

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated April 30, 2014 wherein the ministry decided that the appellant was ineligible for income assistance after November 21, 2013. The basis for the decision was the ministry’s finding that the appellant has acknowledged residing together with another person (“Person X”) in a marriage-like relationship since November 21, 2013 and that the appellant failed to apply for assistance on behalf of his entire family unit as required by section 5(1) of the Employment and Assistance Regulation (“EAR”).

PART D – Relevant Legislation

EAA

Section 1 [*definitions of “dependant” and “family unit”*]

Section 1.1 [*meaning of “spouse”*]

EAR

Section 5

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A letter from Person X to the ministry dated February 12, 2014;
- A letter from the appellant and Person X to the ministry dated February 14, 2104;
- A written reconsideration submission dated April 15, 2014.

The appellant received income assistance as a sole recipient from June 2011 to December 2013. The appellant contacted the ministry on December 12, 2013 to add his child to his file, and on January 9, 2014 Person X and their mutual child were added to his file. After conducting an investigation of the appellant's circumstances, the ministry made a determination on March 11, 2014 that the appellant had been living in an undeclared common-law dependency situation since February 15, 2013.

At reconsideration, the ministry was satisfied that though the appellant and Person X had been residing together since February 15, 2013, the evidence did not demonstrate a degree of financial, social and familial interdependence consistent with a marriage-like relationship until their child was born on November 21, 2013.

In her letter to the ministry dated February 12, 2014 Person X wrote that she and the appellant ("my common law partner and I") had been roommates and friends before becoming a couple. She wrote that "It was after the birth of our [child] that we decided to try being a "family"...This new arrangement was born out of the want for [our child] to have two parents together."

In their letter of February 14, 2014 the appellant and Person X wrote that "In October 2013 after many discussions and with careful consideration we decided that it would be in the best interest of our unborn [child] to try to live as a family. We moved into our current...apartment...on November 1st...Our [child] was born...November 21st...3 weeks later I added my [child] and [Person X] to my...file."

In his reconsideration submission (written by the appellant's father and signed by the appellant), the appellant wrote "...[the appellant] respectfully requests that the Ministry at the very least recalculate any overpayment effective November 21, 2013, the date [the appellant] and [Person X's] relationship became marriage-like. On the grounds of genuine hardship, however, [the appellant] would like the Ministry to withdraw the determination entirely...because it will afford the Ministry the opportunity to help a new family break out of the cycle of poverty."

In a written submission attached to his Notice of Appeal, dated May 16, 2014 the appellant wrote that he would like to appeal the portion of the ministry's reconsideration decision dealing with the period December 2013 to January 2014. He based his request on two grounds:

1. Genuine hardship – the appellant wrote that he and Person X are living on maternity employment insurance benefits, and that they are emotionally exhausted from the ministry's assessment process which has held up the possibility of their receiving B.C. Rental Assistance. He also indicated that their child has special needs since being born several

weeks premature. He stated that a favourable appeal decision will provide an opportunity to help a new family break out of the cycle of poverty.

2. Administrative ambiguity – The appellant noted that in two reconsideration decisions – including the reconsideration decision that is the subject of this appeal - the ministry had made several typographical errors with respect to the date on which the appellant and Person X were deemed to be spouses of each other. The appellant wrote that these decisions were “inaccurate and very confusing”, and he expressed the hope that the “overworked and under resourced Ministry staff can close his social assistance overpayment file and save the taxpayers any further administrative costs associated with this somewhat convoluted process.”

In a written submission in the form of an e-mail dated June 9, 2014, the ministry acknowledged that it had made typographical errors with respect to dates in the reconsideration decision, having referred once to “May 15, 2014” rather than “May 15, 2013”, and having referred several times to “November 21, 2014” rather than to “November 21, 2013”. Otherwise (it stated in another e-mail submission on June 9, 2014) the ministry relied on its reconsideration decision.

The panel has accepted the appellant's submission of May 16, 2014 and the ministry's submissions of June 9, 2014 as going to argument.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision which found that the appellant was ineligible for income assistance as of November 21, 2013.

The relevant legislation is as follows:

EAA

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 responsibility for the person's dependent child;

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

"recipient" means the person in a family unit to or for whom income assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

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.

EAR

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.

The appellant's position, as expressed in his written submissions, is that though he and Person X have been living in a marriage-like relationship since November 21, 2013 the ministry's reconsideration decision should be rescinded on grounds of genuine hardship, and on grounds of administrative ambiguity. The appellant argued that rescission would give the family unit an opportunity to "break the cycle of poverty". He also argued that the ministry's typographical errors made the reconsideration decision inaccurate and confusing.

The ministry's position is that the appellant acknowledges that he and Person X have been living together in a marriage-like relationship since November 21, 2013. The ministry contends that since the appellant failed to make a new application on behalf of his new family unit, he ceased to be eligible for income assistance as of that date.

Panel Decision

The evidence is undisputed that the appellant and Person X commenced living together in a marriage-like relationship on November 21, 2013. Both the appellant and Person X have acknowledged this in their letters of February 12 and February 14, 2014. The appellant also made this acknowledgement in his submissions of April 15 and May 16, 2014. It is also undisputed that the appellant did not apply for assistance on behalf of his new family unit until December, 2013.

Section 5(1) of the EAR requires that, subject to the exceptions set out in paragraphs (a) and (b), in order for a family unit to be eligible for income assistance, an adult in the family unit must apply on behalf of the family unit. There is no evidence that the exceptions in paragraphs (a) and (b) apply in the present case.

The appellant's financial situation and the circumstances of his child's premature birth are unfortunate, but the legislation does not give the ministry the discretion to ignore the requirements of section 5(1) in assessing eligibility.

With respect to “administrative ambiguity”, the ministry has acknowledged that it made typographical errors with respect to dates in the reconsideration decision. However, on reading the decision the errors are readily apparent on its face. It is evident from the appellant’s written appeal submission that he clearly understands the ministry’s decision and the case he has to meet. He has not suffered any prejudice as a result of the ministry’s errors. Accordingly, the ministry’s typographical errors do not provide a basis for rescinding the reconsideration decision.

Based on the evidence and the acknowledgements of the appellant and Person X, they are spouses of each other for the purposes of the EAA in accordance with section 1.1. Based on the definition of “dependant”, it’s clear that the appellant and Person X are dependants of each other. In accordance with the definitions of “applicant” and “recipient”, the appellant and Person X - along with their child - form a “family unit”. The evidence supports the conclusion that the appellant received income assistance as a sole recipient while he was a member of a larger family unit. The panel finds that the ministry’s conclusion that the appellant was not eligible for income assistance since he had not applied on behalf of the family unit as required by section 5(1) of the EAR was reasonably supported by the evidence.

Accordingly, the panel confirms the ministry’s decision.