

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 24, 2015 which found that the appellant is not eligible for assistance for the months of March, April and May 2015 since he resided with a "dependant" with whom he must be assessed as one family unit, pursuant to Sections 1 of the *Employment and Assistance for Persons With Disabilities Act* (EAPWDA) and Section 5 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 5

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Sections 1, 1.1, and 18

PART E – Summary of Facts

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

- 1) Handwritten statement dated June 29, 2015 in which the appellant's girlfriend wrote that she was "going back and forth" from another province to the appellant's community to visit him and "to see how things were going" and then "finally in February" she decided to move to the appellant's community permanently to stay. She has been living in the appellant's community since February;
- 2) Overpayment Chart dated July 7, 2015, covering the period March 2015 through May 2015 and including comments that the appellant submitted a written statement signed by his girlfriend, now on file as his spouse, that she moved in with the appellant in February 2015. Both the appellant and his spouse are unsure of exact date so, to be administratively fair, the overpayment is taken from March 2015 until his spouse was added to his file in June 2015. The total overpayment is \$2,719.26;
- 3) Letter dated July 10, 2015 to the appellant in which the ministry enclosed the Overpayment Chart and wrote that the overpayment occurred as a result of a failure to declare his dependent relationship with the person with whom he resided [his girlfriend] while receiving assistance from February 2015 to May 2015. The evidence to support the ministry's decision includes a written statement submitted by the appellant's girlfriend stating that she moved in with the appellant in February 2015;
- 4) An unsigned Overpayment Notification dated July 10, 2015; and,
- 5) Request for Reconsideration dated August 10, 2015.

In his Request for Reconsideration, the appellant wrote that:

- When his girlfriend moved in with him he was not working and neither was his girlfriend.
- He had no idea he had to notify the ministry about his living situation as he had never had to do this in the past.
- He was not dependent on his girlfriend and he never has been. His girlfriend's father was giving her money that he was unaware of at the time.
- Now he knows he had to report this information and he has this debt that he cannot pay.
- They recently had a major life change by having a baby unexpectedly.
- Their plan is to move to another province so his girlfriend's family can help with the baby.
- He receives disability because of his learning disability which involves learning and processing. The need to report the change in his living situation was one of those things he does not understand.

Additional Information

In his Notice of Appeal dated September 7, 2015, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he does not understand why he cannot receive a second chance. He never meant for any of this to happen. He has too many things to work out and this is one he has "no idea to go about."

At the hearing, the appellant stated that:

- His mother used to deal with all his disability forms. His mother would fill out his monthly reports when he was living with his parents.
- He moved out from his parents' place about 4 of 5 years ago, although it is hard for him to recall exactly when.

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- After he moved out of his parents' place he just received automatic deposits of his assistance into his account and he did not have contact with the ministry.
 - In response to a question, the appellant stated that "of course" he let the ministry know when he moved out of his parents' place and he also let them know each time he moved after that since he moved several times.
 - His girlfriend had their baby recently and unexpectedly.
 - He and his girlfriend have recently moved into a new place in another province.
 - He is still not working.
 - He did not understand that there would be any problem with his girlfriend moving in with him.

The ministry relied on the reconsideration decision. The ministry stated at the hearing that:

- The ministry commenced a review of the appellant's file on May 21, 2015 in response to an allegation that the appellant had been living in a dependency relationship with his girlfriend and that they had recently had a child together.
- When the appellant signed his application for assistance, he agreed that he must report any changes in his situation. The appellant did not report the change in his circumstances, as required.
- The usual process is to ensure that a client understands the application and the obligations being agreed to, including reading out the application before it is signed by the client.
- The appellant and his girlfriend both acknowledged to the Investigative Officer that they have been living together "in a relationship" since February 2015.
- On June 9, 2015 the appellant's girlfriend and their child were added to the appellant's file.
- Although it also depends on the income and assets of the appellant's girlfriend, the appellant may have received more in monthly assistance after his girlfriend and child were added to his file.
- On June 29, 2015 the appellant and his girlfriend submitted a letter signed by his girlfriend and stating that they have been living together since February 2015.

Admissibility of New Information

The ministry did not raise an objection to the admissibility of the information in the Notice of Appeal or the appellant's oral testimony. This information provides additional detail with respect to the relationship between the appellant and the alleged dependant. The panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for assistance for the months of March, April and May 2015 since he resided with a "dependant" with whom he must be assessed as one family unit pursuant to Section 5 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Section 5 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) provides:

Applicant requirements

- 5 For a family unit to be eligible for disability assistance or a supplement, an adult in the family unit must apply for the disability 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.

Section 1(1) of the *Employment and Assistance for Persons With Disabilities Act* (EAPWDA) provides definitions as follows:

"family unit" to mean "...an applicant or 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" has the meaning in section 1.1

Section 1.1 of the EAPWDA provides:

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.

Ministry's position

The ministry's position is that the appellant is not eligible for assistance because he has not applied for assistance on behalf of his family unit, including his girlfriend, as per Section 5 of the EAPWDR. The ministry points out that Section 1 of the EAPWDA defines "family unit" to include an applicant or

recipient and his or her dependants, and the definition of "dependant" includes a person who resides with the person and is the spouse of the person. The meaning of "spouse" for the purposes of the EAPWDA, as set out in Section 1.1(1), includes two persons who "acknowledge to the minister that they are residing together in a marriage-like relationship." The ministry argued that the appellant and his girlfriend have resided together for at least the previous 3 months and they have acknowledged a marriage like relationship. The ministry argued that, as the appellant's girlfriend meets the definition of his "spouse", she is also his dependent and part of his "family unit" and, in order to be eligible for disability assistance, the appellant must apply on behalf of his entire family unit. The ministry argued that the appellant did not inform the ministry of his relationship with his girlfriend when she moved into his residence, he did not apply for assistance on behalf of his entire family unit and, therefore, he received disability assistance for which he was not eligible for the months of March, April and May 2015.

Appellant's position

The appellant's position is that while he admits that he has been residing with his girlfriend since February 2015, he was not aware of the obligation to inform the ministry of this change. The appellant argued that he receives disability because of his learning disability which "involves learning and processing" and his reporting obligation was one of those things he did not understand.

Panel decision

Pursuant to section 5 of the EAPWDR, for a family unit to be eligible for disability assistance, an adult in the family unit must apply for the disability assistance on behalf of the family unit. "Family unit" is defined in Section 1(1) of the EAPWDA as the applicant and his 'dependants' and the first part of the definition of "dependant" is "...anyone who resides with the person." The appellant does not dispute that he and his girlfriend have lived at the same address since February 2015 and that they have now moved together with their child to another province, and the panel finds that the ministry reasonably determined that the appellant's girlfriend "resides" with the appellant.

Section 1 of the EAPWDA provides three different options for falling within the definition of "dependant" and includes being the spouse of the person under sub-paragraph (a). The meaning of "spouse" for the purposes of the EAPWDA has two distinct options as set out in the sub-sections to Section 1.1 and, in sub-section (1), can either include two persons married to each other [Section 1.1(1)(a)] or two persons who acknowledge to the ministry that they are residing together in a marriage-like relationship [Section 1.1(1)(b)]. The appellant did not dispute the ministry's assertion that he and his girlfriend both acknowledged to the Investigative Officer with the ministry that they have been living together "in a relationship" since February 2015. The appellant's girlfriend provided the ministry with a handwritten statement dated June 29, 2015 confirming that "finally in February" she decided to move to the appellant's community permanently to stay and she has been living in the appellant's community since February. In his Request for Reconsideration, the appellant wrote that his "girlfriend" moved in with him and that they recently and unexpectedly had a child together.

Given the ministry's undisputed assertion that an acknowledgement was provided to an Investigative Officer with the ministry by both the appellant and his girlfriend that they were residing together "in a relationship", and the written statement by the appellant's girlfriend as well as the evidence provided by the appellant in his Request for Reconsideration and at the hearing, the panel finds that the ministry reasonably concluded that the appellant's girlfriend is the appellant's "spouse" according to the definition in Section 1.1 of the EAPWDA and, as they reside together, she is his "dependant" and is reasonably included by the ministry within the appellant's family unit.

Although the appellant argued that he has a learning disability which “involves learning and processing” and he was, therefore, not aware of the obligation to inform the ministry that his girlfriend had moved in with him, Section 5 of the EAPWDR stipulates that an adult in the family unit *must* apply for disability assistance “on behalf of the family unit” in order to be eligible for disability assistance. The panel finds that the use of the word “must” gives the ministry no discretion to excuse the appellant from this obligation upon determining that the appellant’s girlfriend is his dependant and, therefore, part of his family unit. The panel notes that the ministry stated at the hearing that the usual process is to ensure that a client understands the application form and the obligations being agreed to, including reading out the application before it is signed by the client, and the appellant acknowledged at the hearing that he understood the requirement to advise the ministry of his change in circumstances when he moved out of his parents’ place and each time he moved thereafter.

Conclusion

The panel finds that the ministry’s decision, which found that the appellant is not eligible for assistance for the months of March, April and May 2015 since he resided with a "dependant" with whom he must be assessed as one family unit, pursuant to Section 5 of the EAPWDR, was reasonably supported by the evidence. Therefore, the panel confirms the ministry’s reconsideration decision.