

PART C – Decision under Appeal

This is an appeal of the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated September 17, 2013, in which the Ministry denied the appellant income assistance due to failure to apply for assistance on behalf of his entire family unit, as required by section 5(1) of the *Employment and Assistance Regulation*.

PART D – Relevant Legislation

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

PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with s. 22(3)(b) of the *Employment and Assistance Act*.

The information before the Ministry at reconsideration included the following documents:

- A copy of the appellant's British Columbia marriage certificate dated January 2006, indicating the names of the appellant and his spouse and that they were married December 18, 2005 in British Columbia;
- A copy of the letter from Citizenship and Immigration Canada dated February 12, 2009 to the appellant's spouse indicating that her application to sponsor the appellant had been approved;
- A copy of a Service Canada form, Statutory Declaration – Separation of Legal Spouse or Common Law Partners, dated August 17, 2012, indicating that the appellant and his spouse had separated as of May 31, 2012 and notarized by a Notary Public;
- A copy of a handwritten note from the woman identified as the appellant's spouse dated July 9, 2013, stating "I [her name] am renting room in [appellant's address] to [the appellant with his Social Insurance Number] for 350\$ Can a month + half a hydro";
- A copy of the BC Hydro bill for the appellant's address in the name of the woman identified as the appellant's spouse for the month of May 2013; and
- A copy of the Ministry's Bank Profile form for the appellant (4 pages), showing that as of December 2012 he had a joint account with the woman identified as his spouse with one bank, as well as a bank account with another bank.

At reconsideration, the Ministry also had the appellant's written submission on reconsideration dated September 17, 2013, in which an individual has provided hand-written comments beside certain paragraphs of the Ministry's original decision. In these comments, the appellant (or his representative) has written "living in separation & paying rent" beside the Ministry's statement that at the time of the intake appointment, the appellant provided information stating that he had been living together with his ex-spouse for at least one consecutive year. The comment "False – not sharing expenses but paying rent" is written beside the Ministry's statement that the appellant provided verbal information at the time of intake that he shares expenses with his ex-spouse. The hand written comments also indicate that the appellant and the woman identified as his spouse no longer have a joint bank account. Further, the hand written comments indicate that the appellant and the woman identified as his spouse "live together under the same roof but not together – separated" and that "not sharing cost of home and food." The appellant or his representative also wrote the following submission on reconsideration:

Please note that the requestor does not speak English, and has had to rely on a friend to assist him with writing additional comments. These comments are found added to section 2 of this form and in the attached page. In summary, the requestor submits that he is separated from his wife. He is renting a room from his former wife and has agreed to pay half the hydro. He reports that this is the only living arrangement available to him because of his lack of resources. He states that he has helped her with grocery shopping from time to time because she is elderly and cannot walk far – not because he is in a marriage-like relationship. He also reports that he no longer has a joint bank account with his former wife. The requestor submits that he no longer demonstrates financial or familial dependence that is consistent with a marriage-like relationship – he is living as a separated person and should be allowed to apply as a single person.

First of all "Employment and Assistance Act" meaning of spouse does not include people living in separation. Statutory declaration provided by Notary Public.

2nd of all – [appellant's name] is paying rent of 350\$Can + half of Hydro

P.S. And what is wrong if he help former wife bring the grocery home, the elderly person can't walk much.

3rd of all – the [bank] account belong totally to [name of spouse] and the reason for joint account was decision of [spouse] because of health issue

4th living separated under the same roof because cannot find any other shelter for the price of \$350.00

In his hand-written submission in the notice of appeal of the reconsideration decision, the appellant wrote, "Because Ministry got it wrong! I live in separation, not in common-law relation."

The Ministry relied on the reconsideration decision, which states that the appellant applied for income assistance as a single person in July 2013 and indicated in his application that he lives with his ex-spouse, providing the Ministry with a copy of his Certificate of Marriage, but informing the Ministry that he and his spouse were currently separated. The Ministry advised the appellant on July 24, 2013 that he was not eligible for income assistance because he had not applied for assistance on behalf of his entire family unit. The reconsideration decision states that although the appellant indicated that he had separated from his spouse and had submitted a declaration of separation (the Service Canada form referred to above), the appellant had not provided the Ministry any evidence to establish that he was not still married to his spouse and the Ministry considers her a dependant of the appellant to be included in his family unit for the purposes of assessing his eligibility for income assistance.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's determination that the appellant is not eligible for income assistance because he has failed to apply on behalf of his entire family unit (including the woman identified as his spouse as his dependant), as required by section 5(1) of the EAR, is reasonable.

Applicable legislation

Section 5(1) of the EAR sets out the applicant requirements for income assistance, providing that "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 notes that there is no information before it to indicate that subs. 5(1)(a) or (b) apply to the appellant, or that the appellant's family unit includes any children (dependant or otherwise) thereby triggering the provisions in subs. 5(2) through 5(5).

In sections 1 and 1.1 of the EAA, the definitions of "dependant", "family unit" and "spouse" are set out as follows:

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;

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.

The appellant's submissions indicate that, although he lives in the same apartment with the woman who is his former wife and pays her money for the rent and splits the Hydro bill with her, he and his

former wife are separated – he does not consider her his “spouse” – and he points to the Service Canada statutory declaration of separation form as evidence that he and his spouse are separated.

In its reconsideration decision, the Ministry noted that under subs. 1.1(1)(a) of the EAA, two people are deemed to be spouses if they are married and the Ministry determined that the appellant had not provided any evidence to establish that the appellant is not still married to the woman identified as his spouse. The Ministry found that the woman identified as the appellant’s spouse must be considered his spouse in accordance with the provisions of subs. 1.1(1)(a) of the EAA. In its reconsideration decision, the Ministry advised the appellant that since he resides with the woman identified as his spouse and she is his spouse, she is considered a dependant (as per subs. 1(1) of the EAA) and must be included in his family unit for the purposes of assessing his eligibility for income assistance, under subs. 5(1) of the EAR.

Subsection 5(1) of the EAR requires that, in applying for income assistance, the appellant must apply for income assistance on the basis of his “family unit.” As provided in the definitions under subs. 1(1) of the EAA, the appellant’s “family unit” means the appellant and his dependants and this includes anyone who resides with the appellant and is his “spouse.” The appellant does not dispute that he resides with the woman identified as his spouse on the Certificate of Marriage. Under subs. 1.1(1)(a) of the EAA, the meaning of “spouse” for the purposes of the EAA and the EAR includes two persons who are married to each other. Although the appellant points to the Service Canada Statutory Declaration – Separation of Legal Spouse or Common Law Partners, dated August 17, 2012, indicating that he and his former spouse separated in May 2012, the appellant has not provided this panel (or the Ministry) evidence that he is no longer married to the woman identified as his spouse on the Certificate of Marriage.

Accordingly, the panel finds that the Ministry’s determination that the appellant is not eligible for income assistance because he has failed to apply on behalf of his entire family unit (including the woman identified as his spouse as his dependant), as required by section 5(1) of the EAR, is reasonable based on the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant. The panel therefore confirms the Ministry’s decision.