

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 22, 2014 which found that the appellant is not eligible for assistance as a sole recipient since she is residing with a "dependant" with whom she must be assessed as one family unit, pursuant to Sections 1 of the *Employment and Assistance for Persons With Disabilities Act* (EAPWDA) and Section 5 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

*Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), Section 5  
*Employment and Assistance for Persons With Disabilities Act* (EAPWDA), Sections 1 and 1.1

## PART E – Summary of Facts

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

- 1) Birth Certificate for the appellant's child and indicating the name of the child's father;
- 2) Application for Income Assistance by the appellant dated September 1, 2011;
- 3) Telephone bill dated October 24, 2013 in the appellant's name with a handwritten note of the divided amount for 2 people;
- 4) Hydro bill dated October 31, 2013 in the appellant's name with a handwritten note of the divided amount for 2 people;
- 5) Letter dated December 27, 2013 from the ministry to the appellant advising her that she is no longer eligible for assistance as a sole recipient as she meets the definition of spouse; and,
- 6) Request for Reconsideration- Reasons dated January 7, 2014.

In the Request for Reconsideration, the appellant wrote that:

- She and the father of the child are no longer together as it was not working out.
- Since they have a child together, they decided it was for the child's best interests for them to stay friends.
- To ensure the child has a healthy, happy lifestyle with both his biological parents, she and the child's father were staying in the same residence and sharing the rent due to lack of housing and employment in their community.
- She feels as though she is being forced to be with the child's father and to add him to her file.
- She and the child's father "split up several months ago. We no longer have contact and we no longer have any interest in each other."
- The only time she sees the child's father is when it comes time for court to fight for their son.
- She feels like the ministry and everyone government-related are trying to diminish her right as a person living with disabilities.

In her Notice of Appeal, the appellant expressed her disagreement with the ministry's reconsideration decision. She wrote that she is a person with multiple disabilities and she will get her family doctor to send documents confirming her disabilities.

At the hearing, the appellant stated that:

- She and her child's father broke up "several months ago." After the birth of their child, they fought too much and their relationship went downhill ever since.
- The father of her child originally came to her because he could not find a place in town to rent and she agreed that he could stay downstairs on a couch and she would live upstairs but there were no "lovey-dovey" feelings between them. He was begging for help and she agreed that he could live with her but made it clear that it was not permanent. As it turned out, she ended up kicking him out.
- They broke up on December 28, 2013. She knows this because she has the date and time on her calendar.
- Although the ministry says that she and the child's father are common law spouses, her landlord has confirmed in a letter that she is living with another female room-mate and not with the child's father. Her current room-mate is the mother of the child's father.
- As far as she knows, the child's father is "in a shelter somewhere."
- The child's father sometimes comes to the residence to visit his mother but the appellant makes sure she is not at home then.
- The child's father left the residence about 2 ½ months ago, about January 6, 2014.

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- She has 3 or 4 disabilities and it is hard for her to understand some things. Her doctor would have confirmed that she is bipolar and has ADHD as well as other conditions.
  - She and the child's father had agreed that he would pay half of anything he used. He used the phone "quite a few times" but did not contribute towards the bill and she ended up paying the full \$105 for the October 24, 2013 invoice. He was supposed to pay half of the hydro bill too but she paid that herself.
  - She tried to be a friend to him but felt that his actions were "a slap in the face" and she cannot go back to him.
  - Her child does not live with her. The child lives with her father who is "trying to take the child away from her."

The ministry relied on the reconsideration decision, which included evidence that:

- The appellant has been receiving assistance as a sole recipient with Persons With Disabilities designation.
- On November 8, 2013, the appellant's landlord advised the ministry that the appellant resided with the father of her child since October 1, 2013. The landlord stated that the child's father presented the appellant as his girlfriend and that he and the appellant have a biological child together who does not reside with them.
- On November 20, 2013 the appellant advised the ministry and she resides with the child's father and share household responsibilities, shelter expenses, and that they have a biological son together who does not reside with them.
- The appellant has a history with the ministry for acting as an advocate on behalf of the child's father regarding his financial assistance.
- On December 17, 2013 a social worker with the Ministry of Children and Family Development (MCFD) advised the ministry that the appellant and the child's father present themselves in the community and to MCFD as a couple, that they attend meetings and court appointments together.
- On December 20, 2013, the appellant requested that the child's father be added to her disability assistance file as her spouse and then the appellant failed to follow through with the appointment.
- On December 27, 2013, during a phone call between the ministry, the appellant, her mother and the child's father, the appellant's mother referred to being the "mother-in-law" of the child's father and urged the appellant to add the child's father to her file.

At the hearing, the ministry stated that:

- The ministry also received a letter from the appellant's landlord dated February 6, 2014, which stated that the landlord does not live in the building but the appellant has told him that she is currently living in the premises with a female room-mate and that the child's father no longer resides in the premises. Although the child's father visits the premises from time-to-time, he does not live in the premises. His information is based on what has been told to him, so he is not in a position to either confirm or deny the facts.
- At the time of the original decision, the appellant and the child's father were living together although it may be that they are no longer living together. It is not clear since the file notes indicate that the landlord has observed the truck owned by the child's father parked at the residence.
- The ministry's information is that the appellant's current room-mate was also living at the premises during the time that the child's father lived there.

The ministry objected to the admissibility of the information from the landlord's letter since it is dated February 6, 2014 and it was not available to the ministry when the reconsideration decision was made. The panel admitted the information as providing further detail relating to the living circumstances of the appellant and the child's father, being in support of information that was before the ministry on reconsideration and, therefore, meeting the requirements for admissibility pursuant to Section 22(4) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for assistance as a sole recipient since she is residing with a "dependant" with whom she must be assessed as one family unit, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Section 5 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) provides:

### **Applicant requirements**

5 For a family unit to be eligible for disability 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.

Section 1(1) of the *Employment and Assistance for Persons With Disabilities Act* (EAPWDA) provides definitions as follows:

"family unit" to mean "...an applicant or 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.

"spouse" has the meaning in section 1.1

Section 1.1 of the EAPWDA provides:

### **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.

### **Ministry's position**

The ministry points out that Section 1 of the EAPWDA defines "family unit" to include an applicant or recipient and his or her dependants, and the definition of "dependant" includes a person who resides with the person and is the spouse of the person. The meaning of "spouse" for the purposes of the EAPWDA, as set out in Section 1.1(2), includes two persons who have resided together for at least the previous 3 consecutive months where the ministry is satisfied that the relationship demonstrates

financial dependence or interdependence and social and familial interdependence that is consistent with a marriage-like relationship. The ministry argued that the appellant does not dispute that she and the father of her child have been residing together for more than 3 consecutive months. The ministry argued that the relationship between the appellant and the child's father demonstrates financial interdependence consistent with a marriage-like relationship as the appellant acts as his advocate regarding his financial assistance and they share the rent expense. The ministry argued that the relationship also demonstrates social and familial interdependence consistent with a marriage-like relationship since they have a child together, their landlord and a social worker with MCFD advise that the appellant and the child's father present themselves in the community as a couple, and the appellant's mother refers to herself as the "mother-in-law" of the child's father.

#### *Appellant's position*

The appellant's position is that her family unit does not include the child's father as he is not a "dependant" since he no longer resides with her and he is not her spouse. The appellant argued that, to ensure the child has a healthy lifestyle with both his biological parents, she and the child's father were staying in the same residence and sharing the rent due to lack of housing and employment in their community. The appellant argued that she and the child's father "split up several months ago, that he moved out on about January 6, 2014 and they no longer have contact and no longer have any interest in each other. The appellant argued that the only time she sees the child's father is when it comes time for court to fight for their son.

#### *Panel decision*

Pursuant to section 5 of the EAPWDR, for a family unit to be eligible for disability assistance, an adult in the family unit must apply for the disability assistance on behalf of the family unit. "Family unit" is defined in Section 1(1) of the EAPWDA as the recipient and her 'dependants' and the first part of the definition of "dependant" is "...anyone who resides with the person." The appellant does not dispute that she and the child's father lived at the same address as of October 1, 2013 and stated that she had agreed to help him out because he did not have another place to stay. The appellant argued that the child's father moved out of the premises on January 6, 2014, that she does not know where he is staying, that he "could be in a shelter somewhere," and he only visits "from time-to-time." However, the appellant also stated that she currently lives with the mother of the child's father and the landlord wrote in his letter to the ministry that he could neither confirm nor deny that the child's father had moved out and also that he has observed the truck of the child's father parked at the premises. The panel finds that the ministry reasonably determined that the child's father "resides" with the appellant since he lived at the same address for several months and there is insufficient evidence to establish that he currently resides elsewhere, such as a written statement from the child's father providing his current address or a copy of a tenancy agreement or bills in his name showing a different address.

Section 1 of the EAPWDA provides three different options for falling within the second part of the definition of "dependant" and includes being the spouse of the person under sub-paragraph (a). The meaning of "spouse" for the purposes of the EAPWDA is set out in Section 1.1 of the EAPWDA and requires that the parties have resided together for a specific period of time. The ministry found that the appellant and the child's father resided together for "at least the previous 3 consecutive months" under Section 1.1(2)(a)(i) of the EAPWDA and that this was not disputed by the appellant. The appellant and the child's father began residing together on October 1, 2013 and the panel finds that a period of 3 consecutive months would run to January 1, 2014 at the least. At the hearing, the appellant stated that the child's father moved out of the premises on about January 6, 2014 and the panel finds that this period of time meets the minimal requirement of 3 consecutive months from

October 1, 2013 and, as discussed above, it is currently inconclusive whether the child's father has continued to reside in the same premises as the appellant.

The meaning of "spouse", as set out in Section 1.1(2)(b) of the EAPWDA, also requires evidence that the relationship between the parties demonstrates financial dependence or interdependence and social and familial interdependence consistent with a marriage-like relationship. The appellant does not dispute that she has advocated for the child's father regarding his financial assistance and that they agreed to divide the rent and the hydro expense as part of living at the premises. The appellant also stated that they shared the telephone and he used it "quite a few times" and he was supposed to pay for his usage, but he did not. The panel finds that the ministry reasonably determined that the relationship demonstrates financial dependence or interdependence consistent with a marriage-like relationship since the appellant has shown an interest in the financial affairs of the child's father by acting as his advocate and has paid for the hydro expense as well as the telephone usage on his behalf. The appellant did not suggest that she was pursuing the child's father for reimbursement of these amounts.

The panel finds that the ministry reasonably determined that their relationship also demonstrates familial interdependence consistent with a marriage-like relationship since the appellant agreed that they had a biological child together, that she currently lives with his mother, and the appellant's mother refers to herself as the "mother-in-law" of the child's father. The panel finds that the ministry reasonably determined that the relationship demonstrates social interdependence consistent with a marriage-like relationship as their landlord and a social worker with MCFD advised that the appellant and the child's father present themselves in the community as a couple. In summary, the panel finds that the ministry reasonably concluded that the child's father is the appellant's "spouse" according to the definition in Section 1.1 of the EAPWDA and, as they reside together, he is her "dependant" and was reasonably included by the ministry within the appellant's family unit.

#### *Conclusion*

The panel finds that the ministry's decision that the appellant did not apply for disability assistance on behalf of her entire family unit and, therefore, the appellant is not eligible for assistance as a sole recipient pursuant to section 5 of the EAPWDR was reasonably supported by the evidence and the panel confirms the decision.