

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (ministry) reconsideration decision dated November 26, 2015 which held that the appellant was no longer eligible for disability assistance because the ministry determined that she is currently residing with her spouse, who is therefore her dependant, with whom she must be assessed as one family unit pursuant to Sections 1, 1.1 and 3 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) - Section 1, 1.1 and 3

PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The panel notes that the appellant refers to her alleged spouse as her “husband” and has not disputed that they are legally married. Therefore the panel will refer to him as her husband.

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

1. Shelter information, signed and dated June 23, 2015, which lists the appellant as the tenant and her husband as the landlord;
2. Order to pay, dated June 25, 2015, which shows the appellant and her husband as sellers of a property and that \$6, 631.12 is to be applied toward the purchase of another property;
3. Bank transaction history dated September 26, 2015 for a Tax-Free Savings Account (TFSA) in the name of the appellant. It shows a deposit of \$25, 500 on March 27, 2013 and withdrawals of \$17, 525 on June 24, 2015 and another one of \$8, 537.39 on July 22, 2015 thus leaving a zero balance;
4. Letter dated August 10, 2015 confirming a pay-out of \$26, 781.60 on February 14, 2013 for the loss of a vehicle in the name of the appellant’s husband;
5. Personal deposit account history in the name of the appellant showing deposits of \$17, 525 and \$8, 521 on June 25, 2015 and July 23, 2015, respectively, from a TFSA and two separate withdrawals of the same amounts on the same date; and
6. Email between the appellant’s interpreter and a community services worker dated September 30, 2015, in which the interpreter translates that the \$25, 000 was placed into the appellant’s account for an ICBC settlement, that the appellant’s husband withdrew \$17, 525 to purchase a place and \$8, 521 is from her husband towards her daughter’s education. The interpreter also translates that the husband lives in the top floor of the home and the appellant lives in the bottom floor of the home with her children.

In the Notice of Appeal, signed and dated December 3, 2015, the appellant states that she disagrees with the ministry decision because:

- She can prove that she and her husband live in the same house but in different living spaces and she can provide proof;
- She is disabled and cannot work or pay for her prescription medication; and
- Her husband cannot afford to provide for her.

At the hearing the ministry relied on its reconsideration decision and added that :

- The husband and the appellant have to be assessed as a family unit in order to be eligible for assistance,
- If the appellant is married and continues to have a marriage-like relationship with her spouse, she cannot be assessed as a single recipient,
- The appellant and her husband have shown an interdependent financial relationship and the proof is the ICBC settlement, TFSA, and joint tax filing, and
- The appellant has not provided any new information regarding her claim that she would provide evidence to prove that she lives separately from her husband.

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 disability assistance because the ministry determined that she is currently residing with her spouse, who is therefore her dependant, with whom she must be assessed as one family unit pursuant to Sections 1, 1.1 and 3 of the EAPWDA, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

The legislation provides:

Interpretation

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult 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;

"dependent child", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

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.

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

The Appellant's Position

The appellant's position is that she and her husband do not live together but only in the same house.

The Ministry Position

The ministry's position is that the appellant is not eligible for assistance because she no longer satisfies the continuing conditions of eligibility of having applied for disability assistance on behalf of her family unit. The appellant has been living in the same house as her husband, they are married according to the ministry's records, they share parental responsibility and they have financial interdependence. Accordingly they are in a marriage-like relationship and therefore her husband is considered to be her spouse and her dependant and part of her family unit

The Panel Decision

Section 1.1 of the EAPWDA defines spouse to include two persons who are married to each other or acknowledge to the ministry that they are residing together in a marriage-like relationship. The panel finds that appellant has not provided any evidence to establish that she is not married nor has she

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disputed this. The ministry stated that the appellant has filed taxes with Canada Revenue Agency with a married status for the years 2010 through 2014. Therefore, the panel finds that the ministry reasonably concluded that the appellant's husband is her "spouse" and dependant pursuant to section 1(1) and 1.1 of the EAPWDA.

Section 1.1 (2)(a) of the EAPWDA states that two persons are spouses if they have resided together for the last 3 months or 9 of the past 12 months. The appellant has provided shelter information which confirms that she lives in the same home as her husband. She stated that she lives downstairs and her husband lives upstairs. However the panel notes that appellant has not provided any information to establish that the two reside in separate living quarters and her mailing address as it appears on her notice of appeal does not indicate that the home in which she resides has a separate suite or more than one living quarter. Additionally, according to the ministry the appellant lived with her husband in a jointly owned home previous to her current residence as indicated on her December 2010 disability assistance application. This home was sold in June 2015 and the new one, which is the appellant's current residence, was purchased in July 2015 using some of the proceeds of the sale of the previous residence. The appellant does not dispute this. The panel finds that the ministry reasonably determined that the appellant has not provided evidence which demonstrates that she does not reside with her husband.

Section 1.1 (2)(b) of the EAPWDA states that two persons are spouses if the minister is satisfied that they demonstrate financial interdependence and, social and familial interdependence. The appellant has provided financial statements that show she and her husband jointly owned a home as recently as June 2015, they jointly owned a vehicle and once written-off by ICBC the settlement claim was paid to her husband yet deposited in her TFSA, and that the money from her TFSA was withdrawn to purchase a new home in her husband's name which is also the home she currently resides in. The appellant stated that the husband resides with her son and that he paid \$8, 521 towards their daughter's education, thus demonstrating familial interdependence. The panel finds that the evidence establishes that the ministry reasonably determined that there is an interdependent financial and familial relationship between the appellant and her husband.

Since the ministry was reasonable to determine that the appellant's husband is her spouse, with whom she resides, and therefore he is the appellant's "dependant", the panel finds that the ministry is reasonable to determine that the appellant's spouse must be assessed as a part of the family unit for the purposes of eligibility for disability assistance pursuant to section 3 of the EAPWDA.

Conclusion:

The panel finds that the ministry was reasonable to determine that the appellant is not eligible for disability assistance because she is currently residing with her spouse, who is therefore her dependant, with whom she must be assessed as one family unit pursuant to Sections 1, 1.1 and 3 of the EAPWDA. The panel confirms the ministry's reconsideration decision.