

PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") December 1, 2015 reconsideration decision that the appellant and her fiancé are living together in a marriage-like relationship, her fiancé meets the definition of a spouse under section 1.1 of the Employment and Assistance for Persons with Disabilities Act, and the appellant is required to apply for assistance as a two person family unit in order to be eligible for assistance by the terms of section 5 of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

EAPWDA Employment and Assistance for Persons with Disabilities Act, section 1 EAPWDR
Employment and Assistance for Persons with Disabilities Regulation, section 5

PART E – Summary of Facts

The evidence before the ministry at reconsideration was

- the appellant has been a recipient of disability income assistance since 2002.
- Ministry records stating that:
 - on August 5, 2015 the appellant advised her fiancé was now living with her and she requested he be added to her file, that he was not currently working due to surgery, that he owned the house across the street which he was renting out. She was advised once he was added to her file the rental income and both homes would be included in the calculation of the income and asset levels.
 - on August 10, 2015 the appellant submitted a written request to have her “spouse” added to her file as a dependent.
 - on August 19, 2015 the appellant advised she would be providing confirmation of the rental income and that one of their properties had been listed for sale. On August 20 she asked if proof of listing the property would be sufficient to maintain eligibility and was advised she must have her spouse added to her file before eligibility could be determined. On September 16 and 20 she was reminded she was required to schedule an appointment to have her spouse added to her file to maintain eligibility.
 - on October 2, 2015 the appellant stated once her house sells she would be married, and was advised she was not eligible for further assistance due to failure to apply for assistance on behalf of the entire family unit. The appellant said her spouse would move out.
 - August 10, 2015 *Note to Worker* with a message from the appellant requesting to add her fiancé to her file, saying this is to fix up her mobile home for sale, that her fiancé has no income and is awaiting a settlement.
 - December 1, 2015 *Request for Reconsideration* submission from an advocate on behalf of the appellant, in which it is stated the appellant had not ever cohabited with her fiancé and they both maintained separate primary residences, that on August 20, 2015 she advised the ministry she was intending to sell her home and cohabit with her fiancé at his primary residence.
 - November 16, 2014 letter from the appellant stating she has never cohabited with her fiancé.
 - November 16, 2014 letter from the appellant's fiancé stating he and the appellant have never lived together in a marriage-like relationship, that they had no jointly held assets and their relationship does not demonstrate any financial dependence or interdependence.
 - A set of documents containing the fiancé's name and address:
 - June 2015 water bill for fiancé's residence.
 - July 2015 hydro bill for fiancé's residence.
 - July 2015 letter and statement of outstanding taxes for fiancé's residence.
 - July 2015 credit union statement addressed to fiancé at his residence.
 - June 2015 Canada Revenue notice of assessment for fiancé.
 - copy of fiancé's driver's licence and social insurance card.
 - copy of cheque signed by fiancé.
 - February 20, 2014 physician's note confirming fiancé's disability.
 - 2013 correspondence relating to fiancé's involvement in a class action.

Before the hearing began the appellant's advocate asked if a law student with the advocacy

organization could sit in as an observer. There being no objections, the student attended the hearing.

At the hearing the appellant's advocate said the appellant is not married and there was no acknowledgement of a marriage-like relationship.

The appellant said she and her fiancé have been in a relationship on and off for about eight years, that he stays with her 75-80% of the time. None of his mail comes to her address, they do not have a financial relationship, except to regain telephone service she had her phone put in his name, but she pays the bills. As a result of head and back injuries in the past she has short-term memory problems and difficulty explaining herself sometimes. Referring to the ministry's October 2, 2015 note, the appellant stated that she had not said her fiancé would move out, but rather that he would not move in.

The appellant's fiancé attended as a witness. He said he lives across the street from the appellant, has lived there since 1996, that she has been his girlfriend on and off for ten to twelve years, that he spends a lot of time at her home, maybe one-half to three-quarters of the time. He said the appellant is poor at communicating and she gets very tense on many occasions. He said they had no shared expenses except she pays for a phone that is in his name. He denied living with the appellant, said they each have their own residence. In reply to questions he said he lives in a "fifth wheel", one of several mobile accommodations on the property. Over his years of residence on the property he has lived in a number of different accommodations: in the main house, in a cabin, a camper and a trailer. He has lived in the current one for about one year. He stated the main house is occupied by tenants, and his father lives in a small building on the property. The house mortgage payments are \$1606, the gross rental revenue is \$1850. The hydro bill for the whole property is in his name. For transportation he borrows his father's car.

The ministry's representative described an unsuccessful attempt by the ministry to visit the appellant's home as background to the ministry's investigation of the appellant's living arrangements. The appellant objected to the admission of this additional oral evidence as it was not included in the package and it had not been made available until the hearing.

The ministry representative explained that to determine residency the ministry looks at things like rent, utilities, hydro, licencing, etc. She acknowledged there was no such information in relation to the appellant's residence in the appeal package, but commented there must have been something submitted to satisfy the investigating officer, such that there was no question that the appellant lived at her given address and not at her fiancé's.

The panel determined the additional oral evidence of the appellant and the witness was admissible under s.22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration.



The panel determined the additional oral evidence of the ministry was not admissible under s.22(4) of the Employment and Assistance Act as it was not in support of the records before the minister at reconsideration, and was not relevant to the decision under appeal.

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PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's reconsideration decision that the appellant and her fiancé are living together in a marriage-like relationship, her fiancé meets the definition of a spouse under section 1.1 of the EAPWDA, and the appellant is required to apply for assistance as a two person family unit in order to be eligible for assistance by the terms of section 5 of the EAPWDR.

Relevant Legislation

Employment and Assistance for Persons with Disabilities 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;

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.

Employment and Assistance for Persons with Disabilities Regulation

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.

Appellant's Position

The appellant argues she is not married to and has never resided with her fiancé, that they maintain separate primary residences, that her fiancé does not meet the definition of a spouse, and neither of them has ever acknowledged to the minister that they reside together in a marriage-like relationship as defined under the EAPWDA. The appellant says it was not her intention to request an immediate change to her family unit, but to begin a process to achieve income support as a family unit of two after completing the sale of her home and moving in with her fiancé.

At the hearing the appellant's advocate said the ministry failed to consider the appellant's evidence, including documents illustrating the fiancé's separate address and the letters from the appellant and her fiancé (incorrectly dated November 16, 2014, should be 2015). The advocate said the August 10, 2015 *Note to Worker* does not say the appellant and her fiancé were living together, but was submitted in anticipation of residing with him in the future. He said in relation to the EAPWDA section 1.1(2) there was no evidence of financial or social/familial dependence or interdependence.

The advocate argued *Hudson v. Employment and Assistance Appeal Tribunal* gives direction to place significant weight on the applicant's evidence unless there is legitimate reason not to do so, but the ministry failed to explain why it did not accept the appellant's evidence. He said *Hudson* says the Employment and Assistance for Persons with Disabilities legislation must be interpreted with a benevolent purpose in mind, which in this case means any doubt as to the interpretation of "spouse" should be resolved the appellant's favour. He argued section 8 of the Interpretation Act requires a liberal interpretation, and the Supreme Court of Canada's decision *Abrahams v Canada* says where social welfare benefits are concerned, ambiguities with the legislative language are to be found in favour of the claimant.

Ministry's Position

The ministry argues the appellant initially said that her fiancé lives with her, that she initiated the request to have him added to her file as a dependant, and specifically referred to him as her "spouse". It is the ministry's position the couple were living together in a marriage-like relationship, and there is no information to show they were not living together. The minister has determined that the appellant and her fiancé reside together in a marriage-like relationship, her fiancé meets the definition of a spouse, and is considered to be her dependant and part of her family unit.

In responding to the advocate's arguments based on case law and the Interpretation Act at the hearing, the ministry's took the position that the Tribunal is based on its own legislation, that *Hudson* has no bearing, is not a precedent, that they use section 19 of the Interpretation Act, and that no Supreme Court ruling has any precedence in this situation.

Panel's Decision

Section 5 of the EAPWDR requires an adult in the family unit to apply for disability assistance on

behalf of the whole family, with two exceptions that do not apply in this case.

Section 1(1) of the EAPWDA says “family unit” includes a recipient and the recipient's dependants. It defines “dependant” to include a spouse, and section 1.1 has two definitions of spouse:

- (1) two persons who are married or who acknowledge to the minister they are residing together in a marriage-like relationship.
- (2) two persons residing together if
 - (a) they have resided together for at least the previous 3 consecutive months or 9 of the previous 12 months and
 - (b) the minister is satisfied that the relationship demonstrates financial dependence or interdependence, and social and familial interdependence, consistent with a marriage-like relationship.

In the Reconsideration Decision the ministry relied on its record that the appellant said she was living with her fiancé, the appellant's use of the word “spouse” in the August 11, 2015 written request, and the absence of verification her fiancé does not live with her, as acknowledgement of a marriage-like relationship.

The appellant denies having told the ministry that she was living with her fiancé. Whether or not the ministry's record is an accurate record of the appellant's words, it does not constitute an acknowledgement of residing together in a marriage-like relationship.

In the August 10, 2015 written request, the wording used by the appellant is “I would like to add my now fiancé to my file as spouse.” The appellant's evidence is the request was submitted in anticipation of residing with her fiancé in the future. The panel finds the request could be interpreted as anticipatory rather than a description of the existing relationship, and is not an explicit acknowledgement of an existing marriage-like relationship.

The appellant and her fiancé specifically deny they acknowledged residing together in a marriage-like relationship. It is their evidence her fiancé stays with the appellant half to 80% of the time, and that the fiancé maintains a separate residence. The evidence of the fiancé's separate residence is supported by copies of various documents showing his address. The ministry said there is an absence of verification her fiancé does not live with her, but did not address the documents provided showing a separate address for the fiancé.

The panel finds the ministry's determination of acknowledgement of a marriage-like relationship is not reasonably supported by the evidence.

The second definition in the legislation uses the criteria of two people living together for at least the previous three consecutive months or 9 of the previous 12 months, along with demonstration of financial dependence or interdependence and social and familial interdependence. The only indication from the ministry as to length of cohabitation is the ministry record that on August 5, 2015 the appellant said her fiancé was now living with her, and that on October 2, 2015 she said he would move out. The appellant denied making either statement, but in any event that period of time is less than three months. The ministry provided no evidence of financial dependence or interdependence,



which is also denied by the appellant, nor of social and familial interdependence. The panel finds the ministry's determination that the appellant's fiancé meets the definition of a spouse is not reasonably supported by the evidence.

The panel finds the ministry's determination that the appellant's fiancé is considered her dependant and part of the family unit, and therefore she is required to apply for assistance as a two person family unit to be eligible for assistance, is not reasonably supported by the evidence and rescinds the decision.