

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of November 17, 2014, which denied the appellant disability assistance as a sole recipient with a dependent child in accordance with sections 1 and 1.1 of the Employment and Assistance for Persons with Disabilities Act because the appellant's relationship with her boyfriend meets the meaning of "spouse" and of "dependant".

PART D – Relevant Legislation

Employment and Assistance Act (EAA) sections 1 and 1.1.

PART E – Summary of Facts

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

- From ministry records:
 - The appellant has been receiving assistance for a Person with Persistent Multiple Barriers (PPMB) as a sole recipient with a dependent child.
 - On October 24, 2014 the appellant was approved for Person with Disabilities (PWD) designation.
- With her Request for Reconsideration dated October 24, 2014 the appellant submitted a letter stating that the impact of losing assistance is harmful to her and her daughter as they are losing their home and her health and safety are harshly affected. Without assistance her only choice is to leave their current living situation. She is barely able to work to bring in income and the father of her child is a PWD and pays \$20 child support and because of the ministry's decision she and her daughter are now homeless and without income.

She is in a romantic relationship with her boyfriend. They identify themselves as boyfriend/girlfriend publicly which includes presenting themselves as a couple in the community, sharing meals, spending time with each other's kids, and supporting each other.

They are not financially dependent nor financially cooperative. The reason for moving in was of practical nature: The boyfriend's rent was being increased so he needed a roommate, and the appellant was paying nearly the same amount each month in an unhealthy isolated apartment where she had no support for her disability. From the beginning they had the arrangement to keep their finances completely independent: she pays for rent, contributes to utilities, buys food for herself and her daughter, and pays her own bills.

She has sole custody of her daughter and the relationship with her boyfriend does not give him any right of decision and parenting in regards to her daughter.

Her disability is cognitive problems and anxiety issues and she sometimes finds it difficult to do basic chores. Her current home situation helps her and her daughter to get well, but anxiety of losing income and home makes her health worse to the point of not being able to complete the forms for appeal. The daily support she and her daughter are getting from her boyfriend has offered her indescribable relief from anxiety and stress. Her boyfriend is familiar with her disability and they trust him and he ensures that she will not go more than a few hours before someone is home to make sure they're looked after. He is of daily help to complete forms, attend and make notes of doctor's appointments. Moving will uproot them from a stable, safe, healthy home. Other healthy clean homes rent for at least double of what they are paying now.

Her daughter has suffered several traumas in the past, but since living here she has greatly improved. Loss of financial assistance and a consequent move will have a negative impact on her daughter's mental health.

- The appellant's advocate submitted a letter stating that the appellant has and continues to pay her share of the rent and utilities electronically each month. There is no financial dependence or interdependence as their finances are independent; the appellant does not share bank accounts or credit cards with her boyfriend, and they do not have jointly owned assets or joint liabilities/debts. Their financial arrangement is as roommates splitting shelter costs.
- A ministry letter dated October 16, 2014 informing the appellant that she is no longer eligible for assistance because she currently lives in a "marriage-like" situation and at this time her eligibility for income assistance cannot be determined.
- Shelter Information signed September 27, 2013, disclosed the appellant's rent start date at her current address as September 1, 2013. Rent is \$550 per month including utilities. Her boyfriend is named as "landlord including property manager, agent"; he is not the same person as the home owner.
- A letter by the appellant dated September 24, 2014, stating that she and her daughter have not been added to her boyfriend's rental agreement. The arrangement was that her boyfriend would collect her rent and utilities payment each month and disperse it to his own accounts. In the past couple of months she has made online transfers directly to her boyfriend's account for rent, and towards her boyfriend's utilities accounts. Her rent/utility money is still going to her boyfriend.
- The appellant's bank statements from June 1, 2014 to August 31, 2014 identify a total of 2 rent payments and 2 utility payments:
 - August 29, 2014: Descriptive Withdrawal Rent to the home owner: \$400
 - July 23, 2014: Descriptive Withdrawal Rent: \$400
 - July 23, 2014: Online Bill Payment to BC Hydro: \$50
 - July 23, 2014: Online Bill Payment to Shaw Cable: \$50
- An undated letter by the home owner in which he states that he rents his home to the appellant's boyfriend. The appellant and her daughter moved in with his permission. He did not rewrite the rental agreement and the appellant's boyfriend remains the person with the primary responsibility for the care and maintenance and monthly payment of rent.
- A letter dated September 24, 2014 by the appellant's boyfriend in which he states he is a renter and rents from the landlord [who is the home owner]. He pays \$900 per month rent of which \$450 is covered by the appellant. He also has cable and hydro and gas to look after for which the appellant puts in \$100 extra per month. Until recently the appellant has provided her boyfriend with cash, but he agreed she should put her share into the accounts involved, i.e. the landlord/home owner's account and Hydro and Shaw accounts.

The appellant's Notice of Appeal dated November 21, and received November 24, 2014, included:

- 2 bank print-outs showing 2 account activities in May 2014 and 6 activities in September 2014.
- 3 rent/utilities receipts for \$550 signed by the appellant's boyfriend
 - dated June 27, 2014 [does not say for which month];
 - dated July 23 for the month of August;
 - dated September 3 for the month of September.
- A letter by the appellant stating that she has remained financially independent, has paid all her rent and utilities in full, and her boyfriend never had to cover any of her expenses. She has paid her share of rent and utilities to her boyfriend with cash in different ways: sometimes through cash withdrawals, sometimes with online payments to his account, sometimes buying fuel for his car, sometimes deducting half the amounts of shared. They kept a tally each month and made sure it all equaled her share of rent and utilities. In July she began to make most of her share of the rent and utility payments directly into the appropriate accounts, plus \$50 in cash or fuel at his convenience. The appellant provided the following self-reported description.

July Rent:

May 28 cash withdrawal	\$ 30	(full amount of withdrawal was \$580: \$550 June rent/utilis, \$30 toward July rent)
June 1 fuel purchase into her boyfriend's car	\$ 20	
June 20 fuel purchase into her boyfriend's car	\$ 30	
June 21 purchases at 2 stores for 1/2 of household expenses	\$ 50	
June 26 cash withdrawal	\$ 260	
June 27 fuel purchase into her boyfriend's car	\$ 40	
June 27 cash withdrawal	\$ 120	
Total	\$ 550	

August Rent:

July 23 transfer to the home owner's account	\$ 400
July 23 BC Hydro	\$ 50
July 23 Shaw	\$ 50
July 23 cash withdrawal	\$ 50
Total	\$ 550

September Rent:

Aug 29 transfer to the home owner's account	\$ 400
Aug 31 fuel purchase into her boyfriend's car	\$ 50
Sep 3 BC Hydro	\$ 50
Sep 3 Shaw	\$ 50
Total	\$ 550

The appellant adds that in her phone conversation with the ministry during which she was informed that she had been denied assistance she was not asked to explain why her bank statements did not show withdrawals in the amount of her rent, nor was she informed that her boyfriend's letter was not enough to confirm that she has paid her rent/utilities in full. If the ministry had asked for that supporting information she would have easily provided the enclosed details but she was not asked nor given the opportunity.

At the hearing the advocate submitted a written outline of her oral presentation which included information from the appeal package and more details on the ministry review: it was conducted in September 2014; on October 9, 2014 the appellant was told by the ministry over the phone that she was no longer eligible for benefits because she lived in a marriage-like relationship.

The appellant stated that before her accident she was a writer and editor, now she just does a bit of writing. Before she moved in with her boyfriend she lived in a moldy 400 square foot apartment. Until this summer they had a loose arrangement for rent and utility payments, which included cash lump sums, contributions to Hydro and Shaw, and credit for household and gasoline purchases; the appellant and her boyfriend then kept an ongoing and unwritten tally of the amounts paid. She owned her own a car at the time period in question but it is now sold. In her July rent tally she writes she paid \$50 towards household expenses but affirms at the hearing that there is no supporting entry in her bank statements on a 21st \$50 amount. On June 21 she made purchases at 2 stores for \$58.78 and \$47.39 - these purchases were for toilet paper, garbage bags and cleaning supplies, and \$50 was roughly her share. The 3 rent/utilities receipts for \$550 each were written up by her boyfriend for the appeal.

Pursuant to section 22(4) of the Employment and Assistance Act the panel does not admit the May 2014 and September 2014 bank print-outs because this is new information that is not in support of bank information that was before the ministry at reconsideration; the panel admits the 3 rent/utilities receipts issued by her boyfriend because they support the appellant's claim that she paid her rent including utilities in full. For the same reason the panel admits the appellant's appeal letter and her statements at the hearing as well as the advocate's submission, with the exception of references to amounts paid in May and September as these are not substantiated by the bank information that was before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is the whether it was reasonable of the ministry to deny the appellant disability assistance as a sole recipient with a dependent child because the appellant's relationship with her boyfriend meets the meaning of "spouse" and of "dependant".

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;

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.

It is the panel's task to decide whether it was reasonable of the ministry to determine that the relationship of the appellant and her boyfriend meets the meaning of "spouse" and "dependant" in accordance with the relevant legislation.

The meaning of "spouse" is determined in section 1.1 of the EAA; section 1.1(2) lists the conditions that determine whether 2 persons who reside together are considered spouses: According to subsection (a) they have to be residing together for at least the previous 3 consecutive months or 9 of the previous 12 months. The appellant does not dispute this.

In addition, as set in subsections (b)(i) and (ii), the minister must be satisfied that the relationship demonstrates (i) financial dependence or interdependence and (ii) social and familial interdependence, consistent with a marriage-like relationship. The appellant disagrees that there is financial dependence or interdependence in her relationship (i), and she disagrees that her social and familial interactions constitute a marriage-like relationship (ii).

A spouse is considered a "dependant" in accordance with section 1(1). The appellant argues that since her boyfriend does not meet the definition of "spouse", he cannot be considered a "dependant".

Financial dependence or interdependence - 1.1(2)(b)(i)

The appellant argues that she and her boyfriend are not in a marriage-like relationship because there is no financial dependence or interdependence between them as set out in section 1.1(2)(b)(i). The reason for moving in together was of a practical nature: his rent was being increased and as a result he needed a roommate. The appellant was able to improve her situation by leaving an "unhealthy isolated apartment" and moving to a place where she had support for her disability. From the beginning their financial arrangement was that of roommates splitting shelter costs. They have been keeping their finances completely separate. The appellant does not share bank accounts or credit cards with her boyfriend, and they do not have jointly owned assets or joint liabilities/debts. The appellant continues to pay her share of the rent and utilities electronically each month in full. She buys food for herself and her daughter and pays her own bills.

The ministry argues that there is no documentation provided that the appellant paid \$550 for June, July and August for rent and utilities and as a result concludes that her boyfriend paid her additional portions of rent and utilities in which she was short; this indicates financial dependence or interdependence in accordance with section 1.1(2)(b)(i).

While the appellant states she pays \$450 for rent and \$100 for utilities monthly and while her boyfriend/landlord provided 3 receipts for \$550 each, the appellant's bank statements for June, July and August 2014 indicate that she paid no rent and utilities in June, \$400 rent and \$100 utilities in July, and \$400 rent in August. The panel finds therefore that there is no evidence that the appellant paid rent/ utilities in full for June, July and August 2014, and, as there is no evidence of the outstanding payments, that on the balance of probabilities the ministry was reasonable to conclude that her boyfriend paid the outstanding amounts. Therefore the panel finds the ministry reasonably established that the relationship between the appellant and her boyfriend demonstrates financial dependence or interdependence as set out in section 1.1(2)(i).

The panel notes that, while the appellant claims she made contributions towards her rent/utilities at varying times and with varying amounts by buying fuel, sharing household expenses, paying her boyfriend by cash or online, and was tallying up the amounts verbally each month, there is no evidence that any of these payments were applied towards rent in the months of June, July and August.

The appellant argues further that the ministry should have asked her why her bank statements did not show withdrawals in the amount of her rent and give her the opportunity to provide additional evidence.

The panel finds it to be a reasonable request from the ministry to ask for bank statements of 3 consecutive months in order to examine the appellant's rent and utility payments. After the appellant was informed of her denial in the original decision she had the opportunity to ask for more information and provide additional documents at reconsideration.

Social and familial interdependence – 1.1(2)(b)(ii)

The appellant argues that her relationship does not constitute social and familial interdependence consistent with a marriage-like relationship because even though they identify themselves as boyfriend/girlfriend publicly which includes presenting themselves as a couple in the community, sharing meals, spending time with each other's kids, and supporting each other, they would do these things whether they are living in the same home or not. She has sole custody of her daughter and does not allow her boyfriend to make decisions regarding her daughter, nor does she allow him any parenting responsibilities.

The ministry argues that social and familial interdependence as set out in section 1.1(2)(b)(ii) is established in the appellant's circumstances because the appellant resides with her boyfriend and confirms that she and her boyfriend present themselves as a couple in their community, share meals, spend time with each other and with each other's children, and support each other. The ministry concludes that all this together with their financial dependence or interdependence is consistent with a marriage-like relationship, and as a result the relationship between the appellant and her boyfriend meets the meaning of "spouse".

The panel finds that the ministry reasonably established social and familial interdependence as set out in section 1.1(2)(b)(ii) because the appellant confirms that she and her boyfriend are in a romantic relationship, are living together, present themselves as a couple publicly and in the community, share meals, spend time with each other's children, and support each other. The appellant describes how greatly she appreciates her boyfriend, the stable home they have together, the positive impact this has on her daughter, and how she and her daughter trust him.

Conclusion:

As a result the panel finds that the ministry reasonably established that the relationship of the appellant and her boyfriend is consistent with a marriage-like relationship according to section 1.1(2)(b), and they are spouses of each other.

As the appellant's boyfriend resides with her he also meets the definition of "dependant" pursuant section 1(1). Consequently, the appellant is not eligible to receive assistance as a sole recipient with a dependent child.

The panel finds, therefore, that the ministry reasonably concluded that pursuant to sections 1 and 1.1 of the EAA the appellant is not eligible to receive disability assistance as a sole recipient with a dependent child. The panel finds the ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable regulation in the circumstances of the appellant. Therefore the panel confirms the ministry's reconsideration decision.