

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (The Ministry) dated the March 27, 2014, which denied the Appellant income assistance as a sole recipient, due to the determination that the Appellant resided in a dependency relationship, that meets the definition of spouse, pursuant to Section 1 and 1.1 of the Employment and Assistance Act (EAA).

PART D – Relevant Legislation

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

PART E – Summary of Facts

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded in accordance with s. 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration consisted of the following, and is not disputed:

- the appellant is a sole recipient of income assistance with no dependants
- the appellant receives assistance as a Person with Persistent Multiple Barriers (PPMB)
- the appellant has not been designated a Person with Disabilities (PWD)
- the appellant has been in receipt of assistance since September 2006 and PPMB since June 2010
- the appellant has resided with her roommate for the past two years
- the current rent paid to the landlord amounts to \$875.00 with the appellant's share of that rent being \$220.00
- the appellant shares a joint bank account with her roommate, and this account receives the income from both roommates and the funds were accessed by both roommates
- the appellant takes care of the house and her roommate's cats while he is away at work and the roommate takes care of the bills and shopping using the joint bank account
- the appellant has been started on medication for anxiety with the latest person with persistent multiple barriers (PPMB) Medical Report dated March 2012 confirming severe depression, chronic back pain and diabetes
- the appellant has not been determined to Person with Disabilities (PWD)

In her Notice of Appeal dated April 7, 2014 the appellant wrote that:

- "I am not living common-law. The person I live with is not my common-law, just my best friend. The stress of dealing with this has led to me going on anxiety medication."

In her Request for Reconsideration, the appellant included:

- a letter of support from the local anti-poverty group stating that the appellant is clearly not in a common-law relationship, but merely accepting assistance from a long-time friend
- a letter from the appellant's landlord detailing the tenancy agreement which indicates the amount discussed concerning that each of the roommates would pay every month
- a note from the appellant's physician indicating that she is being treated for anxiety and is scheduled to see a psychiatrist for the condition dated March 17, 2014
- a note from a former neighbour of the appellant and her roommate, indicating that he has seen nothing to indicate that the appellant and her roommate are anything more than roommates
- a letter from the appellant's roommate which states the following:
 - the appellant and her roommate have known each other since childhood, and are not in a common-law relationship
 - that the appellant suffers from depression as well as physical limitations
 - that the appellant suffers from anxiety attacks, especially in public places, and has difficulty functioning outside
 - that the joint bank account was opened to enable the appellant's roommate to look after the shopping and bill payments
 - that the appellants' roommate tries to take her to doctor's appointments and helps

- her manage her medications
- that the stress of her current situation has made her physically sick and worsened her depression
- that the appellant and her roommate do not function as a couple, the roommate has his own private life and does not take the appellant with him when he travels
- that the appellant is her roommate's longtime best-friend, and he is trying to help her as much as he can because she would not be able to live on her own.
- a letter from the appellant noting the above mentioned support notes and letters, and indicating that she was mugged outside her apartment on March 14, 2014, a fact which has increased her level of anxiety when outside her home
- a copy of the tenancy agreement between the appellant and her roommate, and the landlord dated January 16, 2014.
- a copy of a Shelter Information form provided to the ministry indicating the amount that the appellant was to pay for her share of the rent
- a copy of a letter from the landlord confirming that the appellant and her roommate had signed a tenancy agreement and detailing the amount of rent that each would pay
- a copy of an email from the appellant's roommate to the local anti-poverty group confirming that he would pay \$655 and the appellant would pay \$220 for rent
- copies of bank statements, and records detailing the transactions and details of the joint account held by the appellant and her roommate.

At the hearing the appellant's roommate stated that:

- they had opened a joint account about two or three years ago because it was easier for him to pay the bills etc. due to the appellant's difficulty in functioning outside the home, and that he does most of the bank transactions
- the appellant and her roommate had lived together for approximately five years
- the appellant and her roommate rent a two-bedroom apartment and each have their own bedroom
- the appellant and her roommate have known each other for thirty-four years
- the appellant and her roommate are just good friends, they do not go out together, and introduce one another to others as 'my roommate.'
- the appellant's roommate does serve as a caregiver and provides advice to the appellant.

At the hearing the appellant stated that:

- she suffers from anxiety which it makes it very difficult for her to go out in public
- It is because of her anxiety that her roommate does most of the shopping and banking
- the number of stairs at their former apartment made it difficult and sometimes impossible for the appellant go out
- her roommate would remind her about upcoming doctors' appointments, keep her on track with her medications, check up on her if she was feeling particularly poorly
- the appellant does not rely on her roommate, but his presence and care makes her life easier
- the appellant does not go out socially with her roommate, they each have their own families and friends, they live separate lives, and have just been best friends since the appellant was thirteen years old.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision which determined that the appellant was residing in a common-law relationship and was therefore ineligible for assistance as a sole recipient, was reasonably supported by the evidence, or was a reasonable application of the applicable legislation and regulations.

Section 1 of the EAA provides definitions required to interpret the Act as follows:

"**family unit**" means an applicant or a 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;

Section 1.1 of the EAA provides the definition of a spouse which is at issue in this appeal as follows:

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.

Meaning of Spouse

Residency

The fact that the appellant and her roommate have been residing together is not disputed. The appellant states that she and her roommate have been living together for 5 years.

Financial Dependence or Interdependence

The ministry's position is that the fact that the appellant and her roommate have a joint bank account into which the income of both individuals is deposited and to which both individuals have access, and the fact that their rent is not of equal proportions, is indicative of financial interdependence consistent with a marriage-like relationship.

The appellant's position is that she and her roommate share a joint bank account and are joint tenants paying unequal amounts of rent in order to help the appellant to live more comfortably and cope with the effects of PPMB, anxiety and the resulting poverty. The appellant denies that she is in a marriage-like relationship and argues that the financial and rental arrangements are the result of a caring friendship which has lasted for over thirty years.

Panel Decision

Section 1.1(2)(b)(i) of the EAA defines in part what constitutes the meaning of "spouse." The ministry was satisfied that the relationship demonstrates financial dependence or interdependence consistent with a marriage-like relationship and meets this part of the definition of "spouse." The panel finds as fact, that the appellant and her roommate operate a shared bank account and pay unequal amounts of rent and find that this is more consistent with a marriage-like relationship than a typical relationship between roommates. Therefore the panel finds that the ministry reasonably determined that the appellant and her roommate are in a relationship that demonstrates financial dependence or interdependence consistent with a marriage-like relationship.

Social and Familial Interdependence

The ministry's position is that the imbalance in the share of rent paid, the fact that the roommate took care of all expenses from the joint account, takes care of all the shopping, bill payments, and looks after the appellant is more consistent with a marriage-like relationship than a roommate relationship. The ministry further argues that while the appellant has been identified as a PPMB, the record reflects that she has not been identified as PWD, therefore she does not require all the assistance that she receives from her roommate. The ministry gave greater weight to this evidence than to statements by the appellant, her roommate, and the appellant's former neighbour that stated the relationship between the appellant and her roommate was nothing more than a friendship. The appellant's position is that the fact that her roommate pays a disproportionate share of the rent, looks after expenses, bill payments, and shopping demonstrates nothing more than the kindness and care provided to her by a friend of many years, and this fact has been affirmed by her roommate and her former neighbour. The appellant's position is that the care she receives from her roommate, while not necessary, is very helpful to her and makes her life more comfortable, but does not make it a marriage-like relationship.

Panel Decision

Section 1.1(2)(b)(ii) of the EAA requires that the ministry be satisfied that the relationship demonstrates social and familial interdependence consistent with a marriage-like relationship. The panel finds that the degree to which the appellant and her roommate are financially intertwined, the fact that there is an extensive sharing of household and out-of-home duties, the fact that the appellant only pays a much smaller portion of the rent and that she and her roommate have a joint tenancy agreement, and the fact that the appellant relies upon and receives care from her roommate is more consistent with a marriage-like relationship than it is like a roommate relationship. The appellant is not a PWD who may require significant assistance but is PPMB which reflects barriers to employment. Therefore the panel finds that the ministry reasonably determined that the appellant and her roommate are in a relationship that demonstrates social and familial interdependence consistent with a marriage-like relationship.

Conclusion

The panel finds that the ministry's reconsideration decision, which held that the appellant is living in a relationship that meets the definition of spouse under section 1.1 of the EAA and dependant under section 1 of the EAA, and is therefore ineligible for income assistance as a sole recipient, was reasonably supported by the evidence, and the panel confirms the decision.