

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 2, 2014 which found that the appellant is not eligible for assistance as a sole recipient since he is residing with a "dependant" with whom he 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) Request to Increase Payment Amount and/or Frequency dated August 22, 2008 from the alleged dependant as the "customer" to a financial institution relating to a mortgage on the property which is the appellant's address, along with an Authorization Re: Pre-Authorized Debit;
- 2) Commitment Letter dated August 21, 2008 for a mortgage with a financial institution on the property which is the appellant's address, with the alleged dependant as the mortgagor and the appellant as the guarantor;
- 3) Chequing Account Statements for September, October 2013, November 2013, December 2013, January 2014 showing an automatic withdrawal of \$288 with a mortgage reference for the description;
- 4) Receipt dated January 10, 2014 in the appellant's name for the sum of \$700 for rent, signed by the alleged dependant;
- 5) Handwritten note dated March 6, 2014 from the appellant referencing his residence address and stating: "I have been renting for 5 years. [The alleged dependant] is my landlord and caregiver as I am not capable of doing this myself. The landlord also lives in the house";
- 6) Unsigned Mortgage Renewal/Extension Agreement dated March 6, 2014 for a second mortgage with a financing company in the name of the appellant and the alleged dependant secured by the property which is the appellant's residence for a period of 12 months and indicating a balance due date of April 8, 2015;
- 7) Letter dated March 6, 2014 from a financial institution to the appellant at his residence responding to a request for a copy of his credit file and advising that a response will be provided by March 13, 2014;
- 8) Savings Account Statement as of March 6, 2014, showing a negative balance, with a balance as of September 19, 2013 of \$28.53;
- 9) Personal Assessment Statement from a financial institution for the appellant, indicating negative balances for a savings account and a chequing account and his liability as guarantor of a mortgage with a balance of \$221,130.20;
- 10) Statement of Mortgage Particulars indicating a mortgage with respect to the property which is the appellant's address, in the face amount of \$24,390 opened April 7, 2010 in the name of the alleged dependant;
- 11) Annual Mortgage Statement from a financial institution for the period December 31, 2012 to December 31, 2013, with the mortgaged property being the appellant's residence and the mortgagor being the alleged dependant;
- 12) Mortgage Account Details for the principal balance of \$221,130.20 and a maturity date of October 1, 2018;
- 13) Employment and Assistance for Persons With Disabilities Review dated March 21, 2014 signed by the appellant;
- 14) Neuropsychological/vocational Assessment for the appellant dated April 17, 2014;
- 15) Handwritten note from the appellant stating: "As of the 28 of April 2014 I will no longer be a guarantor on either mortgage; and,
- 16) Request for Reconsideration dated April 4, 2014.

In his Notice of Appeal, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he has significant facts that were not interpreted properly.

At the hearing, the appellant stated that:

- He has been supported by the alleged dependant for a long time.
- As soon as he mentions to prospective employers that he has had strokes, they become apprehensive and, even though he is confident, it is a huge stumbling block for him.
- The alleged dependant told him that he is no longer a guarantor on the second mortgage and she is working on getting him off the first mortgage by putting her daughter as guarantor in his place.
- The alleged dependant is still refusing to divulge any of her banking information.
- He exists by taking gardening jobs.
- His mental capacity is not what it should be and he was not thinking to the future when he signed as guarantor to the mortgages.
- The only way the alleged dependant could get a mortgage is if she had a guarantor and she asked him to sign, so he did. He feels he may have been used.
- He did not get any guidance when he signed and he did not foresee that it would be a problem. Asked about independent legal advice, he said that he did not ask for it and it was not provided to him.
- He does most things around the house. He makes the meals, does the dishes, he built the garden and is the "handy labour."
- Asked about the things that the alleged dependant does for him as a "caregiver", the appellant stated that she schedules events and includes him and keeps him busy. She is his social circle along with another community group where he is able to network and pick up jobs with a seniors' centre about once a week.
- He pays rent to the alleged dependant and she ensures the money goes into an account for the second mortgage payment. An amount is automatically withdrawn from his chequing account to pay for the mortgage too.
- The receipt for rent paid in January 2014 was the last time he made a payment.
- He requested documents from the financial institutions and they gave them to him. He is still the guarantor on the second mortgage because he has not been officially signed off yet. He is going on what he is being told by the alleged dependant.
- He has no personal or intimate relationship with the alleged dependant. They work well together- "it is a mutual give and take."
- He initially referred to the alleged dependant as his "common law spouse" because he knew that after a man and a woman have been living together for a while, people usually consider them common law spouses.
- He started living with the alleged dependant at least 3 or 4 years ago. They met at a social event and he thought he could help her because he is very handy. He put a new roof on the house last year. The alleged dependant was looking for someone to help pay the bills.
- Asked whether the amount he pays for rent includes room and board, the appellant stated that it does, but if he wants something else to eat he will go out and get it.
- The house is fully shared by him and the alleged dependant. There is no separate suite.

The ministry relied on the reconsideration decision. The facts included:

- The appellant re-applied for disability assistance as a single person family unit.
- The appellant advised the ministry in February 2014 that the property in which he resides is owned by his common law partner and that he is the guarantor on the second mortgage.
- The appellant also stated that his common law partner is his landlord to whom he pays rent, and she pays him back for his portion of the second mortgage.

- The appellant stated that the mortgage was taken out in 2009 and that he had been living with the alleged dependant since that time. She is employed but the appellant does not know what her income is, where she banks, or if she has any other assets.
- On March 3, 2014, the appellant advised the ministry that the alleged dependant refused to be added to his file and refused to provide any requested documents.
- The appellant submitted his January 2014 rent receipt signed by the alleged dependant.

At the hearing, the ministry stated that:

- The Employment and Assistance for Persons With Disabilities Review form was completed in this case because the appellant had an open file, being a MSO [medical services only] recipient, and he was asking to be considered for assistance again.

Admissibility of New Information

The ministry did not raise an objection to the admissibility of the information in the oral testimony on behalf of the appellant. This information provides additional detail with respect to the relationship between the appellant and the alleged dependant. The panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 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 he is residing with a "dependant" with whom he 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's position is that the appellant is not eligible for assistance because he has not applied for assistance on behalf of his family unit, including the alleged dependant, as per Section 5 of the EAPWDR. 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 he and the alleged dependant have been residing together in the same house for 5 years and the residency requirement has been met. The ministry argued that the relationship between the appellant and the alleged dependant demonstrates financial interdependence consistent with a marriage-like relationship as the appellant has been holding two joint mortgages with the alleged dependant and the monthly payment for one of the mortgages comes out of the appellant's bank account. The ministry argued that the relationship also demonstrates social and familial interdependence consistent with a marriage-like relationship since the appellant initially referred to the alleged dependant as his "common-law spouse" and then, after he was advised to add her to his application for assistance, he referred to her as his "landlord and caregiver". The ministry argued that there is no indication that the appellant requires a caregiver since the Neuropsychological/Vocational Assessment concluded that he has some limitations for the types of employment he can perform and not that he requires a caregiver, and the appellant was employed in December 2013 providing care, as a foster parent, for a teenager.

Appellant's position

The appellant's position is that his family unit does not include the alleged dependant as she is not a "dependant" since she is not his "spouse" according to the stated definitions. The appellant admitted that he has been residing with the alleged dependant for several years but argued that he is in the process of being removed as a guarantor on both mortgages registered on the property. The appellant argued that the alleged dependant is his landlord and caregiver and pointed out that he pays her rent and she takes care of scheduling events for him and keeping him busy.

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 applicant and his 'dependants' and the first part of the definition of "dependant" is "...anyone who resides with the person." The appellant does not dispute that he and the alleged dependant have lived at the same address for at least 3 years, they share a house with no separate suite or unit, and the panel finds that the ministry reasonably determined that the alleged dependant "resides" with the appellant.

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 alleged dependant have resided together for 5 years, based on the information that the appellant provided to the ministry at that time, and that the residency requirement had been met. At the hearing, the appellant stated that he was not sure when he and the alleged dependant started living together, but he stated that it was at least 3 or 4 years ago and that they continue to reside together. The panel finds that the ministry reasonably determined that the residency requirement had been met since 3 or 4 years meets both requirements in Section 1.1(2)(a)(i) and (ii) of the EAPWDA, namely that they have resided together for at least 'the previous 3 consecutive months' or '9 of the previous 12 months.'

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 he acted as guarantor of both a first and second mortgage taken out by the alleged dependant and secured by the property in which they reside. A commitment letter dated August 21, 2008 as well as the appellant's Personal Assessment Statement from a financial institution showed the appellant's liability as guarantor of one mortgage, and a Mortgage Renewal/Extension Agreement dated March 6, 2014 set out the appellant's name as guarantor on a second mortgage with a financing company. The appellant stated at the hearing that his mental capacity is not what it should be and he was not thinking to the future when he signed as guarantor to the mortgages. He stated that the only way the alleged dependant could get a mortgage is if she had a guarantor and she asked him to sign, so he did and he feels he may have been "used." The appellant argued that he is in the process of being removed as guarantor on both mortgages but acknowledged that he has not obtained confirmation from the financial institutions that this has been done.

Although the appellant argued that the alleged dependant is his "landlord" to whom he pays rent, the panel finds that the ministry reasonably determined that acting as guarantor on a mortgage is indicative of more than solely a landlord-tenant relationship. As a guarantor, the appellant has taken on legal responsibility to pay the full amount of the mortgage if the alleged dependant, as the mortgagor, defaults. The appellant also does not dispute that payments are automatically withdrawn from his chequing account each month towards the payment of one mortgage and that he also gives a cheque to the alleged dependant for "rent," which is applied to his share of the mortgage expense. The appellant did not suggest that he would be discontinuing his payments towards the mortgages secured on the residence he shares with the alleged dependant. 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 assumed financial responsibility on behalf of the alleged dependant and is contributing towards payment of the mortgages together with her.

The panel finds that the ministry reasonably determined that their relationship also demonstrates social and familial interdependence consistent with a marriage-like relationship. The appellant agreed that he has lived with the appellant for at least 3 or 4 years and he signed as guarantor of the mortgage on August 21, 2008, which is over 5 years ago. The appellant first referred to the alleged dependant in his conversations with the ministry as his common law spouse and then, when he was advised by the ministry to add her to his file, he stated that she is his "caregiver." As pointed out by the ministry, the Neuropsychological Assessment dated April 17, 2014 concluded that the appellant has some limitations for the type of employment he can perform but did not indicate that he needs a caregiver. As well, the Assessment referred to the appellant having acted in a responsible role as a foster parent to an at-risk teenager between November and December 2013 and, while he was told that he was considered inappropriate for the job by the company, the appellant's response was that he was not properly trained, with no suggestion that he needed a caregiver for himself.

At the hearing, the appellant initially stated that he has been supported by the alleged dependant for a long time. He also stated that they met at a social event and he thought he could help her because he is very handy and he put a new roof on the house last year, for example. The appellant said that he does most things around the house like making the meals, doing the dishes, building the garden and being the "handy labour." Asked about the things that the alleged dependant does for him as a "caregiver", the appellant stated that she schedules events and includes him and keeps him busy.

She is his social circle along with another community group where he is able to network and pick up jobs with a seniors' centre about once a week. Asked to describe their relationship, the appellant stated that "they work well together" and "it is a mutual give and take." The panel finds that the description of the relationship between the appellant and the alleged dependant is not consistent with that of a caregiver and a person in need of care but, rather, it demonstrates social and familial interdependence consistent with a marriage like relationship. In summary, the panel finds that the ministry reasonably concluded that the alleged dependant is the appellant's "spouse" according to the definition in Section 1.1 of the EAPWDA and, as they reside together, she is his "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 his entire family unit and, therefore, the appellant is not eligible for assistance as a sole applicant pursuant to section 5 of the EAPWDR was reasonably supported by the evidence and the panel confirms the decision.