

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated November 16, 2015 which held that the appellant was not eligible for income assistance as a sole recipient with no dependants because he was residing with his spouse pursuant to Section 1 and 1.1 of the Employment and Assistance For Persons With Disabilities Act.

PART D – Relevant Legislation

Employment and Assistance For Persons With Disabilities Act, (EAPWDA),
Section 1, definitions of “family unit”, “dependant” and “spouse”.

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

PART E – Summary of Facts

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

A Request for Reconsideration dated November 9, 2015 in which the appellant wrote that 10 months ago he had been approved to be the room-mate of Ms. A. He moved into a new place and received a \$250 deposit and assistance cheques for September and October. After not receiving a cheque for November, the appellant then inquired with the ministry to learn he was no longer eligible as a sole recipient.

The information provided on appeal:

In the Notice of Appeal dated November 20, 2015, the appellant indicated that he had a new advocate and witnesses and was disputing the reconsideration decision because of legislation and policy.

At the hearing, the appellant testified that he had lived apart from Ms. A for 25 years before they became room-mates about 11 months ago at which time the ministry had approved their living arrangement as room-mates. The appellant recalled attending the ministry's office with Ms. A and signing a paper. He indicated that due to a limited level of education he doesn't read and write well but he did understand that the ministry had given Ms. A and himself permission to live together and assistance cheques followed for 10 months. He noted that he and Ms. A share the same last name. Their only child after having a baby moved nearby and rented a house which contained a suite. The appellant and Ms. A moved into the suite when after 2 months, the appellant was told that he no longer qualified as a single recipient and his assistance would be cut off. Neither the appellant nor Ms. A can afford to live alone. The appellant testified that his daughter intends to move away with the grandchild in the New Year and that he plans to move with them.

The appellant's advocate submitted 3 letters of support – one from the daughter and one from a friend of Ms. A and one from the appellant's friend- which all indicated that the appellant and Ms. A were not in a marriage-like relationship. The appellant's advocate indicated that an on-line divorce would cost \$300 and that neither the appellant nor Ms. A could afford to pay towards one.

The ministry stood by the reconsideration decision. When asked why the appellant's status had changed, the ministry responded that when new information comes to light, they must act upon it. In regard to the approval of a legally married couple living together as room-mates without it impacting on the composition of the family unit, the ministry testified that she does not know of any exceptions to policy that would allow this and that there was nothing to indicate that approval had been given in the appellant's file though confirmed that the appellant received disability payments as a room-mate to Ms. A for 10 months.

The panel has admitted the appellant's testimony as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the EAR as this new information helps clarify the appellant's living situation.

Findings of Fact:



The appellant and Ms. A have not divorced.

The appellant and Ms. A share a two-bedroom basement suite.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was not eligible for income assistance as a sole recipient without dependants because he was residing with his spouse. Specifically, the issue is whether the ministry's decision is reasonably supported by the evidence, or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is as follows:

Employment and Assistance For Persons With Disabilities Act,

Section 1, definitions of "family unit", "dependant" and "spouse".

"family unit" means an applicant or a 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"

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.

Employment and Assistance For Persons With Disabilities Regulation,

Applicant requirements

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's position is that the appellant has confirmed that he is married to Ms. A and as per the legislation two persons are spouses of each other for the purposes of the Act if they are married to each other. As the appellant has moved in with his spouse, he no longer satisfies the continuing conditions of eligibility and must apply and be assessed as a couple.

The appellant's position is that he and Ms. A have not filed for divorce for financial reasons, they use the same last name and 11 months ago, they had received ministry approval to be room-mates. The appellant argues that he and Ms. A are not in a marriage-like relationship as they are not financially interdependent and have given the ministry proof by providing bank statements at its request.

Panel's Findings:

While the panel finds that the appellant made a reasonable conclusion that he had approval to be the room-mate of Ms. A as he received assistance for the prior 10 months as a sole recipient with no dependants, the legislation is specific in terms of its definition of a "dependant" and "spouse" and that

the ministry has no discretion with its interpretation. The panel finds that the ministry reasonably determined that the appellant and Ms. A are married and accordingly that Ms. A is the appellant's spouse as defined in section 1.1 of the EAPWDA and that as the appellant and Ms. A reside together, she is a dependant and included in the family unit of the appellant pursuant to section 1 of the EAPWDA.

Section 5 of the EAPWDR provides that income assistance must be applied for on behalf of the entire family unit which is an applicant and his or her dependants. Accordingly, the ministry reasonably determined that the appellant was not eligible for income assistance as a single recipient with no dependants.

The panel therefore confirms the ministry decision.