

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry's) reconsideration decision dated April 15, 2014 which held that the appellant is not eligible for income assistance pursuant to section 5 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because he did not apply for assistance on behalf of his family unit which the ministry found included a dependent spouse as defined in sections 1 and 1.1 of the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)*.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act – EAPWDA – sections 1 and 1.1*  
*Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – section 5*

## PART E – Summary of Facts

The evidence before the ministry at reconsideration included:

- Application for Income (Disability) Assistance dated October 5, 2012, Parts 1 and 2, signed by the appellant acknowledging that he understood his responsibility to provide accurate and complete information and report all changes in circumstances that might affect eligibility for assistance. The appellant check marked in Part 2 Family Type, "Single Person with Dependents" and indicated that he needed an interpreter for his assessment interview because he only speaks his native language.
- Letter from the ministry to the appellant dated March 5, 2014 advising that his file had been selected for review to determine current eligibility or audit past eligibility for assistance. The ministry requested the appellant to provide a marriage certificate and divorce certificate respecting an individual residing at his address (Ms. L.), as well as 3 months of credit card statements, current rent receipts for himself and his dependent child, utility bills, T5 slips, information regarding shares, and contact information for his child's biological mother.
- Assessment Roll Report dated February 13, 2014 for the appellant's address indicating that the property is solely owned by Ms. L.
- Assessment Roll Report dated February 26, 2014 describing another property solely owned by Ms. L.
- Certificate of Marriage for the appellant and Ms. L. dated October 18, 2005.
- Writ of Summons and Statement of Claim for family law proceeding dated September 15, 2008 in which the plaintiff, Ms. L. is seeking a divorce from the appellant.
- Personal Property Registry search results from October 2012 naming the appellant as the sole debtor for a vehicle loan; and March 3, 2014 showing a security agreement for the vehicle with the names of the appellant and Ms. L. as joint debtors.
- Undated Personal Credit Application for the vehicle signed by the appellant as the applicant and Ms. L. as the co-applicant.
- Conditional Sales Agreement for the vehicle dated August 8, 2012 signed by both the appellant and Ms. L. as the buyers.
- Transfer Tax Form for the vehicle, dated September 12, 2012 showing the vehicle was transferred from the appellant to Ms. L. for zero dollars.
- Owner's Certificate of Insurance and Vehicle Licence, and Vehicle Registration dated September 21, 2013 naming Ms. L. as the owner of the vehicle and the appellant as principal operator.
- Transaction Statement for vehicle loan payments in the name of the appellant, showing monthly payments made from August 2012 to March 2014.
- Letter from the ministry to the appellant dated March 13, 2014 advising that the appellant was no longer eligible for assistance because he had not submitted information requested in letters of February 25 and March 5, 2014; his file would therefore be closed on April 10, 2014.
- Shelter Information for the appellant dated March 3, 2014 indicating that the appellant and his dependent child have rented a suite at the appellant's current address since June 2013; that the appellant, his child, and Ms. L. all live at the same address and she is the landlord and registered owner of the property. Ms. L.'s other property is recorded under "Address of Landlord", and an attached rent receipt dated March 11, 2014 indicated Ms. L. received \$800 rent from the appellant.

In addition, the appellant provided a statement for his Request for Reconsideration dated March 28, 2014 in which he reported the following:

- He and Ms. L. formally divorced on December 29, 2008. However, he was diagnosed with an illness

and, Ms. L. rented part of her residence to him at a lower than market rate.

- He has a landlord and tenant/friend relationship with Ms. L.

He tried to move out but could not afford higher rent for himself and his dependent child; however, he was about to apply for subsidized housing.

- He and Ms. L. do not have any shared, common assets.

#### Appellant's additional evidence

In his submission for this appeal, dated April 23, 2014 the appellant stated that he submitted an application for subsidized housing on April 14, 2014 and he provides the file number for his application. Further, in his written submission dated May 16, 2014 the appellant included the following documents:

- A (dark poor quality) "photograph of the Appellant's bedroom in (Ms. L.'s) condominium apartment."
- Six bank account print outs indicating transactions between March and May 2014. These print outs do not include the account holder's name. The appellant stated that they are in his name.
- Phone bill dated March 22, 2014 (6 pages) in the name of the appellant.

The panel finds that this evidence relates to the appellant's living situation and expenses which were issues before the ministry at reconsideration. The panel therefore admits the above listed documents pursuant to section 22(4)(b) of the *Employment and Assistance Act* as being in support of the information and records that were before the ministry at the time the reconsideration decision was made.

#### Ministry's evidence – reconsideration summary

The ministry relied on its reconsideration summary and did not submit any new evidence for this appeal. In its reconsideration summary the ministry reported the following:

- The appellant received disability assistance as a single parent with one dependent child. His file was opened in October 2012.
- The appellant provided his Certificate of Divorce from Ms. L. with his Request for Reconsideration.
- In February 2014, when the ministry called the appellant about a file review, the appellant reported that he was living with his girlfriend, Ms. L. On February 27, the ministry met with the appellant, his child, Ms. L. and an interpreter and the appellant reported they had been living together since 2012. After being advised that he could apply with Ms. L. as his spouse, or move to another residence, he reported that Ms. L. is his landlord and friend.
- The ministry did not receive documentary evidence of the appellant's application for subsidized housing.
- Ms. L. was a step mother to the appellant's child while the appellant and Ms. L. were married and she has been caring for the appellant during his illness.

The panel makes the following findings of fact:

- The appellant had been a single parent recipient of income assistance since October 2012 and the ministry discontinued his payments in April 2014.
- The ministry initiated a review of the appellant's income assistance file in March 2014.

- The ministry received information that Ms. L. was the appellant's former spouse and they are now divorced; that he and his child currently reside with Ms. L. at her residence; that Ms. L. helps take care of the appellant during his illness and he pays her rent; and that he and Ms. L. have a joint car loan and he transferred the vehicle to Ms. L.'s name and she assumed the payments during his illness.
- As of the date of this hearing, the appellant had not provided any documentary evidence regarding any attempts to move out of Ms. L.'s residence.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's reconsideration decision of April 15, 2014, which held that the appellant is not eligible for income assistance pursuant to section 5 of the EAPWDR because he did not apply for assistance on behalf of his family unit which the ministry found included a dependent spouse as defined in sections 1 and 1.1 of the *EAPWDA*.

The following sections of the legislation apply to the appellant's circumstances in this appeal:

### ***EAPWDA* - Interpretation:**

Section 1 defines "dependant" and "family unit":

1 (1) In this Act:

"**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;

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

### ***EAPWDA* – Meaning of "spouse"**

Section 1.1 defines "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.

### ***EAPWDR* – Applicant Requirements**

Section 5 sets out an eligibility requirement for assistance:

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.

#### Appellant's Position

In his written submission dated May 16, 2014 the appellant argued that the ministry's decision that Ms. L. is his spouse was not a reasonable application or interpretation of the *EAPWDA* because he and Ms. L. are financially independent of one another. He argued that the phone bill and bank statements in his name, as well as a photograph of his bedroom in Ms. L's residence that he attached to his submission "prove that (he and Ms. L.) are financially independent of one another." His position is that he "did in fact correctly apply for assistance on behalf of his family unit" consisting of himself and his child, "and therefore he is eligible for assistance."

The appellant further submitted in a statement addressed "To Whom it May Concern" dated May 19, 2014 that in February when the ministry investigator reported that the appellant had advised the ministry in a phone interview that he was currently living with his "girlfriend", he did not understand much English, did not have a translator to assist him, and did not understand the investigator's questions. His position is that he did not report that Ms. L. was his girlfriend.

In his Notice of Appeal dated April 23, 2014 the appellant argued that the vehicle he and Ms. L. leased as co-signers is not a common asset. He explained that Ms. L. co-signed the lease because he did not have sufficient identification to enter into the lease on his own. When he became ill, and unable to work and make the monthly lease payments, he transferred the vehicle to Ms. L., "not because she was my spouse; it was because no one was willing to pay more than \$40,000 to buy my car." He added that he became the principal operator of the vehicle because Ms. L. allowed him to use her car for his frequent hospital and doctor's appointments.

The appellant further argued that when he told the ministry that he was paying Ms. L. rent, he reported that she was his ex-wife and female friend but never said she was his girlfriend. He stated that the ministry explained that he and Ms. L. would be considered family because Ms. L. took care of him during his illness and the ministry gave him two choices: "1. Apply together as live in common law stat(us), 2. Move out otherwise."

The appellant argued that both he and Ms. L. clearly informed that ministry that they "were not/ are not a family." and that Ms. L. had other male friends and "still had a possibility to remarry one day." He further submitted that Ms. L. is "only my friend, landlord/tenant relationship...She helps me out of friendship and sympathy and her help is only temporary, not forever." The appellant submitted that Ms. L. "no longer takes care of my (child) with a step mother status."

With regard to himself and his child residing with Ms. L., the appellant's position is that Ms. L. "rents the place to me for a lower than market price purely out of friendship and sympathy, not because we are a couple." He submitted that he "did try to look for a place to move out" but could not afford the rent; however, he has now applied for subsidized housing and submitted his application on April 14, 2014, prior to the reconsideration decision being made on April 15<sup>th</sup>. He hopes that he can continue renting from Ms. L. while waiting for subsidized housing.

### Ministry's Position

The ministry's position as set out in its reconsideration decision is that the appellant is not eligible for income assistance because he did not apply for assistance on behalf of his "family unit" which includes his spouse, as required under section 5 of the EAPWDR. The ministry argued that Ms. L. is the appellant's spouse as defined in section 1.1(2) of the *EAPWDA* because the appellant and Ms. L. have resided in the same accommodations for at least the previous 3 consecutive months; and the appellant's and Ms. L.'s relationship demonstrates financial interdependence and dependence, as well as social and familial interdependence consistent with a marriage-like relationship.

With regard to financial interdependence and dependence, the ministry argued that the appellant and Ms. L.'s relationship demonstrates these qualities because the evidence indicates that:

- the appellant has a joint vehicle lease with Ms. L.;
- Ms. L. is making the lease payments while the appellant is unable to due to illness;
- the appellant is the principal operator of the vehicle; and
- he transferred the vehicle to Ms. L. for zero dollars.

With regard to social and familial interdependence, the ministry argued that the appellant and Ms. L.'s relationship demonstrates such interdependence for the following reasons:

- the appellant was previously married to Ms. L. who acted as a step mother to his child;
- the appellant initially reported that Ms. L. was his girlfriend but he changed her status to "landlord and friend" after the ministry advised of the options to either move or apply for assistance with Ms. L. as the spouse;
- Ms. L. offered the appellant low cost accommodations and provided care to the appellant during his illness; and
- he did not provide evidence of his subsidized housing application or demonstrate that he is in the process of moving out.

### Panel's Decision

Section 5 of the EAPWDR sets out the requirement that for a family to be eligible for disability assistance an adult in the family unit must apply for the assistance on behalf of the family unit unless the family unit does not include an adult or includes a minor age spouse. "Family unit" as defined in section 1 of the *EAPWDA* includes the applicant's dependants. Under section 1 of the *EAPWDA*, a "dependant" includes the applicant's spouse, dependent child, or person in a parental role for the dependent child. The panel notes the ministry's finding that there was insufficient information to determine that Ms. L. is currently in a step parent relationship with the appellant's child.

### Definition of spouse

The ministry then turned to the "Meaning of spouse" under section 1.1 of the *EAPWDA* to determine who the appellant's dependants are. Section 1.1(1) defines spouse as two persons who are married to each other or who acknowledge that they are residing in a marriage-like relationship. The appellant provided the ministry with his Certificate of Divorce and stated that his relationship with Ms.

L. is one of landlord/tenant and friend. The panel notes that the ministry, therefore, did not consider Ms. L. to be the appellant's spouse under this section.

The question is whether the ministry reasonably concluded on the basis of the evidence that the appellant and Ms. L. are spouses under section 1.1(2) of the *EAPWDA*. This section has two requirements:

First, the relationship must have been of a set duration under section 1.1(2)(a) which states that two persons are spouses if they have resided together for at least the previous 3 consecutive months, or 9 of the previous 12 months. The appellant's rental agreement indicated that he had been renting accommodations at Ms. L.'s residence since June 2013, and had therefore lived there for over 8 months before the ministry initiated the file review in February 2014. The appellant does not dispute this and there is no dispute that Ms. L. also resides at this residence. The panel therefore finds that the ministry reasonably determined that the duration of relationship criterion for a finding of "spouse" in section 1.1(2)(a) of the *EAPWDA* is thereby met.

Second, section 1.1(2)(b) of the *EAPWDA* states that two persons are spouses if the minister is satisfied that the relationship demonstrates financial dependence or interdependence under section 1.1(2)(b)(i), and social and familial interdependence under section 1.1(2)(b)(ii) consistent with a marriage-like relationship. The ministry found that the appellant and Ms. L. were financially dependent and interdependent because they have a vehicle loan together and Ms. L. then took over the loan payments and ownership of the vehicle to assist the appellant during his illness while the appellant became the principal operator.

The appellant argued that the arrangement with regard to the vehicle demonstrates only that Ms. L. wanted to help him out as a friend and not because they are spouses. However, the evidence indicated that the appellant had transferred a very expensive vehicle (valued at approximately \$50,000) to the appellant for zero dollars, indicating to the panel that the ministry was reasonable in finding financial dependence and interdependence consistent with a marriage-like relationship.

Ms. L. was also financially assisting the appellant by providing him with below market rent, and although he stated that the new evidence consisting of his bank print outs and phone bill "prove that (he and Ms. L.) are financially independent of one another.", the panel notes that the bank print outs do not contain the name of the account holder, and the phone bill, though in the appellant's name, is not sufficient in and of itself to denote financial independence.

Given that the evidence indicates the appellant and Ms. L. had a joint financial arrangement for both the vehicle and his rental accommodation, and the bank print outs and phone bill are not sufficient to demonstrate financial independence, the panel finds the ministry reasonably determined that the appellant and Ms. L.'s financial arrangements point to them being spouses for the purposes of section 1.1(2)(b)(i) of the *EAPWDA*.

As explained above, in order to be considered spouses pursuant to section 1.1(2)(b), the minister must also be satisfied that the relationship exhibits social and familial interdependence under section 1.1(2)(b)(ii) consistent with a marriage-like relationship. The ministry found that the appellant and Ms. L. are socially interdependent because Ms. L. offered the appellant low cost accommodations and care, to assist him during his illness and the appellant did not provide evidence that he is in the



process of moving out. With regard to any attempts to move out, the appellant did not provide any information regarding a search for accommodations and though he stated that he applied for subsidized housing one day before the ministry made its reconsideration decision and provided a file number, he did not submit a copy of the application. In any event, there is no evidence that he searched for alternate accommodations until after the ministry presented him with the option of moving out.

With regard to familial interdependence the ministry found that Ms. L. was previously the appellant's spouse and even though they divorced, they continue to reside together and it was not until the ministry explained the options of either applying for income assistance with Ms. L. as his dependant, or moving out of her residence that the appellant indicated that Ms. L. was merely his landlord and friend. The appellant disputed that he ever told the ministry that Ms. L. was his "girlfriend" and argued that due to his language barrier he did not understand what the ministry was asking him.

The panel nevertheless notes that regardless of whether Ms. L. is the appellant's "girlfriend" or "landlord/friend", the evidence is that the appellant did not refute the ministry's information until after the ministry presented the options of either applying with Ms. L. as his spouse or moving out. The appellant did not argue that he told the ministry any sooner that Ms. L. was not his "girlfriend", and in fact he did not provide copies of his divorce proceedings or his Divorce Certificate until the ministry requested proof of divorce upon review of his file. The evidence further indicated that the appellant remained the principal operator of the vehicle even after he transferred it to Ms. L., and she was also his caregiver during his illness. The panel therefore finds that the ministry reasonably determined that the appellant's relationship with Ms. L. demonstrates a social and familial interdependence consistent with a spousal relationship pursuant to section 1.1(2)(b) of the *EAPWDA*.

### Conclusion

The panel finds that the ministry's determination that the appellant did not apply for income assistance on behalf of his family unit pursuant to section 5 of the *EAPWDR* was reasonably supported by the evidence. Accordingly, the panel confirms the ministry's reconsideration decision.