

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 24 July 2015 determined the appellant was not eligible for income assistance because he failed to apply for assistance on behalf of his entire family unit under s. 5 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), s. 1 and 1.1;
EAR, s. 5.

PART E – Summary of Facts

The appellant was not in attendance at the hearing and after confirming that he was notified of the date and time of the hearing, the hearing proceeded under section 86(b) of the EAR.

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

- On 13 April 2015 the appellant applied online for income assistance, stating no street address, that his ex-spouse did not have the money to pay alimony and that neither could afford a divorce. The appellant indicated a separation date with his spouse of 1 August 2014.
- On 20 April 2015, the ministry conducted a phone interview with the appellant indicating that while he had reconciled with his spouse for a short period of time in December 2014, they had then decided to separate without a formal agreement and that he had some support from friends, family and his ex-spouse.
- On 22 April 2015 the ministry was provided with the following documents:
 - Confirmation by BC Assessment and Land Titles that the appellant was the joint owner with his spouse of a manufactured home with land title;
 - BC Assessment indicated the appellant's address as the same as his spouse on the said property;
 - Confirmation that the appellant was a joint mortgage holder against that property with his spouse;
- On 29 April 2015, the ministry received an undated letter from the appellant stating that he had no income and no prospect of such, that he tried to get disability assistance without success, that he was couch surfing and that he needed help.
- The same day, the ministry received a letter from the appellant's spouse stating that she and the appellant were separated, that their house was mortgaged to the maximum and they would not get any money were they to sell it, that the appellant had no income and that she could barely support herself and could not pay support for the appellant, that they had over \$1,000 overdraft at the bank and that no help had been available for the appellant.
- On 30 April 2015, the appellant indicated to the ministry that he did not wish to assign his maintenance rights to the minister since his spouse did not have enough money to support him and he did not want to apply for the family unit because his spouse was making too much money. He gave his spouse's address as his primary residence but indicated he was also couch surfing frequently with friends.
- On 12 May 2015 a ministry worker called the appellant's phone number and reached its voice mail that stated "You have reached the home of [the appellant's first name] and [his spouse's first name and his last name]".
- A series of bank statements and bank information sheets (14 pages) received at the ministry's office on 29 April and 9 June 2015 showing the appellant and his spouse having a joint bank account and with a joint address at the residence they both own. The bank statements showed an overdraft of about \$1400.
- A 1-page doctor's letter dated 16 June 2015 by the appellant's physician indicated that the appellant had health challenges rendering it difficult for him to find a suitable employment at that time and describing his medical condition. The letter indicated the appellant's address as the family residence that he owned with his spouse.
- On 25 June 2015 the ministry determined the appellant ineligible for income assistance for having failed to apply on behalf of his entire family unit. The appellant was informed he had to sign the

Application for Income Assistance forms in order to proceed with a reconsideration request.

- On 6 July 2015 the appellant informed the ministry that his spouse had agreed to give him \$200 per month for support.
- On 7 July 2015 the appellant signed an Application for Income Assistance forms (Parts 1 and 2) declaring his address as the family residence he owned with his spouse. At the question "Describe your current living arrangement", the appellant indicated: "Own". He indicated his marital status as "Separated (previously married)" and the date of separation as 1 August 2014. He did not report any bank account but at the question "Do you have Direct Deposit" he answered "Yes".
- In his request for reconsideration dated 13 July 2015 the appellant indicated that he had arranged a room to rent on his own as of 1 August 2015 and that the mortgage on their home was higher than the sale value and that if they had to take him off the residence ownership that would cost bank fees and would risk of putting his spouse on the street as well.

In his Notice of Appeal dated 4 August 2015, the appellant indicated he was on his own "on the street", that he could not afford a divorce and that he was allowed to use their residence "to get phone calls and such stuff" but he "couch surf" for shelter.

No additional evidence was presented at the hearing.

PART F – Reasons for Panel Decision

The issue under appeal in this case is whether the ministry's decision that the appellant was not eligible for income assistance because he failed to apply for assistance on behalf of his entire family unit under s.5 of the EAR was either a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation is:

Section **1(1)** of the EAA defining:

“dependant”, in relation to another person, means anyone who resides with the other person and who:

- (a) is the spouse of the other person,
- (b) is a dependant child of the other person,
- (c) indicates a parental responsibility for the other person's dependant child;...

“family unit” means an applicant or a recipient and his or her dependants;...

Section 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.

And s. 5(1) 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.

The ministry argued that the appellant was legally married to his spouse and that his spouse was a dependant under the legislation and therefore they formed a family unit. Thus, he was required to apply for income assistance on behalf of his entire family unit, which he had failed to do and therefore he was not eligible for income assistance.

In his Notice of Appeal and in the material before the ministry at reconsideration, the appellant argued that he had been separated from his spouse since August 2014 with the exception of some time in December 2014 when they reconciled for a period of time. He argued that he currently did not reside at the house he jointly owned with his spouse but was couch surfing and would go there once in a while. He argued that he and his spouse did not have the resources to pay for a divorce or to settle their joint bank account because of the large overdraft that they could not afford to pay. He finally argued that even though he was a joint owner of their family residence, it was mortgaged to the maximum and selling the house would not even cover the mortgage. Thus he should be considered as a single applicant, separate from his spouse.

The legislation (s. 1.1(1)(a) of the EAA) is clear that if two persons are married to each other they must be considered as spouses, which is the case with the appellant and his spouse as they both admit they are not legally divorced. Section 1 of the EAA provides that a spouse who resides with the

person who makes an application for income assistance is a dependant for the purposes of the act. In this case, the appellant admitted that he still occasionally resides with his spouse in the residence they jointly own. Further, the appellant's address is the family residence on all the documentation submitted to the ministry and in his Application for Income Assistance (Part 2). The evidence also shows that he has a joint bank account with his spouse. As well, his phone number is that of the family residence and the voice message on the voice mail indicates that messages may be left for either him or his spouse.

The panel acknowledges that the appellant is in a difficult situation having medical issues that interfere with him getting employment but that is not relevant to the determination as to whether he and his spouse constitute a family unit.

The appellant mentioned in his request for reconsideration that as of 1 August (he did not mention the year but the ministry and the panel determined he meant 2015) he had arranged a room to rent on his own. However, the panel notes that on his Notice of Appeal dated 4 August 2015, he still gave the family residence as his address and phone number and instead of confirming his new accommodations he wrote that he was on his own "on the street".

Given the evidence, the panel finds the ministry reasonably determined the appellant's spouse is a "dependant" and part of a family unit for the purpose of applying for income assistance. The panel finds the ministry reasonably determined the appellant was ineligible to apply for income assistance as a single person under s. 5(1) of the EAR.

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