviewing the evidence in this light, the panel will first consider the RESP issue. The appellant has argued that naming the landlord a co-subscriber to the RESP, though he has made no contributions, is a contingency measure in case something happened to her. However, the panel notes that she has provided no documentation that would confirm that she was the sole personal contributor to the fund. Moreover, with the landlord as a co-subscriber, he maintains a say in how the RESP is managed, not only with respect to how the fund is invested but also whether and when the fund might be collapsed before it can be used for the child's post secondary education.

In other financial matters, in her Request for Reconsideration the appellant stated that "the payment arrangements for [her] to rent at the residence were to pay the hydro bill and the [cable] bill even though they are in [the landlord's] name." At the hearing, the appellant clarified the situation by stating that she and her landlord were not parties to a formal Residential Tenancy Agreement, agreeing informally that the rent would be \$550/month in total, with the appellant paying the hydro and cable bills, with the rest in cash. The panel notes that this arrangement resulted in the appellant obtaining her long-distance telephone calls and pay-for-view movies "for free." Further, the bank statements provided show ABM payments to hydro of \$50 in January 2013, \$50 in February and \$220 in March, all even dollar, round number amounts. The appellant has not provided any documentation that these amounts match the actual hydro bills, nor any explanation for such variation in payments. In addition, the appellant has not provide any third party documentation (such as her landlord's cash deposit slips or other records), that would verify her paying rent of \$550/month in the form of bill payments plus cash.

Given the joint ownership of the RESP and the lack of transparency in their financial arrangements, the panel finds that the ministry was reasonable in finding that the financial arrangements between the appellant and her landlord go beyond that of roommates or a landlord-tenant relationship and are consistent with a marriage-like relationship, with the economic informality that is often typical in such a relationship.

With respect to social and familial interdependence, the appellant's testimony is that she and her landlord do not have a social life together, either outside the home or in at-home activities such as watching movies together. When they have meals together, this is more by chance and mutual convenience, reflecting the reality of living under the same roof. The appellant acknowledges that the landlord acted as her birth coach, but that this was a one-time activity leading up to the birth of her son and since that time the appellant's testimony is that the landlord plays no role in the day-to-day upbringing of the child: for instance he does not feed, bathe, change or clean up after him. And while the appellant does many of the household chores, including basic housekeeping and shopping, much of this can be attributed to meeting the needs of her child.

While the appellant and the landlord may not have much of a social life together, it is not so much what they do together that is important, but what they do for each other that defines their relationship. The appellant has acknowledged that the landlord has been supportive of her in providing affordable housing, acting as her birth coach, being there for her in times of her son's medical crises, and being available (albeit on a "last resort" basis) to take her to appointments, while she does the housework and the grocery shopping and pays the bills. The panel considers the relationship to be a mutually beneficial partnership, and finds that the ministry was reasonable in determining that there was social and familial interdependence consistent with a marriage like relationship.

The panel notes that by based on the living arrangements and social and familial interdependence alone, this would not be enough to meet the definition of spouse in section 1.1 of the EAA. However, in combination with the findings regarding what might be described as "murky" financial dependence or interdependence, the panel finds that the ministry was reasonable in determining that the landlord is the spouse of the appellant as defined in section 1.1 of the EAA.

Parental responsibility

The position of the ministry is that the landlord indicates a parental responsibility for the appellant's dependent child. This assessment was based on the appellant's previous statements that the landlord acts in a father role, that he was her birthing coach, that they have a joint RESP for her son, and because she has identified the landlord as being responsible to ensure that her son gets the RESP funds if something should happen to her.

The position of the appellant is that her landlord has never indicated any parental responsibility for her child. He acted as her birth coach when she was going through a difficult time, but since her son's birth he has not participated in the child's day-to-day upbringing. She considers her landlord a good male role model for her son, nothing more. He agreed to have his name on the RESP because she was advised to have someone she trusted added to the account and she had no one else to turn to; he has not contributed to the account.

Panel findings

Regarding the landlord being the appellant's birthing coach, while the panel considers this role as being consistent with being in a marriage like relationship, the panel does not consider this to indicate parental responsibility, as this was a one-time activity providing support for the mother leading up to the child's birth and not a factor in the child's up-bringing.

The panel gives credence to the ministry's report in the April 2013 file review that the appellant stated that the landlord acts as a father figure to her son. The appellant submits that instead she said that she sees the landlord as a male role model. The panel does not consider the two statements as being much different. However, the panel does not consider acting as a father figure the same as indicating parental responsibility. As generally understood, anyone can act as a father figure – a step-father, uncle, brother or someone else held in high regard by the child. Father figure status is earned by moral example, not claimed by the older party. On the other hand, parental responsibility is a legal concept, arising from biological parenthood, adoption, guardianship, fostering or through marriage with a biological parent, none of which is the case in this appeal. Further, parental responsibility brings with it certain obligations, such a financial support and commitment to the ongoing day-to-day upbringing of the child. In this respect, the testimony of the appellant is that the landlord plays no role in feeding, bathing, changing or cleaning up after the child. While there is some financial involvement through the joint RESP, the panel does not consider that goes to providing any significant financial support to the child. Accordingly, the panel finds that the ministry was not reasonable in determining that the landlord indicates a parental responsibility for the appellant's dependent child.

Note

In reaching its findings above, the panel has not factored in the appellant's intention to change her residence on 01 July 2013. The issues before the panel relate to relationship and responsibility matters while she resided with her landlord, and her intention to move out is not relevant to this appeal.

Conclusion

On the basis of the foregoing, the panel finds that the ministry's determination that her landlord is a dependant of the appellant under definition (a) of section 1 of the EAA is reasonably supported by the evidence and therefore the ministry was reasonable in determining that the appellant is not eligible for income assistance for failure to apply for assistance on behalf of her entire family unit. The panel therefore confirms the ministry's decision.