

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 13 April 2015 determined that:

- the appellant and her spouse formed a family unit with the appellant's dependent child as of 18 June 2014;
- the appellant failed to report all income received by the family unit since that date; and,
- the appellant had received income assistance for which she was not eligible and is liable to repay to the ministry under section 27(1) of the Employment and Assistance Act (EAA).

PART D – Relevant Legislation

EAA, s. 1, 1.1 and 27.

Employment and Assistance Regulation (EAR) s. 1, 5, 33 and Schedule B, s. 1, 2 and 3.

PART E – Summary of Facts

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

- The appellant received income assistance with Persons with Persistent Multiple Barriers (PPMB) designation, as a single parent family unit with one dependent child.
- On 22 January 2015, during an annual review of her file, the appellant informed the ministry that she had been living with a third party for several years and as a couple since 18 June 2014.
- Confirmation of Earnings form dated 7 January 2015 completed by the third party's employer showed that he was working full time for that company and indicated his net earnings. There is a note to the effect that this employee works full time and they believe he will be working for them for some time.
- On 30 January 2015, the appellant completed a ministry form titled "Employment and Assistance Review" indicating at "Add other occupants" the name of the third party she designated as "boyfriend". On page 3 of that form, the box "Marital Status" was left blank. On page 4, she indicated the name of the third party and his wages. At page 5 she indicated the name of her child and at the bottom of the page, the third party signed the "Medical Services Plan Client Release" in the box "Signature of spouse". At page 6 the name of the third party is indicated as "spouse" and at the bottom of the page, the appellant initialed it. Page 7 is signed twice by the appellant on 30 January 2015 and by the third party as "Signature of spouse (applicant 2)" on 16 February 2015.
- 2-page Overpayment Chart covering the months of August 2014 to March 2015 printed on 6 March 2015 by the ministry indicating a total actual income for the family unit of \$22,784.64 and an overpayment of \$4,968.69.
- It seems that sometimes in or about March 2015 the appellant gave birth to a second child as mentioned in the ministry documentation and in her Notice of Appeal (27 April 2015) she mentioned her need to support her "kids".
- In her request for reconsideration dated 9 April 2015, the appellant indicated she had medical reasons for not working and that she was living with her boyfriend but that they were not "Common Law" and thus, his income should not have been considered as hers. She indicated she had her portion of the rent to pay and care for her child and needed her own income. Since she is unable to work, she advised she would not be able to pay this overpayment back. She stated she had been unaware that she had to report her boyfriend's income as her own until they would be Common Law. She also indicated she did not work and his income was not hers.
- In her Notice of Appeal dated 27 April 2015, the appellant indicated that she and her "spouse" (brackets are hers) should not be considered spouses until September 2014 as they did not start their relationship until June 2014 and that his income should not count until then. She indicated that she still needed her own income to support her children and pay her portion of the rent and that she was unable to work for medical reasons and that is why she was on income assistance.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that:

- the appellant and her spouse formed a family unit with the appellant's dependent child as of 18 June 2014;
- the appellant failed to report all income received by the family unit since that date; and,
- the appellant had received income assistance for which she was not eligible and is liable to repay to the ministry under section 27(1) of the EAA

was a reasonable application of the legislation or reasonably supported by the evidence.

S. 1 of the EAA includes important definitions for the purpose of this appeal:

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;

"spouse" has the meaning in section 1.1; ...

Spouse is defined at s. 1.1 of the EAA:

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 a family unit that may apply for assistance under s. 5 of the EAR:

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.

Reporting requirements are set at s. 33 of the EAR:

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

- (a) the report must be submitted by the 5th day of each calendar month, and
- (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation,
 - (i) whether the family unit requires further assistance;

- (ii) changes in the family unit's assets;
- (iii) all income received by the family unit and the source of that income;...

S. 27 of the EAA deals with the liability of the family unit to repay to the government any overpayment of income assistance:

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.

And subsection (2) determines that the amount the ministry decided for repayment is not appealable before this Tribunal:

(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*].

Family unit and spouse:

Initially, the appellant argued that while she was living with her boyfriend, the third party, they were not in a Common Law relationship but she eventually argued that they started a relationship in June 2014 and that he should not be considered her spouse until 3 months later, in September 2014.

The ministry argued that the appellant indicated that she had been living with the third party for several years and that she acknowledged they became a couple as of 18 June 2014. Thus, the appellant and the third party had been residing together in a marriage like relationship since at least June 2014 and, the ministry argued, the birth of a child in or about March 2015 demonstrated that they had been living in a marriage like relationship since June 2014.

Panel's decision:

The panel notes that on 22 January 2015 the appellant indicated to the ministry that she had been living with the third party for several years and as a couple since 18 June 2014. Neither in her request for reconsideration or in her Notice of Appeal did she disagree with that statement but rather confirmed that the third party was her "boyfriend" and that they started a relationship in June 2014. The existence of a marriage-like relationship was supported by the birth of a second child in or about March 2015. The panel also notes that the third party signed the "Employment and Assistance Review" document as a spouse of the appellant on 16 February 2015, also acknowledging a marriage-like relationship, and he did not deny it had been ongoing since at least June 2014. Thus, the panel finds the ministry reasonably determined that the appellant acknowledged that she and the third party were residing together in a marriage-like relationship since June 2014 under s. 1.1(1) of the EAA.

Eligibility for income assistance received:

The appellant argued that she and the third party were not "Common Law" and thus, his income should not be considered as hers. She needs her own resources to pay for her part of the rent and for her children and if she did not report his earnings it was because she was unaware she had to do this before they became Common Law spouses. She also argued that his income should not be

considered as hers as she cannot work because of her medical condition. She finally argued that the overpayment calculation should not start until September 2014 because she and her boyfriend have not been in a marriage-like relationship until June 2014.

The ministry argued that since the appellant and the third party were in a marriage-like relationship since at least June 2014, they formed a family unit and she should have reported his earnings since then and they should have been included in the calculation of the amount of income received by the family unit. Finally, the ministry argued that for the period August 2014 – March 2015 the appellant is liable to repay income assistance for which her family unit was not eligible, in the amount of \$4,968.69.

Panel's decision:

The appellant's argument that the overpayment should only start in September 2014 instead of August might have merit if s. 1.1(2) of the EAA applied, that is if she and / or the third party denied the beginning of their marriage-like relationship. In this case, the panel found the ministry had reasonably determined the starting of the marriage-like relationship in June 2014 under s. 1.1(1) of the EAA and the payment review reasonably started at that point. The appellant's argument that she needs her own income to pay her share of the rent and for her children cannot succeed since she is the person who is responsible for this family unit, being the applicant for income assistance and her spouse being considered as her dependent under s. 1 of the EAA. The family unit is considered by the legislation as a whole and each member of the unit is not considered as having separate income but their earnings are considered as a whole; it does not matter that the earnings are coming from her or from her spouse or that the appellant is unable to work for medical reasons.

Since June 2014, when she acknowledged to the ministry that she started residing with the third party in a marriage-like relationship, the appellant was obligated to report to the ministry all income received by the family unit under s. 33(1)(b)(iii) of the EAR. The appellant admitted failing to do so because she was unaware that she needed to report her "boyfriend's" income and the panel finds the ministry reasonably determined she was required to report her spouse's earnings for that period of time. The employer of the appellant's spouse provided the ministry with the income earned by him and consequently the ministry could also determine whether an overpayment had been made, the period of the overpayment within the time frame of the spousal relationship, here August 2014 – March 2015, and the amount of the overpayment under Schedule B of the EAR. Thus, the panel finds the ministry reasonably determined the appellant's family unit received an overpayment during that period of time. In terms of the amount of the overpayment being \$4,968.69, s. 27(2) of the EAA states that this issue is not appealable to the Tribunal and thus, the panel makes no determination in that respect.

Conclusion:

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.