

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (Ministry) reconsideration decision dated February 12, 2014, which held that the Appellant was not eligible for disability assistance as a sole recipient as the Ministry determined that the Appellant was residing in a dependency relationship during the months of December 2013 and January 2014, and thus the Appellant is required to repay her assistance for those months.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 1, 1.1, 3, 18.

PART E – Summary of Facts

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

- A shelter information form, stamped received by the Ministry on December 20, 2013, showing that the Appellant was paying \$500 per month in rent to her alleged dependant, who is listed as the landlord.
- A BC Assessment Roll Report, dated January 15, 2014, showing that the Appellant and her alleged dependant are co-owners of the house in which they were living during December 2013 and January 2014.
- A Land Title Act Form A, dated January 15, 2014, showing that the property was transferred to both the Appellant and her alleged dependant.
- A Land Title Act Form B, dated January 15, 2014, listing the Appellant and her alleged dependant as borrowers (mortgagors) for the property in which they were living.
- A letter from the Ministry to the Appellant, dated January 16, 2014, stating that a review of the Appellant's assistance had been completed and the Appellant was found ineligible as a single parent for December 2013 and January 2014 because the Ministry had evidence that the Appellant was living in a marriage-like and dependent relationship. The evidence cited in support of this relationship was: co-ownership of a home, verbal confirmation from the Appellant that both the Appellant and her alleged dependant contribute to the shelter expenses, and the Appellant's alleged dependant is the biological father of the Appellant's child.
- An overpayment chart, dated January 16, 2014, showing overpayment amounts for December 2013 and January 2014.
- A two-page letter, undated, from the Appellant stating that she was unaware that she was being inaccurate about her relationship with her alleged dependant. She states that she and her alleged dependant were going through hardships at the time and did not know if they were going to be able to make things work as a family. A couple of days after the Appellant moved in with her alleged dependant, she contacted the Ministry. She states that she answered all of the Ministry's questions and was told that January would be the last month of her assistance. The Appellant states that she was unaware that her name was going to be on the title of the home and the overpayment is the result of a miscommunication with the Ministry. The Appellant stresses that she understands that it is her responsibility to be open and honest with the Ministry and that she has worked hard to make a good life for herself and her child. The Appellant states that she has no way of paying the money back and does not think that the payment should fall on her shoulders; it was never her intention to misuse her assistance.

With the Notice of Appeal, dated February 19, 2014, the Appellant submitted a three-page letter summarizing her response to the reconsideration decision. The Appellant reiterates that she has always been honest about her relationship with her alleged dependant. She states that, in a telephone call with a Ministry worker, she was told that she was OK to receive assistance until January 2014 because she was not in a common-law relationship as they had not been living together for six months. The Appellant argues that she did not know that if you owned a home with someone, that was like a marriage – she states that many people own homes together that are not married and all income is separate. The Appellant acknowledges that she and her alleged dependant have a child together and that they own a home together (although she did not pay any money for the home). She denies that they share financial inter-dependency or present as a family unit to the community. She states that she was not asked if her name was on the title of the home and the miscommunication should not lie on her shoulders. The Appellant states that she did not falsely

declare her relationship status and has worked hard to get her life back on track. Having to repay her assistance for December and January would be a financial burden and her alleged dependant will not cover the cost.

At the hearing, the Appellant provided evidence that she feels this decision is based on a misunderstanding. She argues that she has been honest about her relationship and that she is going by what the Ministry worker told her in November – that her disability assistance would be discontinued in January 2014. It did not occur to the Appellant to inform the Ministry that she was a co-owner of a home because she had not put any money into the purchase.

The panel determined that the additional oral and documentary evidence was admissible under Section 22(4) of the EAA as it was in support of the records before the Minister at reconsideration because it provides evidence of the relationship between the Appellant and her alleged dependant during December 2013 and January 2014.

PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision to find the Appellant ineligible under Section 3 of the EAPWDA as a sole recipient for assistance during December 2013 and January 2014 because she was residing in dependency relationship under Section 1 of the EAPWDA is reasonably supported by the evidence.

The legislation provides the following:

Interpretation

1 (1) In this Act:

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

"**business day**" means a day other than Saturday or a holiday;

"**child**" means an unmarried person under 19 years of age;

"**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; (B.C. Reg. 131/2012)

(B.C. Reg. 193/2006)

"**dependent child**", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

"**dependent youth**" means a dependent child who has reached 16 years of age;

"**disability assistance**" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*];

"**employment plan**" means a plan required under section 9 [*employment plan*] and includes an amended employment plan;

"**family unit**" means an applicant or a recipient and his or her dependants;

"**former Act**" means

- (a) the *Disability Benefits Program Act*, or

(b) the *BC Benefits (Income Assistance) Act*;

"**hardship assistance**" means an amount for shelter and support provided under section 6 (1) [*hardship assistance*];

"**person with disabilities**" means a person designated under section 2 [*persons with disabilities*];

"**recipient**" means the person in a family unit to or for whom disability assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

(a) the person's spouse, if the spouse is a dependant, and

(b) the person's adult dependants;

"**spouse**" has the meaning in section 1.1;

"**supplement**" means any form of assistance specified by regulation, other than disability assistance, hardship assistance or financial assistance provided under section 7 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded under this Act;

"**tribunal**" means the Employment and Assistance Appeal Tribunal established under section 19 of the *Employment and Assistance Act*.

(2) The Lieutenant Governor in Council may prescribe other circumstances in which a child is a dependent child of a parent for the purposes of this Act

(3) For the purpose of the definition of "dependant", spouses do not reside apart by reason only that a spouse is employed or self-employed in a position that requires the spouse to be away from the residence of the family unit for periods longer than a day. (B.C. Reg. 193/2006)

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.

(B.C Reg. 193/2006)

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act and the regulations, and

(b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act or the regulations.

Overpayments

18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

The Ministry argues that the Appellant is living with a person who satisfies the legislative definition of a dependant and under Section 1 and all but one of legislative criteria in the definition of a spouse under Section 1.1 of the EAPWDA. The Ministry argued that the Appellant and the Appellant's alleged dependant show financial dependence or interdependence as they jointly own an asset (their home), they show social and familial interdependence as they present as a couple and have a child together. The Ministry argued that it does not matter if there was a miscommunication, the Appellant is still ineligible for assistance as a sole recipient because she was residing in a dependency relationship during December 2013 and January 2014.

The Appellant argues that she has been honest with the Ministry and answered all of the questions that she was asked during her contact with the Ministry. She argues that she didn't know that she should tell the Ministry that her name was on the title of the property and that she didn't think that her alleged dependant was a common law partner as they had been living together only since November 2013. The Appellant argues that the Ministry worker told her that she would receive assistance until January 2014 and so she didn't worry about it further.

The panel finds that the Appellant's alleged dependant meets the definition of a "dependant" under Section 1 of the EAPWDA as he is the biological father of her child, they jointly own a home, and they both contribute to the cost of the property that they share with their child. The panel therefore finds

that the evidence indicates a parental responsibility by the Appellant's alleged dependant for the Appellant's dependent child and that the Appellant and the child's father reside together.

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