

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”), reconsideration decision dated March 25, 2014, which determined that the appellant was not eligible for income assistance because she had not applied for such assistance on behalf of her family unit as prescribed in section 5 of EAR. The ministry further determined that: (a) the appellant was married and continued to reside with her spouse, as defined in section 1.1(a) of the Employment Assistance Act; and (b) the appellant’s spouse was her dependant, and therefore part of the appellant’s “*family unit*”.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The relevant evidence before the ministry at the time of the reconsideration decision included the following:

1. The appellant's application for income assistance dated March 11, 2014;
2. The original decision of the ministry dated March 11, 2014, which notes that: (a) the appellant has informed the ministry that although the appellant is separated from her husband, they still live together; (b) the appellant's spouse continues to give her financial assistance, they share a common residence and each contribute to the household expenses.
3. An Occupancy Agreement dated May 13, 2003 that names the appellant and her spouse as joint occupants of residential premises described in the Agreement;
4. A hydro bill dated January 31, 2014 in the name of the appellant's spouse;
5. Request for reconsideration from the appellant dated March 11, 2014, which among other matters states that: (a) the appellant does not have any money for medication; (b) the person she is living with is controlling and writes down how much she owes him; (c) the appellant and the person she lives with are different entities and have separate accounts; (d) the appellant will get divorced once she gets a stable job and looks after herself.

Subsequent to the reconsideration decision, the appellant filed a Notice of Appeal dated April 2, 2014, which among other matters states that: (a) the appellant is on sick leave and unable to look for a job; (b) she is in a household situation that she has already described to the ministry; (c) the appellant is desperately in need of financial help; (d) she has previously agreed to pay back the assistance received after she gets a job and becomes financially stable.

The panel notes that the appellant's statements in the Notice of Appeal relate to the appellant's medical condition (referred to in the Request for Reconsideration) and refers to her household situation previously described in her application for income assistance, all of which information are in support of information and records that were before the ministry at the time of reconsideration. Therefore the panel admitted them as additional evidence pursuant to the provisions of section 22(4) of the EAA.

Neither the appellant nor a ministry representative appeared at the hearing of the appeal. After confirming that the appellant and the ministry were notified of the date and time of the hearing, the hearing proceeded in their absence under section 86(b) of the Employment and Assistance Regulation.

The panel also made the following findings of fact:

1. The appellant is married to her spouse and not yet divorced; and
2. The appellant continues to reside in the same accommodation with her husband.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision to deny the appellant income assistance was reasonably supported by evidence, or a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry determined that the appellant was not eligible for income assistance because she had not applied for such assistance on behalf of her family unit as prescribed in section 5 of EAR. The ministry further determined that: (a) the appellant was married and continued to reside with her spouse, as defined in section 1.1(a) of the Employment Assistance Act; and (b) the appellant's spouse was her dependant, and therefore part of the appellant's "*family unit*", as defined in section 1 of the EAA.

In arriving at its reconsideration decision, the ministry relied upon the following legislation:

Employment Assistance Regulation

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.

(2) A child who is not residing with his or her parent is not eligible to receive assistance unless, after reasonable efforts by the minister to have the parent assume responsibility for the financial support of the child, the minister decides to grant income assistance to the child. (B.C. Reg. 48/2010)

(3) If a family unit includes a parenting dependent child, an application under subsection (1) may include in the family unit both the parenting dependent child and his or her dependent child. (B.C. Reg. 197/2012)

(4) Despite subsection (1), if

(a) a parenting dependent child is a dependent youth residing with his or her parent, and

(b) the parent of the dependent youth is a recipient under the Act or a recipient within the meaning of the *Employment and Assistance for Persons with Disabilities Act*,

the dependent youth may apply for income assistance or a supplement for a family unit composed of the dependent youth and any dependant of that dependent youth.

(B.C. Reg. 197/2012)

(5) The minister may provide income assistance or a supplement to a family unit described in subsection (4) if the minister considers that this is appropriate in the circumstances. (B.C. Reg. 197/2012)

(6) If income assistance or a supplement is provided to a family unit described in subsection (4), the minister may not provide income assistance or a supplement on account of a person in that family unit as part of any other family unit.

(B.C. Reg. 197/2012)

Employment Assistance Act

Part 1: Introductory Provisions

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;

"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; (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)

From the record of appeal, the panel notes that the appellant's position is that, although she shares housing accommodation with her husband, she has been separated from him since December 2009. She does not have any money for medication; her husband is controlling and writes down how much

she owes him; they have separate accounts and she plans to obtain divorce once she gets a stable job and is capable of looking after herself.

The ministry's position is the appellant has acknowledged that both the appellant and her husband continue to live together. In the circumstances, the ministry determined that the appellant is not eligible for assistance as her application for income assistance has been submitted as a "*single person*" and not on behalf of her family unit, which includes her husband as her spouse, as prescribed in section 5 of the EAR and the related provisions of section 1(1) and section 1.1 of the EAA.

Section 5 of the EAR provides that for a *family unit* to be eligible for income assistance, it must apply on behalf of the whole *family unit* unless the *family unit* does not include an adult or a *spouse* of an adult applicant. The term "*spouse*" is defined in section 1.1 of EAA and section 1.1 of EAR. It includes:

- two persons who are married to each other [sub-section 1.1(1)]; or
- two persons who reside together for at least the previous 3 consecutive months or 9 of the previous 12 months and 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 [sub-section 1.1(2)].

In the present appeal, the appellant has acknowledged that: (a) she is still married to her spouse but intends to seek a divorce from him once she gets a stable job and can look after herself; and (b) in the meantime she occupies the same premises as her *spouse*. The contents of the Occupancy Agreement dated May 13, 2003 and the appellant's Application for Income assistance dated March 11, 2014 support the acknowledgement that the appellant and her spouse continue to occupy the premises described in the Occupancy Agreement since 2003 and share common expenses. The panel therefore finds that the ministry reasonably determined that the appellant is separated but legally married (and not yet divorced), and continues to reside in the same premises as her *spouse*.

As the appellant is legally married and lives in the same premises as her spouse, her application for income assistance must be made on behalf of the whole of her "*family unit*", which is described in section 1(1) of EAA to mean "*the applicant or a recipient and his or her dependants*". The term "*dependant*" is further described in the same sub-section as "*anyone who resides with the person and is the spouse of the*" applicant. The panel further notes that the appellant's application for income assistance is for a "*Single Person*", whereas she is a married person residing with her spouse. In the circumstances, the panel finds that the ministry was reasonable in determining that the appellant is not eligible for income assistance because she has not applied for such assistance on behalf of her *family unit*, which includes her husband.

In conclusion, the panel finds that the ministry's decision to deny income assistance to the appellant was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's reconsideration decision.