

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of June 1, 2015, which denied the appellant assistance as a sole recipient with one dependent child in accordance with sections 1 and 1.1 of the Employment and Assistance Act because the appellant's relationship with her landlord/owner of the property she resides in meets the definition of "dependant" and "spouse".

### 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:

- Letter from the Appellant dated May 20<sup>th</sup>, 2015 stating that she has no spousal relationship with her landlord but because of his lengthy absences they thought it easier if the appellant covered bills and purchased home safety and improvement supplies with rent monies, then they would balance things out later.

In the future the landlord will appoint someone to collect rent and cover all farm, house and yard expenses and provide appropriate receipts.

As requested, the appellant has been looking for the 2013 tax assessment but has so far been unable to locate it.

- A ministry letter dated March 16<sup>th</sup>, 2015 informing the appellant that she should not be denied income assistance due to failure to apply for assistance on behalf of the entire family unit.

Reconsideration decision dated March 16<sup>th</sup>, 2015 that determined the appellant should not be denied assistance due to failure to apply for assistance on behalf of the entire family unit as her landlord did not meet the definition of spouse.

- Request for reconsideration dated March 6<sup>th</sup>, 2015 of denial of income assistance due to dependency. This request has Shelter information form and letter from the landlord attached.

The worker had received information that one of the appellant's children was residing with her grandmother since July 2014, and further that the appellant was living with her spouse, her landlord. A hold had been placed on benefits to discuss the matter further.

When the appellant attended the office she confirmed her daughter sometimes stays with her on weekends but resides with her grandmother since July 2014. She also confirmed that her spouse/landlord works out of town and when in town stays with her for a few days at a time. On March 4<sup>th</sup>, 2015 the appellant was advised she was deemed ineligible for further income assistance due to dependency.

The appellant says she does not have a spouse and has never lived with her landlord.

- Shelter information signed November 11<sup>th</sup>, 2014 disclosing the appellant's rent start date at her current address as October 1, 2014. Rent is \$1,000 per month including utilities, no security deposit required, and the appellant does not share a kitchen or bathroom with the owner.
- Undated letter dated stamped received March 4, 2015 from the home owner/landlord stating the appellant rents the residence, rent is \$1,100 monthly, and the appellant looks after simple maintenance and yardwork and rent is adjusted accordingly.
- A letter from her mother dated March 11, 2015 stating she is at the appellant's home often, the

landlord does not live there, and the appellant and he are not in a spousal partnership. She confirms the landlord is rarely here and when he is he stays in the 5<sup>th</sup> wheel on the property.

- A ministry letter dated April 21, 2015 advising they are reviewing the appellant's eligibility for assistance, reminding her of two previous requests sent and the outstanding information required being Income Tax Notice of Assessment for 2013 and Cell phone bills. As this information has not been provided the appellant's eligibility cannot be determined and she is no longer eligible for assistance, and file will be closed on May 8, 2015
- Request for reconsideration dated April 21, 2015 of decision that appellant living in a common law relationship with landlord and not eligible for benefits, with evidence attached being bank statements, shelter information form, handwritten undated letter from landlord, 3 internal emails, several pages of facebook (social media) posts and photos.
- Bank statements for period between September 17<sup>th</sup>, 2014 and March 25<sup>th</sup>, 2015 which show no withdrawals to pay rent, and March payment of utilities of gas and hydro.
- Email dated January 20, 2015 reporting information that daughter living with grandmother since July 2014 and the appellant living with a man for a few months who works and makes an income.
- 2 emails dated April 21, 2015 regarding relationship, one providing a statement encompassing time frame from January 7<sup>th</sup>, 2014 to January 20<sup>th</sup>, 2015 reporting the appellant saying in new relationship, a community professional confirming on February 2<sup>nd</sup>, 2014 that has been in relationship for approximately 2 months, September 8<sup>th</sup> 2014 the appellant reporting she would be moving to boyfriend's home and paying him rent, and January 20<sup>th</sup>, 2015 a report that boyfriend works up north and makes an income
- Excerpts from appellant's facebook page indicating status as of September 10<sup>th</sup>, 2014 "got engaged" and still engaged as of April 5, 2015 and various photographs of the appellant with partner.

The appellant's Notice of Appeal dated June 11<sup>th</sup>, 2015 did not include any further documentation but referenced the March 17<sup>th</sup> ministry letter. The appellant states she is a single mom with 3 dependants, the initiating allegation was untrue, and the first reconsideration was decided in her favour, and she feels she is not being heard.

At the hearing the advocate and witness, the appellant's mother, confirmed that there was no spousal relationship, that the appellant and her landlord had never lived together, that on the property the landlord owned there were various buildings, one being an empty old farmhouse. The appellant and the landlord had dated in the fall of 2014 and he said the appellant could live in the empty old farmhouse, and so the appellant moved in, with the verbal agreement that she would take care of utilities and yardwork and they would sort out the balance of the \$1,000 rent owing. The landlord works out of town and is rarely in town. The witness is at the property location often and knows the situation. She confirms the property has a bunch of buildings on it and that it was probably a mistake for the appellant to pay all the utilities but on this property with all these buildings it would be very unrealistic to separate out the utilities. The witness confirms she assisted the appellant to review her bank statements which were provided and those averaged payments of \$1133 per month for utilities and supplies. The appellant had undertaken a renovation of a bathroom in the farmhouse, for example, and paid for all those supplies.

At the hearing the appellant stated that she is not in a relationship with the landlord. They never lived together, nor have they ever been dependant on each other. She confirmed they have not been a couple since the beginning of January, 2015 although she has not changed her facebook status. The appellant again confirms that they are not a couple now and the landlord agrees to let her continue to rent. She also reiterated that she does not have one child, she has 4 children, 3 of whom are dependants.

The appellant submitted 2 handwritten letters, 2 pages each, at the hearing. The first handwritten letter is a detailed explanation of what occurred on February 11<sup>th</sup>, 2015 when she attended the ministry office to see about her cheque. The appellant read this letter out at the hearing. This explained that when she arrived at the office it was nearing 4 pm closing time, the worker explained her cheque was on hold, and she was asked about her daughter living with her mom, which the appellant disagreed with. The worker also asked about her boyfriend's name which the appellant told the worker. The appellant says the worker said in a subsequent report that the appellant used the word "spouse" but the appellant says she never used that term. The worker told her she needed to add the boyfriend to her file and the appellant advised that she would not do that because they do not live together. The worker told the appellant she was a fraud and was defrauding the Ministry. The worker interrupted the appellant and did not give the appellant a chance to fully answer questions and told her to leave the office. The appellant was shocked and just said to her "May God Bless You".

The second handwritten undated letter details the appellant's son's autism condition, their living situation prior to moving to the old farmhouse, and his improvement since.

At the hearing the ministry stood by the reconsideration decision, explaining the timelines of the emails and the internal systems with fraud investigations, the definitions of dependency, financial dependence or interdependence, and social and familial interdependence.

The ministry had no objection to accepting the appellant's testimony and 2 page letter regarding the February 11<sup>th</sup>, 2015 meeting with the ministry worker.

Pursuant to section 22(4) of the Employment and Assistance Act the panel admits the 2 page written

and oral testimony regarding the February 11<sup>th</sup>, 2015 meeting with the worker as it is in support of the information and records before the minister when the decision being appealed was made and supports the appellants claim that the landlord was not her spouse. The panel does not admit the 2 page written testimony regarding the son's medical condition as it is not in support of any information and records before the minister when the decision being appealed was made.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reconsideration decision which denied the appellant assistance as a sole recipient with one dependent child in accordance with sections 1 and 1.1 of the Employment and Assistance Act because the appellant's relationship with her landlord/owner of the property she resides in meets the definition of "dependant" and "spouse" was a reasonable application of the legislation in the circumstances of the appellant or a reasonably supported by the evidence.

### Employment and Assistance Act

#### Interpretation

**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;

**"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;

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

(3) For the purpose of the definition of "dependant", spouses do not reside apart by reason only that a spouse is employed or self-employed in a position that requires the spouse to be away from the residence of the family unit for periods longer than a day.

#### 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.

The Ministry argues that the appellant's landlord is a dependant of the appellant. A "dependant", in relation to a person, means anyone who resides with the person and who (a) is the spouse of the person. While the appellant argued that the landlord works out of town and when in town stays with her for a few days at a time, the definition of "spouse" as set out in 1(3) of the EAA clarifies that for the purposes of dependant just because a spouse is employed in a position that requires the spouse to be away from the residence for periods of time, it is considered they do not reside apart.

The appellant argues that she does not have a spouse and has never lived with her landlord. While the appellant initially identified her landlord as her boyfriend and said he stayed with her when not working in camp, the appellant now stated her landlord does not live with her, but stays on the property in a 5th wheel when he is in town, thus it is not established that they reside together. A letter from her mother dated March 11, 2015 states she is at the appellant's home often, the landlord does not live there, and the appellant and he are not in a spousal partnership. She confirms the landlord is rarely here and when he is he stays in the 5th wheel on the property. The initial report from the social worker was a false allegation, the appellant believes she knows who reported and that person has made personal attacks against her previously.

The ministry argues she referred to her landlord as her boyfriend and that he stays with her when in town. As well, the Ministry of Children and Family Development reported that she moved into his house in September 2014 and Facebook posts indicates the appellant and the landlord are engaged to be married.

The appellant in return stated that they started to date in the fall of 2014 but are not currently and that on the property the landlord owned there were various buildings, one being an empty old farmhouse.

He said the appellant could live in the empty old farmhouse, and so the appellant moved in with the verbal agreement that she would take care of utilities and yard work and they would sort out the balance of the \$1,000 rent owing.

The panel finds that the ministry's decision that the appellant and landlord have been residing together since October 2014 is reasonably supported by the facts given the appellant's Facebook post of their engagement and notification the Ministry of Children and Family Development. Section 1.1 (2)(a)(i) has been met, as they resided together for 3 consecutive months from October, 2014 to January, 2015.

The second part of the test is whether the minister is satisfied that the relationship demonstrates

- (i) financial dependence or interdependence, and
- (ii) social and familial interdependence,

With respect to dependency, the ministry explains that the shelter information form signed by the landlord indicates the appellant was required to pay \$1,000 rent utilities included, however there is no evidence to support that rent was paid; the bank statements do not show any withdrawals, however they do show the appellant paid the landlord's utility bills and there are withdrawals for gas and hydro even though the shelter information form indicated utilities were included. The ministry argues that as the appellant was paying bills for the landlord, there was no documents from the landlord that confirms the status of her rent payments on a month to month basis and there are no rental receipts, this demonstrated financial dependence or interdependence.

The appellant said they agreed that she would take care of utilities and yard work and they would sort out the balance of the \$1,000 rent owing. The witness confirms the property has a bunch of buildings on it and that it was probably a mistake for the appellant to pay all the utilities but on this property with all these buildings it would be very unrealistic to separate out the utilities. The witness confirms she assisted the appellant to review her bank statements which were provided and those averaged payments of \$1133 per month for utilities and supplies. The appellant had undertaken a renovation of a bathroom in the farmhouse, for example, and paid for all those supplies.

The panel notes that while the appellant claims she made contributions towards rent by paying utilities and for yard work and renovation expenses, which were deducted from rent, there is no evidence that any of these payments have been applied towards rent. With evidence that the appellant's bank statements showed no withdrawals for rent, that there were no receipts showing rent paid, there was nothing from the landlord confirming rent on a month to month basis and only a verbal rent arrangement, the panel determines that the ministry's decision that the relationship demonstrated financial dependence or interdependence consistent with a marriage-like relationship was reasonably supported by the facts.

With respect to social and familial interdependence, the ministry argues the Facebook information shows the appellant and the landlord presenting themselves as a couple in the community for public view and being engaged to be married. The appellant argues that they have not been a couple since the beginning of January, 2015 although she has not changed her Facebook status.



The panel finds that the ministry's decision that the appellant and the landlord demonstrate social and familial interdependence consistent with a marriage like relationship to be reasonably supported by the evidence of the Facebook postings.

*Conclusion*

As the panel finds the ministry reasonably established that the relationship of the appellant and her landlord meets the definition of "spouse" as per section 1.1 of the EAA, the ministry's decision that as the landlord is a "dependent" of the appellant, in accordance with section 1(1) of the EAA is a reasonable application of the legislation as a dependent is defined as a spouse of a person.

As such, the panel determines that ministry decision that the appellant is not eligible for assistance as a sole recipient with a dependent child as, "family unit" includes an applicant and his or her dependents is a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's decision.