

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated October 23, 2013, which denied the appellant assistance as a sole recipient under Section 1 and 1.1 of the Employment and Assistance Act because the appellant has been residing with his spouse since September 2011.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 1 and Section 1.1

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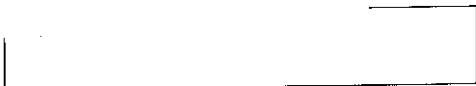
PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The evidence before the minister at reconsideration included the following documents:

- **Residential Tenancy Agreement**, dated August 31, 2011 that lists the appellant and another man as tenants, and lists the appellant's alleged spouse as an adult person who will occupy the rental unit.
- **10 Day Notice to End Tenancy for Unpaid Rent or Utilities**, dated August 28, 2013 lists the appellant's alleged spouse as a tenant at the appellant's address.
- **Landlord's Application for Dispute Resolution**, dated September 5, 2013 lists the appellant's alleged spouse as a tenant at the appellant's address.
- **Letter from the appellant's advocate**, dated October 11, 2013 stating that the appellant and another man paid rent at the premises. The letter also states that the appellant's alleged spouse is his ex-wife. The appellant and their children did stay and live together on a regular basis, but the appellant's ex-wife entered the home to visit the children and to care for her terminally ill brother. The appellant and his ex-wife are not in a relationship, and they do not do activities together.
- **Employment and Assistance Request for Reconsideration Form**, dated October 8, 2013.

At the hearing, the ministry representative reviewed the documents listed above and concluded that the appellant and his alleged spouse are married and reside together. The ministry pointed out that there is no documented evidence, verbal or written, of a divorce or separation. In response to questioning, the ministry stated that there is no evidence of correspondence with the appellant's alleged spouse in the ministry's records and that the appellant had consistently applied for assistance as a sole recipient.



PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision to deny the appellant assistance as a sole recipient on the basis that he is residing with his spouse as defined in section 1.1 of the EAA is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The Employment and Assistance Act provides the following definitions:

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; (B.C. Reg. 193/2006)

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.

(B.C. Reg. 193/2006)

The ministry argues that because the tenancy agreement, the notice to end tenancy, and the tenancy dispute resolution documentation list the appellant's alleged spouse as an occupant at the appellant's

address beginning in August 2011, that the appellant and his alleged spouse are married and reside together. In the request for reconsideration, the ministry states that a phone call to the landlord on August 1, 2013 verifies that the appellant was living common law with his alleged spouse since August 2011. The appellant has not supplied the ministry with evidence of a separation or divorce, therefore the ministry concluded that they meet the meaning of "spouse" under the Act, and the appellant is not eligible to receive income assistance as a sole recipient.

The appellant's position in the letter from his advocate is that although his ex-wife has stayed and lived with him and their children on a regular basis, they are not in a relationship and do not do activities together.

The panel finds that the ministry's determination to deny assistance to the appellant as a sole recipient was reasonable as the panel found that there was insufficient evidence to show that the appellant and his alleged ex-spouse are not married. The panel finds that the appellant and his alleged spouse share the same last name, and there is no evidence in the appeal record of a divorce or separation and therefore the ministry reasonably determined that they are spouses as defined in Section 1.1 (1) of the EAA. They are both listed on the tenancy documents as occupants at the appellant's address, which establishes that they reside together and that the appellant's spouse is a dependent as defined in Section 1 of the EAA.

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