

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated May 20, 2014 wherein the ministry decided that the appellant had received disability assistance for which she was not eligible which she must repay to the ministry in accordance with sections 18 and 19 of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The basis for the decision was the ministry’s finding that the relationship between the appellant and person X (“X”) satisfied the criteria set out in section 1.1 of the EAPWDA with respect to the length of time of residing together, the degree of financial dependence or interdependence, and social and familial interdependence to establish that they were spouses of each other. Accordingly, the ministry found that the appellant failed to apply for assistance on behalf of her entire family unit as required by section 5 of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”).

PART D – Relevant Legislation

EAPWDA

section 1 [definitions of “applicant”, “dependant”, “family unit”, and “recipient”];

section 1.1 [meaning of “spouse”];

section 18 [overpayments];

section 19 [liability for and recovery of debts under Act].

EAPWDR

section 5 [applicant requirements].

PART E – Summary of Facts

In the reconsideration decision that is the subject of this appeal, the ministry determined that the appellant had been in a marriage-like relationship with X from July, 2006 to the time of his death in September, 2013. Prior to the reconsideration decision the appellant had been receiving disability assistance as a sole recipient since 2002.

Preliminary Matters

With the consent of the appellant, the ministry had an observer attend the hearing.

At the appeal hearing the appellant, through her advocate, submitted a reconsideration decision made by the ministry on May 22, 2014. In that decision, the ministry decided that since the appellant was no longer living with X, she should not be denied current disability assistance as a sole recipient with no dependants. The appellant argued that this decision supplanted the May 20, 2014 decision which is the basis of this appeal, and constituted an acknowledgement by the ministry that there had been no overpayment of disability assistance thereby rendering today's hearing unnecessary.

The panel accepted the proffered reconsideration decision as argument. The panel observed that the May 22, 2014 reconsideration decision did not make any decision with respect to the issues in the current case – the nature of the relationship between X and the appellant between July 2006 and the time of his death in September 2013, the existence of an overpayment of disability assistance, or the obligation of the appellant to repay the overpayment. Accordingly, the panel found that the May 22, 2014 reconsideration decision did not supplant the May 20, 2014 reconsideration decision which remains the subject of this hearing. The panel proceeded with the appeal hearing with the participation of both parties.

* * *

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

- A letter sent to the appellant from the ministry on March 11, 2014 advising the appellant that her disability assistance had been reduced since the ministry had determined that the appellant had lived in a marriage-like relationship with X since 2001.
- A letter sent to the appellant from the ministry on March 12, 2014 advising the appellant that the ministry had obtained and reviewed documentation related to the appellant's past living situation and relationship with X. As a result the ministry had determined that the appellant had received an overpayment of \$96,202.01 in disability assistance for which she was not eligible. The letter included an overpayment chart covering the period July 2006 to September 2013.
- A typewritten reconsideration submission from the appellant, in which the appellant argued that:
 - The overpayment cannot be established until the matter of whether there was indeed a common law relationship or not was decided.
 - Alternatively, the amount of the overpayment was incorrect as the ministry failed to take into account that since X had no income for years, the ministry would have had to have

paid disability assistance equivalent to a couple rather than a single recipient.

- A municipal utilities bill in the name of the appellant and X, dated February 16, 2004.
- Rental agreements and a rent receipt, dated June 16, 2003, and November 27, 2003, all in the name of the appellant and X.
- A notice from a municipality to the appellant and X regarding pending disconnection of utility services, dated January 30, 2004.
- A Power of Attorney dated April 25, 2012 by which X appointed the appellant as his attorney to make decisions in his behalf in relation to his financial affairs.
- A copy of the last will and testament of X, dated May 15, 2009, which left the residue of X's estate to the appellant.
- Statements for X's credit union chequing account for the period January 1, 2013 to August 31, 2013.
- Statements for the appellant's bank account for the period January 1, 2011 to November 14, 2013.
- An e-mail statement from X's son-in-law, dated February 3, 2014, stating (among other things) that:
 - The appellant and X had lived together since 2002, with X paying for food and bills and the appellant paying the rent;
 - The appellant was "for all intents and purposes [X's] common law wife. She referred to herself as such and even started calling herself my children's Nana."
- An e-mail statement from X's son-in-law, dated February 6, 2014, stating (among other things) that:
 - He (the son-in-law) was introduced to the appellant through X as X's "new girlfriend" in October, 2001;
 - In November, 2001 X and the appellant announced that they were engaged;
 - In January of 2002 X's daughter and son-in-law found out that X and the appellant were living together.
- An e-mail statement from X's daughter, dated February 6, 2014, stating (among other things) that:
 - In November 2001 the appellant and X announced that they were engaged;
 - X moved in with the appellant and the appellant's daughter in January, 2002;
 - At X's daughter's wedding in 2005 the appellant introduced herself as the daughter's step-mother.
- An e-mail statement, dated February 9, 2014, from X's daughter-in-law stating (in part), that:
 - the appellant had always told the daughter-in-law that she and X were soul mates;

- the appellant and X attended the daughter-in-law's wedding to X's son E where the appellant was treated as X's partner "as that is what she was";
 - the appellant was in family photos and gave the newlyweds a wedding present as the daughter-in-law's "new step mother in law".
 - subsequently at E's funeral, the appellant insisted on calling E her son;
 - she has received many letters from the appellant asking the daughter-in-law to "respect her place in the family";
 - she has visited the appellant and X in "their home and listened to stories about [X's] love of [the appellant] and her reciprocating that feeling. They shared a bed, finances, a car and life. Even with disapproving children [X] stood beside [the appellant] as they were in love...There is no question that [X] and [the appellant] were more than roommates. They shared a life together..."
- A letter, dated February 17, 2014, from the mother of X's son-in-law, stating (in part) that:
 - the appellant was first introduced to her in November, 2001, as X's girlfriend.
 - when X's grandson was born in 2007, the appellant arrived at the hospital against the wishes of X's daughter, saying that "...she was the babies grandmother and had a right to see him."
 - A letter, dated February 15, 2014 from X's son D stating (in part) that:
 - his father (X) had always introduced the appellant as his wife;
 - the appellant wished D's daughter to call her Nana;
 - "So far as long as I have known [the appellant] there Relationship was common law Without a Dought."
 - to D's knowledge X and the appellant had been together since at least mid-2001.
 - An e-mail dated July 23, 2011 purportedly from the appellant to X's son-in-law stating (in part) "By your marriage to [X's daughter] I am family to you..."
 - A number of photos showing the appellant in attendance at various gatherings of X's family.
 - A letter from the appellant's daughter, dated April 17 2014 stating, in part:
 - X never lived with the appellant before the appellant's daughter left home at age 18.
 - She was introduced to X's daughter and son-in-law by the appellant in 2002, with the appellant referring to X as "my friend";
 - there is proof her mother's financial statements were stolen as there is a police file;
 - "As far as the terms of living arrangements between [X] and [the appellant], the only person who can accurately account for what they were would be [the appellant] now that [X] has passed. As well you may refer again to the legal documents with [the local home and palliative care agency] to the nature of their living arrangements, as this is a part of their assessment"
 - A letter from the appellant's friend and neighbour of 10 years, dated March 20 2014, recounting the care provided to X by the appellant, and describing them as "best friends".
 - A note to file from the ministry's records, dated March 6, 2014, stating "Client ineligible for assistance from July 2006 to Sept 2013...op is \$96,202.01. However this is a potential

amount. There may be some mitigating circumstances or Ministry direction that could change the op.”

- An undated written submission from the appellant (which according to a date stamp appears to have been faxed on April 23, 2014) stating (among other things), that:
 - The appellant and X met in 2001 and “From 2002 onwards, [X] and I simply remained “good friends””.
 - “Many times in life when two adult persons are very close, or best friends, as [X] and I considered each other from 2005 onwards, one cannot prove that fact exactly to others who want to “assume” there is more there.”
 - The appellant and X did not have a sexual relationship as X was afraid of passing on his HepC.
 - The appellant and X being a couple was an “assumption” made by others.
 - Between 2006 and the time X’s old age pension started in September 2009, X simply lived with the appellant and slept on her couch...they did not share meals during those years. X was provided food by his friends at local clubs and he “borrowed \$20 here and there to supply a little food for himself.”
 - After the appellant starting collecting his old age pension in 2009 he started paying back friends who had loaned him money. He provided a few “gifts” to the appellant such as gas money, groceries, a countertop dishwasher (which was for the purpose of sterilizing dishes due to HepC), and a laptop computer.
 - The 2004 municipal utilities bill was in the name of X and the appellant as they were both on the rental agreements.
 - The appellant was not a dependant of X and did not ever claim to be his dependant. They both maintained separate incomes which were both below the poverty line. Supporting financial documents, including income tax returns, had been stolen from the appellant’s home in a break-in.
 - X’s son-in-law “carried out a cyberbullying action against” the appellant.
 - The ministry’s investigation caused the appellant “undue stress” which caused her to have a “mild heart attack” in January, 2014.
- A written statement from the appellant’s close friend of 17 years, stating (among other things) that:
 - X and the appellant dated in 2001 but from 2002 onward they chose to “just be friends”.
 - X and the appellant never lived or shared a place together before the appellant’s daughter turned 18.
 - X and the appellant decided to share rent in 2003, but they maintained separate bedrooms. X was eventually removed from that residence by the RCMP and did not return there.
 - The appellant moved into her current apartment in January 2004 and is still there.
 - In 2005 X contracted HepC at work and lost his job. In 2006 the appellant let X come to stay at her apartment as a roommate.
 - X and the appellant ate separately for the first 3 years, and never claimed each other as dependants for income tax purposes.
 - Once X started receiving his old age pension he bought the appellant a laptop computer out of gratitude for “giving him a roof over his head...”

In her oral testimony on appeal, the appellant substantially reiterated information that had been before the ministry at the time of reconsideration. She also stated that:

- She had been raised in a Christian home and she'd felt it was her Christian duty to take X in when he was homeless in 2006.
- She is of Metis descent, and it is common in Metis culture to take needy persons into one's home.
- X's children simply wish to rip the appellant's life apart.
- Once the Power of Attorney came into effect, the appellant paid for a number of things from X's account. She estimated she purchased about \$300 groceries per month with X's money, of which half was for her benefit. She also estimated that X paid her about \$65 per month for gasoline, and he paid about \$40 per month for allergy tablets of which half was for her benefit.
- The appellant had talked to X twice about him applying to the ministry for disability assistance, but he gave two reasons why he did not wish to do so: 1) he'd been traumatized by applying and being denied twice for the federal CPP disability benefit and didn't want to apply for provincial disability assistance, and 2) he didn't want to endanger the appellant's disability assistance which she had been receiving for years.
- In response to a question from the panel, the appellant confirmed that the supporting "legal documents" referred to in her daughter's written submission of April 17, 2014 were not part of the appeal record.

Additional Information

At the hearing the ministry submitted a written outline of its position which the panel accepted as argument.

Attached to the ministry's written submission was a 4-page printout of the appellant's review of August 2, 2006, showing that the appellant claimed no dependants. The appellant did not object to admission of this document. The panel assessed the document as being in support of the ministry's contention that the appellant was receiving disability assistance as a single recipient and that she had not reported being part of a larger family unit. The panel admitted the document as written testimony in support in accordance with section 22(4) of the *Employment and Assistance Act*.

The appellant submitted a copy of an e-mail which she had sent to the ministry's investigating officer on February 26, 2014 acknowledging that she'd provided the ministry with the wrong RCMP case file number regarding an alleged break-in at her apartment. When questioned by the panel as to the relevance of this document to the current appeal, the appellant said that the documents would have supported her contention that she and the appellant maintained their finances separately. The panel noted that the alleged break-in was referenced in the written submissions of the appellant and her daughter, which had been before the ministry. The panel accepted this document, and the appellant's oral testimony, as being in support of the records and information that had been before the ministry at reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue for the panel to decide is the reasonableness of the ministry's decision that the appellant had received disability assistance for which she was not eligible which she must repay as she had been living in an unreported marriage-like relationship and had not applied for assistance on behalf of her entire family unit.

The relevant legislation is as follows:

EAPWDA

"applicant" means the person in a family unit who applies under this Act for disability 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 disability 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;

"spouse" has the meaning in section 1.1;

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.

Overpayments

18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3)[*reconsideration and appeal rights*].

Liability for and recovery of debts under Act

19 (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

(a) recovered in a court that has jurisdiction, or

(b) deducted, in accordance with the regulations from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

(2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).

(3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.

(4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

EAPWDR

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.

Reporting requirement

29 For the purposes of section 11 (1) (a)[*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

(i) a change that is listed in paragraph (b) (i) to (v);

(ii) a family unit receives earned income as set out in paragraph (b) (vi);

(iii) a family unit receives unearned income that is compensation paid

under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) if the calendar month is within the calendar year in respect of which the family unit qualifies for an exemption under section 3.1 of Schedule B, the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) if the calendar month is within the calendar year in respect of which the family unit qualifies for an exemption under section 7.1 of Schedule B, the amount of unearned income that is compensation paid under sections 29 and 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

* * * *

The appellant's position, as stated through her advocate, is that the appellant has submitted more than enough information to demonstrate that the ministry's decision was wrong. She argued that X's family was angry with her, that e-mails can be falsified, and that it was unreasonable for the ministry to rely on the circumstantial evidence and assumptions provided by X's relatives. She said that she has given direct testimony and supporting evidence to show that she was not in a marriage-like relationship with X - that they were simply "best friends" and that she felt an obligation to provide X with a roof over his head. The appellant said that the evidence shows that she never earned or reported income that was in excess of the allowable earnings exemption, and that there is no evidence that she ever received any income from X. She also stated that since she was not in a family unit with X, she was not subject to the reporting obligations in section 29 of the EAPWDR. The appellant argued that the "ministry can't have it both ways" – that is, the ministry can't claim on the one hand that the appellant was in a marriage-like relationship with X, and on the other hand not acknowledge that if the appellant and X had been in a marriage-like relationship, they would have been entitled to \$1,276 disability assistance per month as a couple rather than the lesser amount she received as a sole recipient. Therefore, argued the appellant, there was no overpayment. The appellant pointed to the ministry's file note dated March 6, 2014 to support her contention that the ministry recognized that its calculation of the overpayment was subject to "mitigating circumstances".

The ministry's position, as set out in its reconsideration decision and in its submission on appeal, is that the appellant received disability assistance while living in a marriage-like relationship with X during the period July 2006 to September 2013. The ministry argued that the appellant's relationship with X satisfies the legislative criteria for a common law spousal relationship regarding the length of time they have lived together, the degree of financial dependence or interdependence, and the degree of social and familial interdependence. The ministry stated that since the appellant was in a marriage-like relationship from July 2006 to September 2013 and did not report that information to the

ministry, the appellant's eligibility for disability assistance during that period could not be established and the appellant must repay the disability assistance she received. At the appeal hearing, the ministry also contended that the appellant had not complied with the reporting requirements in section 29 of the EAPWDR.

Panel Decision

The definition of "spouse" in section 1.1(2) of the EAPWDA sets out three criteria that must all be satisfied to demonstrate that persons are spouses of each other. These include residing together for the requisite time, and demonstration of financial dependence/interdependence and social/familial interdependence consistent with a marriage-like relationship.

With respect to the first criterion – residency – there is no dispute that the appellant and X did live together during the period July 2006 until his death in September, 2013. The appellant has acknowledged this. Accordingly, the panel finds that the ministry reasonably concluded that this criterion had been fulfilled.

With respect to the second criterion – financial dependence or interdependence consistent with a marriage-like relationship – the appellant's evidence was that X had no income from July 2006 until his receipt of CPP/OAS in 2009. During this time X was dependent on the appellant for shelter. After he started receiving his federal pension, the appellant purchased a number of gifts for the appellant and eventually contributed to joint costs such as groceries, medications, and gasoline. The appellant acknowledged that as X's attorney she accessed X's bank account to pay for joint expenditures such as groceries, gasoline, and medications. The nature of the expenditures detailed in X's and the appellant's bank statements is consistent with the contention of X's son-in-law that the arrangement was for X to pay for food and other bills while the appellant paid the rent. On balance, the evidence supports the ministry's conclusion that the relationship between the appellant and X demonstrated financial dependence or interdependence consistent with a marriage-like relationship.

With respect to the third criterion – social and familial interdependence consistent with a marriage-like relationship – a number of X's relatives and relatives-in-law provided statements to the effect that they believed the relationship between X and the appellant was that of common-law spouses. They also indicated that both X and the appellant actively fostered that belief during the time that they lived together. Items such as the family photos and the e-mails from the appellant to X's family members tend to support the statements of X's family. The appellant said that X's family were motivated by malice against her, implied that some of the evidence tendered by them was fabricated, and stated that she was not responsible for the "assumptions" that the family may have had. The appellant pointed to her direct testimony about the nature of her relationship with X, and the statements provided by her daughter and two friends. The panel has drawn an adverse inference from the fact that while the appellant's daughter was willing to express her opinion about financial matters about which she likely had no direct knowledge, she provided no opinion with respect to the nature of the relationship between X and the appellant. This appears to the panel to have more likely than not been a strategic and intentional omission by the appellant's daughter, and an implicit acknowledgment that her opinion would have been harmful to the appellant's case. Considering the evidence as a whole, the panel finds that it reasonably supports the ministry's conclusion that the relationship between the appellant and X demonstrated social and familial interdependence consistent with a marriage-like relationship.

Based on the panel's finding with respect to residence, and the preponderance of the evidence showing financial dependence and interdependence as well as familial and social interdependence consistent with a marriage-like relationship, the panel finds that the ministry reasonably concluded that the appellant and X were spouses as defined by EAPWDA section 1.1.

The ministry's reasons for decision in the reconsideration decision did not refer expressly to the reporting requirements of section 29 of the EAPWDR, though the ministry did refer to this section elsewhere in the decision document. Based on the panel's reasoning as set out above, the panel finds that the evidence reasonably supports the ministry's contention that the appellant did not fulfill her reporting obligations as set out in section 29 of the EAPWDR – to report the "change in family unit membership or the marital status of a recipient".

Based on the definition of "dependant", it's clear that the appellant and X were dependants of each other during the period July 2006 and September 2013. Based on the definitions of "applicant" and "recipient", the appellant and X formed a "family unit". The evidence supports the conclusion that the appellant received disability assistance as a sole recipient while she was a member of a larger family unit. The panel finds that the ministry's conclusion that the appellant was not eligible for disability assistance during the period July 2006 to September 2013 since she had not reported the change in her family unit membership as required by section 29 was reasonably supported by the evidence.

As the appellant was not eligible during the relevant time period, section 18 of the EAPWDA establishes that she is liable to repay the amount of the overpayment provided during that time period. Accordingly, the panel finds that the ministry reasonably determined that the appellant received an overpayment of disability assistance which she is liable to repay.

The panel does not have the jurisdiction to assess the amount of an overpayment. Section 18(2) provides that "The minister's decision about the amount a person is liable to repay...is not appealable..."

Conclusion

Based on the evidence and for the foregoing reasons, the panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and confirms the ministry's decision.