

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision of January 31st, 2014 which determined the appellant's relationship with his female friend must be considered spousal, as defined under section 1.1 of the Employment and Assistance Act (EAA) and therefore, she must be considered a dependant in his family unit for the purpose of assessing the family unit's eligibility for income assistance as set out in section 5(1) Employment and Assistance Regulation EAR.

PART D – Relevant Legislation

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



PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Employment and Insurance Benefit Statement in name of Appellant's female friend (AF).
- Shelter Information form dated May 31st, 2013 in the appellant's name indicating there are 2 adults (only appellant's name is listed) residing at the residence (R1); the rent is \$600 and shared -50/50; the rent receipt is blank.
- Shelter Information form dated September 20th, 2013 in appellant's name indicating there are 2 adults at this address (R2) (only the appellant's name is listed). The form indicates the appellant's share of rent to be somewhat higher than 50/50 - (\$375 of \$600); the rent receipt is dated September 23rd, 2013 and indicates the rent of \$600 was received from the appellant for the month of October 1st, 2013 and is signed by landlord.
- Employment and Assistance Review form date stamped October 1st, 2013 with following information:
 - Family Type: Couple
 - Primary contact: Appellant
 - Have you or your spouse ever applied for income assistance in British Columbia? Yes.
 - Have you or your spouse ever received income assistance in British Columbia? Yes
 - Common Information:
 - Address: same address as shown for R2 for October 2013.
 - Do you have identification documents: Yes
 - Does your spouse have identification documents: Yes
 - Did anyone assist you in completing this form? Yes, a worker (EAW) helped me.
 - Describe your current living arrangement? Rent
 - Current Situation:
 - Are you (or your spouse currently receiving child support or spousal support or maintenance payments? No.
 - Marital Status: Single
 - Spouse: her name is listed; she is over 19 years of age, born in Canada and is non-aboriginal.
 - Common expenses: Rent and phone
 - the Declaration – I declare that all the information I have provided in the application process is true and correct - form is dated October 1st, 2013 and signed by the appellant, the AF and Employment and Assistance worker (EAW).
- Attached to the appellant's Request for Reconsideration the AF provided an 8 page submission that was signed and dated January 15th, 2014. The submission provided background information on her personal situation (family), her health issues, and details on the relationship between herself and the appellant.

In the submission the AF wrote the following:

- the appellant has been a 'recipient' for 2 or 3 years now! I'm not sure of time – I have been trying to get him on his feet with as little help from me as possible;
- everything that 'office' has told the appellant to do – he tried to do, yet, you keep pushing him back on me;
- Yes, I said I am moving;
- I also said – I will move when I am ready.
- Again, like I asked the last EAW – How can you move? Carry things on my back? Can you help me move? she said, no. Anyone with common sense would know – it takes money to move - I have any possessions left – here – in this cabin – I take all my things – the appellant doesn't even have a dish, a pot, a phone, towels, nothing. His entire life is in storage elsewhere;
- We just went through Christmas – very depressing too. He couldn't even get his mother present.



- I took him on as a roommate because – his sister couldn't keep him anymore. I told her I did not want to live with him either – he had nowhere else to go – I have friends. But I didn't want to impose.
 - I tried staying with my daughter - she gave me a key – but her boyfriend then didn't like me being there... my daughter has since had to move back in with her dad;
 - I had to contribute to Christmas gifts for my kids – pay rent here so I don't lose the basic necessities that I have left;
 - So here is what is going to happen – I am going to stay with my girlfriend in another community – my stuff is (most of) staying here until I have somewhere at her house to keep it – the finances to actually move my stuff – not carrying on my back. At least at her place I can attend to my personal preferences and go to Employment Insurance for re-training as I can't do certain jobs anymore.
 - The one person that he has I call his guardian angel. Through this person we were allowed to move into this cabin (R2) not knowing us from Adam, without a penny given to them, on a promise to pay as soon as we could;
 - The guardian angel set up a meeting with his pastor and together they are trying to help him (the appellant) to keep this home here. This is a good place for him to live if he can do it on his own.
 - I will be officially living at my girlfriends home as of Monday, January 20th, 2014. Oh, if we share expenses, food & shelter, does that make us a "common-law" couple, hmm.
 - It takes time to organize a move, with little to no funds, I will be disrupting her family. I am hoping I can help her, not hinder her. We didn't put down on your "form" how much my rent will be – we hadn't had a chance to work out any details yet. As far as I am concerned it's none of the ministries damn business, because it's not, unless you want to help me move – truck rental, men to move my stuff. I can't move heavy things.
- Request for Reconsideration dated January 16th, 2014
 - On September 20th, 2013 the appellant advised the ministry that he was living in a common-law relationship with a female friend (AF).
 - On October 1st, 2013 the appellant and AF attended an appointment at the ministry office to add the AF to the appellant file as his spouse; the ministry advised they presented themselves as a couple and advised ministry (EAW) they were living together. The appellant and the AF signed Employment and Assistance Review forms to make application to receive income assistance as a couple.
 - On November 20th, 2013 the appellant and the AF again attended the ministry office. The appellant requested that the AF be removed from his file. The AF advised the EAW the appellant and she were in a relationship but were not common-law spouses. The AF stated the appellant was helping her out and that she was considering moving in with a friend. The EAW advised the appellant that the AF could be removed from his file when he provided confirmation from his landlord that she had moved out.
 - On December 3rd, 2013 the ministry was contacted on the appellant's behalf by his MLA's office. The MLA's office worker advised the EAW that the appellant had stated that the AF should not be on his file; that the AF's EI funds were for her use only, and should not be deducted from his assistance. On December 6th, 2013 the appellant advised the EAW that the AF had moved in with a friend but did not provide any confirmation from his landlord because the landlord was away until December 17th, 2013. The EAW requested the appellant provide confirmation of the AF's move when the landlord returned.
 - On December 23rd, 2013 the appellant advised the EAW that the AF would not be moving until January 1st, 2014 as she had paid full December rent. On January 6th, 2014 the appellant provided a letter to the

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EAW from his landlord which stated that you would be evicted if the January rent was not paid. The letter did not reference the AF.

- On January 7th, 2014 the appellant and the AF attended the ministry office. The appellant stated that he did not realize what he was doing when he added the AF to his file; that he wanted to help her as she had been denied assistance on her own. The EAW advised the appellant that he had provided information to the ministry that established the AF was his spouse and therefore must be included in his family unit for the purpose of assessing his eligibility for assistance. The appellant then requested reconsideration.
- On January 9th, 2014 the appellant denied that he was living with a common-law spouse stating that he and the AF were still living as roommates. On January 9th, 2014 the EAW received another call from the appellant's MLA's office. The EAW reviewed the information the EAW had on file with the MLA worker and also reviewed the reconsideration process.

On the Notice of Appeal under Reasons for Appeal, the appellant states "I wasn't with (her) in 2011. I didn't know her then, sorry, plus added stress, no money since November 20/13, and no ... (writing is illegible)... I was single living with my sister in ... 2011. She doesn't live here no more – moved out.

Neither the appellant nor the ministry called a witness.

The ministry relied on the facts as stated in the reconsideration decision. In response to questions from the panel and the appellant, the ministry advised that prior to the appellant changing his status (receiving assistance as a couple) on September 27th, 2013 he had been receiving income assistance as a single recipient. On October 1st, 2013 the appellant and AF began to receive income assistance as a couple, rate \$877.22. The ministry advised income assistance is reassessed every month and when AF received in excess of \$1,000 in EI benefits in November the EI benefits affected the December income assistance because they are deducted dollar for dollar. The ministry advised the AF's EI benefits put the appellant and AF in an income in excess situation and therefore the ministry could not issue income assistance. The ministry stated that the note the appellant brought into the office on January 4th, 2014 stated they the appellant owed \$300 for rent. The rent was \$600. The Shelter application indicated that 2 adults were living at this address and the ministry has not received anything from the appellant to confirm the contrary.

The appellant testified that he doesn't have any money and has not had any since November 2013. He has not paid his rent, can't get any bus passes from the ministry that he simply can't go anywhere because he is broke. He stated that when the landlord returns from vacation he will probably be evicted. He stated that AF left him approximately 6 weeks ago and he has no idea where she is living. He stated that he and AF went into the ministry office in October 2013 to add her to his file because he wanted to help her; that they have lived together in another community for 8 months before moving to this location; that she was his friend. The appellant stated that he was sorry that he did what he did and now he can't seem to straighten it out; that he took the note into the ministry office, as they had asked, but they wouldn't accept it. He stated he has called everyone but the situation has not changed; he doesn't know what to do, he just wants to get her off his file and get his life back as he has been living on nothing since November 2013. The appellant testified that they are not a couple and he doesn't understand why the ministry won't accept that they are just living as roommates. He testified that he was just trying to get her some help as she has always been there for him in the past.

The panel finds the appellant's testimony is relevant to the issue under appeal and that his testimony does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) EAA.

The panel makes the following finding of fact:

1. The appellant and AF have been residing together for at least the previous three consecutive months;
2. Prior to October 1st, 2013 the appellant was a single recipient of income assistance;
3. That on October 1st, 2013 the appellant and AF attended the ministry office and the appellant requested the AF be added to his assistance file as his spouse and both parties signed the Employment and Assistance Review application form indicating they were a couple, living in a common-law relationship;
4. That the appellant and AF share the cost of rent.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision wherein the ministry determined the appellant's relationship with his female friend is spousal, as defined under section 1.1 of the EAA, and therefore, and she must be considered a dependant in his family unit for the purpose of assessing the family unit's eligibility for income assistance as set out in section 5(1) EAR.

The legislation considered:

EAA
Interpretation

Section 1(1) In this Act:

"dependant", in relation to a person, means anyone who resides with the person and who is the spouse of the person,

Meaning of "spouse"

Section 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.

EAR
Applicant requirements

Section 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.

The ministry's position is that the appellant on two occasions stated that he and AF were in a common-law relationship: first, on September 20th, 2013 when he contacted the ministry to have AF added to his file that they were living in a common-law relationship; and second, on October 1st, 2013, when the appellant and AF attended the ministry office and completed and signed the Employment and Assistance Review form. The ministry argues the review form indicates the appellant and AF are applying for assistance as a couple (married or common-law); residing together at R2; that rent is not shared; that AF is appellant's spouse; and includes the following declaration " I declare that all information I have provided in the application process is true and complete." The ministry argues that the appellant and AF presented themselves as a couple at the ministry office advising the EAW they were living together and then signed the application form to receive

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income assistance as a couple. The ministry argues that the appellant has changed his story several times about whether or not he and AF are living together. The ministry argued the appellant's eligibility for income assistance will continue to be assessed under section 5 EAR based on the information contained on Employment and Assistance Review form dated October 1st, 2013 or until the appellant provides the ministry proper documentation that demonstrates that the appellant and AF are no longer residing together. The ministry states that the appellant has represented that he and AF are living in a common-law relationship; that the appellant and AF are living in an interdependent/dependent relationship and therefore the ministry considers AF to be the appellant's spouse as defined in s. 1.1 EAA.

The appellant argues that he made a mistake when he asked the ministry to add AF to his file and when he signed the review form on October 1st, 2013; that he was only trying to help his friend until she received her EI benefits. The appellant argued that the EI benefits were hers and he didn't have any right to them; that she worked for them and that was her money. The appellant argues that he doesn't understand why the ministry won't accept that they are just roommates living together and are not living in a common-law relationship. The appellant argues that she has children of her own and she is not his spouse.

In reference to the meaning of spouse in section 1.1(1) EAA the panel finds that appellant completed the Employment and Assistance Review application indicating that he and AF were applying for income assistance as a couple and that he and AF were living in a common-law relationship. The appellant does not disagree with the ministry's position and he apologized in his testimony for making this statement.

The panel finds that the ministry reasonably determined that the appellant and AF are spouses of each other for the purposes of this Act; and that they acknowledged to the EAW that they were residing together in a common-law relationship as defined under section 1.1(1)(b) EAA.

In reference to section 1.1(2) EAA, the ministry's position is that the appellant and AF resided together for at least the previous 3 consecutive months and that the minister is satisfied that the relationship demonstrates a financial dependence or interdependence and social and familial interdependence, consistent with a marriage-like relationship.

The ministry's position is that the appellant and AF were residing together when he completed the request for a review of his assistance on October 1st, 2013 and they were still residing together December 23rd when the appellant attended the ministry office to advise she would not be moving until on January 1st, 2014 as she has paid rent up to that date which is more than 3 consecutive months. The ministry argues that sharing the rent, advocating for one another and sharing household items demonstrates familial and financial interdependence.

The appellant agrees he and the AF support one another but now she has left, he doesn't know where she is and he doesn't have any money and the ministry won't assist him. The appellant argued AF needed help and that was all he wanted to do.

In the appellant's testimony he stated that he was just trying to get her help because "she has always been there for me and I was trying to be there for her". The appellant testified they lived together in another community for 8 months before moving to R2 and they consider themselves roommates and not spouses in a common-law relationship. In the AF's submission she acknowledges their interdependence upon one another with her statements, "I have been trying to get him on his feet"; I paid for the move: pay rent here so I don't lose the basic necessities that I have left; and my daughter invited us for Christmas dinner, we had no tree, nothing – nothing to look forward to – he has been taken on as part of our family".

There is no evidence before the panel that the appellant and AF are not residing together.

The panel finds that the testimony from the appellant and the submission from the AF supports that the relationship between the appellant and the AF demonstrates a financial dependence or interdependence and

social and familial interdependence, consistent with a marriage-like relationship.

The panel finds the ministry's decision that the appellant's relationship with AF is spousal for the purpose of Section 1.1 of EAA, was reasonable.

The panel finds that the ministry's decision that AF must be considered a dependant in the appellant's family unit for the purpose of assessing the family unit's eligibility for income assistance as set out in section 5 EAR was a reasonable application of the legislation in the circumstances of the appellant, and confirms the ministry's decision pursuant to section 24(1)(b) EAA and section 24(2)(a) EAA.