

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated November 3, 2015 which found that the appellant is not eligible for assistance as a sole recipient since he is residing 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 and 1.1

PART E – Summary of Facts

The initial appeal hearing had been adjourned to allow the appellant to consult with an advocate and the appellant advised that he had done so and wished to represent himself on the appeal.

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

- 1) Shelter Information sheet dated October 9, 2009 in which the appellant is renting or intended to rent at another premises [his parents' residence] for the sum of \$375 per month including utilities;
- 2) Residential Tenancy Agreement with the appellant for the subject premises, with the tenancy to start on March 1, 2013 for a fixed term of 6 months ending on August 30, 2013 at which time the tenancy continues on a month-to-month basis or another fixed length time unless the tenant or the landlord gives written notice to end the tenancy. The tenant is to pay the rent of \$985 each month on the first day of each month;
- 3) Letter dated October 20, 2015 to the appellant in which the ministry advised the appellant that he was no longer eligible for assistance as a result of his failure to declare his dependent relationship with the mother of his child with whom he has been residing while receiving assistance since 2013. The ministry has evidence that the appellant entered into a lease agreement for premises shared with the mother of his child, the MCFD [Ministry of Children and Family Development] confirmed that the appellant is living common law with the mother of his child and the appellant had a child together with her. The appellant was advised that he will be assessed for an overpayment from 2013 to present; and,
- 4) Request for Reconsideration dated August 10, 2015.

In his Request for Reconsideration, the appellant wrote that:

- The information provided by MCFD is inaccurate.
- The mother of his child lives at different premises.
- The subject premises were used as a "home visit meeting location" to establish that a suitable home environment is available to unite their family for an MCFD file regarding their child.
- He was full-time at a post-secondary institution ("school") and used the subject premises for certain days to attend school as the bus service to his parents' residence is still unavailable.

Additional Information

In his Notice of Appeal dated November 12, 2015, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that:

- The subject premises have been maintained with rental payments by cheques from his parents made payable to the landlord. Banking records of these payments are available.
- His father has a Power of Attorney for the appellant due to concerns related to the appellant's disability, which is a mental disorder.
- He requires financial management support by his father.
- Initially, the purpose of securing the subject premises was to provide a residence within walking distance to his school. He graduated in June 2015.
- His disability does not allow for consistent travel on public transit. It became necessary to reside at the subject premises to continue attending school.
- He was regularly attending appointments with his disability services coordinator at the school who was aware of a "No Contact Order" between him and the mother of his child.
- He and the mother of his child have a child together and they are seeking to unite their family. They have a file with MCFD and their child is in foster care.

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- The home visit reported on by MCFD that indicates they are residing together is inaccurate. They were simply trying to show to MDFD that a suitable home environment was available for an united family at the time of their home visit.
 - MDFD was also aware that there had been “No Contact Orders” in place pending court appearances. He did not reside with the mother of his child at the subject premises because it was not possible, as determined by court order.
 - The mother of his child resides at another residence with her grandmother (“grandmother’s residence”) who requires her regular support and assistance.
 - He and the mother of his child are focused on uniting their family; however, family issues and obligations have required separate residences to date.
 - The mother of his child is not on the rental agreement for the subject premises.

At the hearing, the appellant provided the following additional documents:

- 1) Shelter Information dated March 13, 2013 for the mother of the appellant’s child for the subject premises, with a start date of March 1, 2013 and indicating the client’s portion of the rental amount of \$595 per month including utilities and 1 adult at the address indicated as “self;”
- 2) General Power of Attorney dated April 8, 2013 by the appellant to his father;
- 3) Bail conditions acknowledged by the appellant on July 29, 2013 with the conditions including a requirement to reside at his parents’ residence and to not change his residence at any time without first obtaining the written consent of the bail supervisor and to have no contact or communication, directly or indirectly, with the mother of his child pending a court date on August 12, 2013;
- 4) Letter dated July 31, 2013 addressed to the mother of the appellant’s child at the subject premises and enclosing a copy of the appellant’s bail conditions and advising that she is not to have contact with the appellant;
- 5) Subpoenas to a Witness dated August 9, 2013 and July 21, 2014 and November 18, 2014 addressed to the mother of the appellant’s child at the subject premises;
- 6) Letter dated August 9, 2013 addressed to the mother of the appellant’s child at the subject premises from the Ministry of Justice enclosing a victim impact statement for completion;
- 7) Undertaking Given to a Justice or a Judge by the appellant dated May 28, 2014 ;
- 8) Letter dated May 12, 2015 in which a community service worker confirmed that the appellant and the child’s mother are currently on a waiting list for couples’ counseling;
- 9) Bank account statements covering the period June 2015 to November 2015 in the appellant’s name and addressed to his parents’ address;
- 10) Cable bills for October and November 2015 in the appellant’s name for services at the subject premises;
- 11) Letter dated October 15, 2015 addressed to both the appellant and the child’s mother at the subject premises in which a social worker with MCFD provided a schedule of visits with the child. The social worker wrote that visits were previously together as a couple and she has been advised that they are no longer together and requests that they have visits separate and apart from each other to alleviate any conflict;
- 12) Bank account statement covering the period November 2015 to December 2015 in the appellant’s name and addressed to the subject premises;
- 13) Letter dated November 2, 2015 in which a lawyer requested confirmation of separation from the mother of the appellant’s child and advising of an upcoming pretrial conference along with a checklist for working well with a lawyer;
- 14) Letter dated December 11, 2015 in which the appellant’s parents wrote that:

- The appellant has been a Person With Disabilities (PWD) client for many years.
- In the past couple of years, the appellant has had a fragmented relationship with the mother of his child, who was born in March of 2014 and seized by MCFD at birth and is still in MCFD's care and control.
- During this time, there have been periods when "No Contact" Orders have been in place and MCFD has forced separate lives on them regarding their child. MCFD has encouraged the child's mother to attend battered women's programs and to terminate any and all relationship with the appellant in order to have access to the child.
- MCFD has ensured that the appellant and the child's mother do not have joint visits with the child.
- They provide emotional support to the appellant and meet many other needs.
- The appellant's relationship with the child's mother is at best somewhat "tenuous" and most times when they pick up the appellant the child's mother is not there and frequently he does not know where she is.
- The child's mother spends the bulk of her time with her grandmother who requires assistance with many aspects of her daily life.
- To date, they have not considered the relationship to be a continuous or permanent relationship for many reasons which include their "rocky" and frequently non-amicable state of affairs on any given day, the mental health of both the appellant and the child's mother, and her commitment to her grandmother; and,

15) BC Hydro account statements dated December 4, 2015 and January 6, 2016 in the appellant's name at the subject premises.

At the hearing, the appellant stated that:

- He believes the 2 or 3 Contact Orders describes the status of his relationship with the mother of his child as being tumultuous and not in any shape or form "common law."
- He has spent some time serving a jail sentence and he was not allowed to have contact with the child's mother.
- He has provided bank statements in his name which do not show activity by the child's mother and there is no financial interdependence.
- He has a letter from his parents that describes the relationship between him and the child's mother. They have separate lawyers for dealing with MCFD regarding their child.
- He has provided utility bills that are all in his name and not in the name of the child's mother.
- He originally moved into the subject premises because it is too hard for him to use public transportation on a consistent basis as a result of his episodes and he needed to be at his school on school days.
- He started a tenancy at the subject premises in March 2013 and initially the intention was to maintain that address so he could go to school. Then, within a short time, the child's mother moved in and they were on good terms at first. The relationship became tumultuous and they ended up not being able to live together legally, with No Contact Orders and bail conditions. He managed to stay in school and to graduate.
- In August 2014 there was a time of separation between them, and the child's mother went to her grandmother's residence and stayed there for a month or two. She received her benefits at the subject premises for a while before that time.
- His assistance goes to his parents' residence and his parents would forward the payments to him.
- Through all of this, he and the child's mother have been trying to reconcile. They had two

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different ministries with different criteria and expecting them to present differently and it was very confusing.

- MCFD wanted them to present as a couple and they tried to do so because their child was taken at birth and they want to show that they have a home that their child can be returned to. There was a reason that they were presenting this way to MCFD in July 2015.
- On the other hand, the other ministry expects that they are exclusively separate and not together as a couple.
- Many of the comments made by the social worker with MCFD are not true or accurate and the social worker is no longer working on their file.
- Their relationship has been very “topsy-turvy” and they would like to change this for the benefit of their child. They are on a waiting list to get some counseling as a couple.
- They do see each other and recognize that there has been confusion about the status of their relationship. They are trying to maintain income and an environment where their child can be returned but the child’s mother has also taken on the role of caring for her grandmother.
- He relies on his father to monitor him because of financial concerns and his father has a power of attorney to manage his affairs. He has a mental condition and he has not done anything to mislead anyone. He has made sure to continue his education and he is trying not to have conflict with the mother of his child.
- Around the time of his court appearance, he went back to live at his parents’ residence and the child’s mother remained in the subject premises. Prior to the No Contact Order, he and the child’s mother were living together “on and off.”
- While he was at his parents’ residence, he thinks he did not pay rent at the subject premises. There have also been room-mates at the subject premises that were “just room-mates.”
- He currently resides at the subject premises. While his intention is to reconcile with the child’s mother, they have lived at different places for most of these dates and there is no “continuing thread.” Their priority is to get their child released from foster care.

The ministry relied on the reconsideration decision as summarized at the hearing.

Admissibility of New Information

The ministry did not object to the admissibility of any of the additional documents. 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 as a sole recipient since he is residing 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 the mother of his child, 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(2), includes two persons who have resided together for at least the previous 3 consecutive months or 9 of the previous 12 months and the ministry is satisfied that the relationship demonstrates financial dependence or interdependence and social and familial interdependence consistent with a marriage-like relationship.

The ministry argued that the residency requirement has been met as the appellant signed a rental agreement for the subject premises beginning in March 2013 and the landlord for the subject premises advised the ministry that the appellant lives in the premises with the child's mother. The ministry further argued that following a visit to the subject premises, the MCFD advised that the appellant and the mother of his child lived together in the subject premises and the MCFD records indicate that they have been living together since 2013, except for a brief period between March and June 2015. The ministry argued that MCFD also advised that the appellant had stated that he and the mother of the child had been living together as "common law partners" for 3 years.

The ministry argued that the relationship between the appellant and the alleged dependant demonstrates financial interdependence consistent with a marriage-like relationship as the appellant currently pays rent and utilities for their joint residence and the appellant indicated to MCFD that he and the child's mother share living expenses.

The ministry argued that the relationship also demonstrates social and familial interdependence consistent with a marriage-like relationship since the appellant and the alleged dependent have a child together, born in March 2014, and the appellant stated that they were meeting with MCFD to unite their family and establish a suitable home environment. The ministry argued that the appellant indicated to MCFD that the appellant and the child's mother are "common law partners" and the landlord also stated that they present as a couple.

The ministry argued that, as the mother of the appellant's child 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 that he was residing with the mother of his child, he did not apply for assistance on behalf of his entire family unit and, therefore, he is not eligible for disability assistance as a sole recipient.

Appellant's position

The appellant's position is that his family unit does not include the alleged dependant as she is not a "dependant" since she is not his "spouse" according to the stated definitions. The appellant admitted that he has been residing with the alleged dependant "on and off" but argued that there were times when "No Contact" Orders legally prohibited them from having contact and he lived at his parents' residence. The appellant argued that the alleged dependant is not on the rental agreement for the subject premises and has also lived some of the time at her grandmother's residence since she has taken on the role of caring for her grandmother. The appellant argued that the home visit reported on by MCFD that indicated they are residing together is inaccurate since he and the child's mother were simply trying to show to MCFD that a suitable home environment was available to unite their family.

The appellant argued that he and the child's mother made comments to MCFD based on their desire and their priority to have their child returned to them and they needed to show a stable relationship. The appellant argued that his parents have confirmed in their letter that they have not considered the relationship between the appellant and the child's mother to be a continuous or permanent

relationship for many reasons which include their “rocky” and frequently non-amicable state of affairs on any given day. The appellant argued that he and the child’s mother have retained separate lawyers in dealing with MCFD.

The appellant argued that his finances are separate, his father has a Power of Attorney and his parents receive the funds for his rent at their residence and issue cheques to the landlord for the subject premises. The appellant argued that he pays for the various expenses for the subject premises, including hydro services and cable, and these accounts are in his name only. The appellant argued that the mother of his child does not have access to the funds in his bank accounts, which are in his name only.

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 the alleged dependant have lived together at the subject premises at different times. He entered into a rental agreement for the subject premises in March 2013 and the appellant stated at the hearing that he and the child’s mother were residing at the subject premises together and were on good terms at first. The Shelter Information for the child’s mother dated March 13, 2013 indicated her intention to rent the subject premises with a start date of March 1, 2013 with 1 adult at the address indicated as “self,” although the appellant stated that he was also living there at that time. Both the appellant and the child’s mother told MCFD in July 2015 that they were residing at the subject premises together, and the ministry wrote that multiple pieces of information from the ministry file for the child’s mother confirmed that she resides at the subject premises. Therefore, the panel finds that the ministry reasonably determined that the mother of the child was residing with the appellant.

Section 1 of the EAPWDA provides three different options for falling within the second part of 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 is set out in Section 1.1 of the EAPWDA and requires that the parties have resided together for a specific period of time. The ministry found that the appellant and the alleged dependant have resided together at the subject premises continuously since March 2013, with the exception of the child’s mother moving out for a brief period between March and June 2015, based on the information that MCFD provided to the ministry and the appellant paying rent and utilities for the subject premises, and that the residency requirement had been met.

At the hearing, the appellant was not clear on the timelines, but he stated that he resided with his parents during the time of the No Contact Orders in July and August 2013 and that in August 2014 there was a “time of separation” and the child’s mother went to her grandmother’s residence and stayed there for a month or two. The MCFD reported from observations made during a home visit in July 2015 that the appellant and the child’s mother were residing together since 2013 except for a brief period between March and June 2015, the ministry wrote that multiple pieces of information from the ministry file for the child’s mother confirmed that she resides at the subject premises, and there was no evidence provided by the appellant to establish that he and the child’s mother were not residing together at the time of the ministry’s denial in October 2015. In the letter from the appellant’s parents dated December 11, 2015, they wrote that “most times” when they pick up the appellant the child’s mother is not there, and frequently the appellant does not know where she is, implying that this is the usual place of residence for the child’s mother. The panel finds that the ministry reasonably

determined that the residency requirement in Section 1.1(2)(a)(i) of the EAPWDA had been met since residing together from July to October 2015 meets the requirement that they have resided together for at least 'the previous 3 consecutive months.'

The meaning of "spouse", as set out in Section 1.1(2)(b) of the EAPWDA, also requires evidence that the relationship between the parties demonstrates financial dependence or interdependence and social and familial interdependence consistent with a marriage-like relationship. The panel finds that the ministry reasonably determined that the relationship demonstrates financial dependence or interdependence consistent with a marriage-like relationship since the appellant currently pays rent and utilities for the residence that they share, and the child's mother has also contributed to the rent for the subject premises, as shown in her Shelter Information dated March 13, 2013. While the appellant pointed out that his bank accounts are in his name only, he acknowledged that he pays the expenses for the hydro services and the cable bills, which are shared with the child's mother. The MCFD social worker reported to the ministry that the appellant indicated to her that he and the child's mother share living expenses and that they could not "make ends meet" living off a combined file, although the appellant stated at the hearing that some of the information from the social worker was not true or accurate.

The panel finds that the ministry reasonably determined that their relationship also demonstrates social and familial interdependence consistent with a marriage-like relationship, primarily since the appellant and the alleged dependent have a child together, born in March 2014. The appellant stated at the hearing that he and the child's mother met with MCFD to show that they are able to offer a stable and suitable home environment so that their child will be returned to them and they will be able to unite their "family." At the hearing, the appellant emphasized the priority for him and the child's mother of having their child returned to them and he also thereby acknowledged that they are trying to work together to establish stability for their family. The MCFD social worker reported that the appellant indicated to her that he and the child's mother are "common law partners," the landlord also stated that they presented to him as a couple, and the appellant stated at the hearing that they are working on "reconciling" and he pointed to their efforts to obtain counseling for couples.

Although the appellant stated that he and the child's mother have different lawyers for dealings with MCFD, this is sometimes required when there may be a conflict of interest in a matter. The appellant also pointed to his parents' comments in their letter dated December 11, 2015 that they have not considered the relationship between the appellant and the child's mother to be a continuous or permanent relationship for many reasons which include their "rocky" and frequently non-amicable state of affairs on any given day, the mental health of both the appellant and the child's mother, and her commitment to her grandmother; however, the parents also thereby acknowledged that there is social and familial interdependence and they are, instead, questioning the permanence of the relationship. In summary, the panel finds that the ministry reasonably concluded that the alleged dependant 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 was reasonably included by the ministry within the appellant's family unit.

Conclusion

The panel finds that the ministry's decision that the appellant did not apply for disability assistance on behalf of his entire family unit and, therefore, the appellant is not eligible for assistance as a sole recipient pursuant to section 5 of the EAPWDR was reasonably supported by the evidence and the panel confirms the decision.