

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated October 27, 2014 which held that the appellant was not eligible for income assistance for the period of January 2014 through to September 2014 because she was residing with her spouse during that time. Pursuant to section 27 of the Employment and Assistance Act, she is required to repay the government the income assistance she received as a sole recipient without dependants.

PART D – Relevant Legislation

Employment and Assistance Act (EAA),
Section 1, definitions of “family unit”, “dependant” and “spouse”.
Sections 11, 27 and 28.

Employment and Assistance Regulation (EAR),
Section 5.

PART E – Summary of Facts

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

- An Income Tax Return “2013” for the appellant indicating her marital status as “SEPARATED”.
- A hydro bill for Mr. B with a pay by date of July 15, 2014 at the same address as the appellant.
- A receipt for part rent in the appellant’s name for \$600, at the appellant’s address dated July 1, 2014 and signed by the landlord.
- A receipt for part rent in the appellant’s name for \$600, at the appellant’s address dated September 1, 2014 and signed by the landlord.
- The appellant’s Request For Reconsideration dated October 15, 2014 which included a letter written by the appellant who stated that she applied for help in December due to her health and being unable to work at that time. She is currently working part time and looking for full time work. She stated that when she applied for help she had just rented a room “temporarily” at her present address while she found a safe place to live, since the building she had been living in was unsafe. She indicated that being on assistance is an insecure way to live as one worker tells you to move and get your health back and then another tells you that you will not receive a cheque in October. The first worker had indicated to the appellant that she should be ok for at least a year. The appellant noted that she and Mr. B were married a long time ago, remained friends, and he was helping her as a friend. The appellant indicated that she should be back in her own space over the next month or so. The appellant also stated that she doesn’t feel that she did anything wrong, was honest and gave any information that was requested. She does not feel that she should nor can she afford to pay for a mistake that wasn’t hers.

At the hearing, the appellant testified that she has been separated from Mr. B for 15-20 years and that they live in a home where they each have their own bedroom and share a kitchen, bathroom and living area. The appellant made the point that they share nothing else. They are not in a marriage-like relationship, do not present as a couple and do not have money for a divorce. The appellant indicated that Mr. B’s roommate passed away and rather than the landlord finding a new tenant, Mr. B recommended the appellant to the landlord as a favour to her. Mr. B is on disability assistance and is in no position to support the appellant. The appellant stated that her EI ran out and she went to the ministry for assistance and has been honest with them all along. She added that no one will be living in the house after January due to its poor condition.

The ministry stood by the reconsideration decision. When asked by the panel if there was any objection to accepting the appellant’s testimony about the separate living arrangements, the ministry representative stated none at all, as it does not affect the decision as they reside together.

The panel has admitted the appellant’s testimony as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the EAR as this new information helps clarify the appellant’s living situation and corroborates her previous testimony.

Findings of Fact

The appellant applied as a single person for assistance on January 15, 2014 and was issued benefits from January 2014 – September 2014.

The appellant and Mr. B have not divorced.

The appellant and Mr. B reside in the same two-bedroom house and share the same residential address.

Both parties agreed that the ministry was aware that the appellant was residing with Mr. B to whom she was married at the time of her application.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was not eligible for income assistance for the period of January 2014 through to September 2014 because she was residing with her spouse during that time and whether the income received by the appellant as a sole recipient without dependants is required to be repaid to the government. Specifically, the issue is whether the ministry's decision is reasonably supported by the evidence, or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is as follows:

Employment and Assistance Act

Section 1, definitions of "family unit", "dependant" and "spouse".

"family unit" means an applicant or a 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"

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.

Sections 11, 27 and 28.

Reporting obligations

11 (1) For a family unit to be eligible for income assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
 - (i) is in the form prescribed by the minister, and
 - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
 - (i) may affect the eligibility of the family unit, and
 - (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

Overpayments

27 (1) If income 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 17 (3) [reconsideration and appeal rights].

Liability for and recovery of debts under Act

- 28 (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 income 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 income 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.

Employment and Assistance Regulation

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.

The ministry's position is that the appellant has not provided any information to show that she is not married to Mr. B and as a result the minister is satisfied that the appellant's relationship with Mr. B meets the definition of "dependant" under section 1 and "spouse" under section 1.1 of the EAA because the appellant and Mr. B reside together and are married to each other. For the period of January 2014 to September 2014 the appellant received assistance as a sole recipient with no dependants and was residing with her spouse at that time. As a result the appellant received income assistance that she was not eligible to receive and is required to repay the government.

The appellant's position is that she didn't do anything wrong, was honest all along and gave any information that was requested by the ministry. She does not feel that she should nor can she afford to pay for a mistake that wasn't hers. The appellant also argues that she and Mr. B live in a boarding house with separate rental arrangements with the landlord, share only common areas and have not lived together for over 15 years. Mr. B was just a friend helping out another and neither she nor Mr. B can afford a divorce.

Panel's Findings

The panel acknowledges that the legislation is specific in terms of its definition of a "dependant" and "spouse" and that the ministry has no discretion with its interpretation. The panel finds that the appellant did not do anything wrong and that this situation arose from a ministerial error.

The panel finds that the ministry reasonably determined that the appellant and Mr. B are married and accordingly that Mr. B is the appellant's spouse as defined in section 1.1 of the EAA and that as the appellant and Mr. B reside together, he is a dependant of the appellant pursuant to section 1 of the EAA. Section 5 of the EAR provides that income assistance must be applied for on behalf of the entire family unit which is an applicant and his or her dependants. Accordingly, the ministry reasonably determined that the appellant was not eligible for income assistance as a single recipient with no dependants and that pursuant to section 27 of the EAA she is required to repay income assistance for which she was not eligible. The panel therefore confirms the ministry decision.