

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated January 5, 2016 in which the Ministry determined that the Appellant is ineligible for disability assistance (“DA”) as a sole recipient pursuant to section 5 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). The Ministry found that the Appellant had not applied for DA on behalf of his entire family unit which includes a spouse as defined in section 1.1(2) 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(2)
Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 5

PART E – Summary of Facts

The evidence before the Ministry at reconsideration consisted of the following:

1. A Request for Reconsideration signed by the Appellant on December 21, 2015 with attached submission dated December 20, 2015. The Appellant stated he is not in a romantic relationship with another resident of his home (“the housemate”) and has never been in a romantic relationship with her. The Appellant stated that due to the housemate’s diminishing health, he has been her personal care assistant more than anything else and assists her with daily meals as she becomes less able to stand at a stove. He described a financial arrangement in which the housemate transfers her monthly cheque into his account and he combines her rent portion with his money and purchases food for the month for both of them. He ensures that the rent gets paid from the balance, as well as utilities and sundry items afterwards. The Appellant explained that it is easier to be accepted as tenants, when moving to a new place, if the landlord believes they are a couple.
2. An e-mail from the Appellant’s landlord to the Ministry dated November 23, 2015 in response to a phone call from the Ministry. The landlord stated that he rented a two bedroom basement suite to the Appellant at \$825 per month including utilities effective November 1, 2015. He stated that the Appellant told him he would be residing in the unit with his wife. Later on, another tenant moved in with them and there was an issue with smoking inside the suite. The Appellant stated they will move out by the end of December 2015.
3. Bank statements for the Appellant’s account from November 18, 2014 to October 30, 2015. The statements show deposits ranging from \$1,300 to \$1,370 (notation, housemate’s first name) for most months. Debits for grocery stores, gas stations, a telephone provider, and miscellaneous stores and businesses are indicated on the bank statements.
4. Tax assessments for the Appellant for 2012, 2013, and 2014. He reported his marital status as single for 2012 and separated for 2013. His marital status is not indicated for 2014.
5. Two Residential Tenancy Agreements signed by the Appellant and the housemate, dated as follows:
 - March 3, 2014 with attached security deposit receipt for \$367.50, and
 - November 1, 2014 indicating monthly rent of \$825.
6. A Ministry Shelter Information form for the Appellant dated November 14, 2013, indicating the following:
 - Rent: \$800 per month plus hydro;
 - Two adults at the given address, each person’s portion \$400;
 - Notations under Landlord Information, “They were like couple - Dec. 11, 2015”, and “another guy there, maybe a son?”
7. Information from the Ministry record indicating the following:
 - The Appellant is currently receiving DA as a sole recipient, his file re-opened in 2009.
 - On November 5, 2015, the Ministry received an allegation indicating he was living in a common law relationship with his roommate.

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- On November 23, 2015, the Ministry spoke to his current landlord who stated the Appellant moved in with his wife. A previous landlord also reported that the Appellant and his roommate presented as a couple.
 - On December 11, 2015, the Appellant submitted bank statements and tax assessments to the Ministry. The bank statements indicated deposits of approximately \$1,300 per month. The Appellant confirmed that the deposits were from the housemate who transfers money to his account as she has mobility issues and cannot get to the bank. The Appellant reported that he withdraws the funds for her. The Ministry noted that there do not appear to be withdrawals for similar amounts or for rent. The Appellant reported that the housemate pays the rent and he pays for food and it “all works out in the end.”
 - On December 18, 2015, the Ministry contacted the Appellant’s previous landlord who stated that the Appellant and the housemate presented as a couple when they lived there.
 - The Ministry’s file review indicated the Appellant and housemate have lived together since April 2013.

Additional submissions

With the consent of both parties, the appeal proceeded by way of a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*. In an e-mail to the Tribunal, the Ministry indicated its submission on appeal will be the reconsideration summary.

In his Notice of Appeal dated January 13, 2016, the Appellant stated that he is not, and never was, in a common law relationship with the housemate. He stated that the housemate had recent medical problems resulting in a loss of mobility and she needs assistance with everyday living.

In a late submission from the Appellant dated February 18, 2016, the Appellant stated his position on appeal (which the panel will address in Part F – Reasons). He reported that the housemate is now his ex-roommate as he has been "kicked out" for non-payment of rent. When he was living there, the housemate transferred money to his account so that he could pay their "mutually agreed upon roommate bills." Due to the housemate's medical conditions which prevented her from doing her own banking, the Appellant handled household bills on her behalf and had a relative move in to take care of her other needs.

The panel chair accepted the late submission in accordance with the Tribunal’s guidelines. The Ministry responded by indicating that the reconsideration summary would continue to be the Ministry’s submission on appeal. The panel finds that the Notice of Appeal and late submission update and corroborate the information in the reconsideration record that described the housemate's medical conditions, the financial arrangement for household bills, the presence of another adult at the residence, and the Appellant’s potential move out. The panel therefore admits the submissions pursuant to section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister at the time the decision being appealed was made.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reconsideration decision of January 5, 2016 that determined the Appellant is ineligible for DA as a sole recipient pursuant to section 5 of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. The Ministry found that the Appellant had not applied for DA on behalf of his entire family unit which includes a spouse as defined in section 1.1(2) of the EAPWDA.

The following sections of the legislation apply to the issues under appeal:

EAPWDA – 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,

"**family unit**" means an applicant or a recipient and his or her dependants;

EAPWDA – Meaning of "spouse"

1.1 (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.

EAPWDR - 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.

The Appellant argued that his relationship with the housemate is “totally platonic” and in his role as her roommate he assists her with daily living activities. He did not dispute that they lived together since 2013 and presented as a couple to their landlords. However, it was easier to find a place to rent if the landlord thought they were a couple and he acknowledged that deceiving the landlord “casts a dark shadow” upon him. Regarding the financial arrangement, the Appellant argued that he and the housemate combine their funds so that he can look after the bills. Due to her medical conditions and mobility issues, it is very difficult for the housemate to get to the bank.

The Ministry argued that the Appellant’s family unit includes a spouse for the purpose of EAPWDR section 5. The Ministry submitted that the housemate is a spouse under EAPWDA section 1.1(2) because the couple has lived together since 2013 and their relationship demonstrates the financial and social/familial interdependence of a marriage-like relationship. The Ministry argued that it would be more consistent with a caregiver relationship to keep finances somewhat separated and provide separate rent cheques to the landlord. The Ministry further argued that the Appellant’s tax assessments did not provide any support for his claim that he and the housemate were not in a marriage-like relationship.

Regarding social/familial interdependence, the Ministry noted the Appellant did not give any indication of being paid or compensated for assisting the housemate as a caregiver. Further, they presented as a couple “on multiple occasions”. The Ministry argued that the combination of the Appellant supporting the housemate in daily living activities and presenting as a couple to their landlords is indicative of social and familial interdependence consistent with a marriage-like relationship.

Panel’s decision

The panel finds that the Ministry reasonably determined that that the Appellant is ineligible for DA as a sole recipient pursuant to section 5 of the EAPWDR. This section requires an adult in the family unit to apply for DA on behalf of the family unit. Under section 1(a) of the EAPWDA, the family unit includes both the recipient and their spouse. In order to be considered a spouse for the purpose of the Act, two persons must have resided together in accordance with the time frame set out in section 1.1(2)(a) [this criteria is not in dispute as both parties accepted that the Appellant and housemate have lived together since 2013]. In addition, under section 1.1(2)(b), the minister must be satisfied that the relationship demonstrates both financial dependence/interdependence and social/familial interdependence consistent with a marriage-like relationship.

As noted by the Ministry, the Appellant and the housemate combined their finances as evidenced by the bank statements that show monthly deposits from the housemate to the Appellant’s account. The Appellant stated he made sure that rent and other expenses were paid out of the combined funds, though he also indicated that the housemate paid the rent while he assisted her with banking. Based on the Appellant’s statement that “it all works out in the end”, the Ministry found that the arrangement to not keep separate financial records was by choice and there was no indication that the Appellant and the housemate maintained separate finances to ensure they were not financially supporting each other. Given the combined funds and lack of separate financial records, the panel finds that the Ministry reasonably concluded that the financial arrangement between the Appellant and the housemate was consistent with financial interdependence of a marriage-like relationship pursuant to EAPWDA section 1.1(2)(b)(i).

Regarding the Appellant's tax assessments, the panel notes that the information for marital status is not consistent over the three years that were provided [single in 2012, separated in 2013, and no marital status recorded on the 2014 assessment]. The panel therefore finds that the Ministry reasonably gave the information little weight. The Ministry submitted that the assessment notices were not enough to establish dependency status on their own, and given the evidence regarding combined finances, the panel finds that the Ministry reasonably determined that the information provided did not support the Appellant's claim that he and the housemate were not in a dependency relationship.

Regarding social/familial interdependence pursuant to section 1.1(2)(b)(ii) of the EAPWDA, there was no evidence of any formal caregiver relationship between the Appellant and the housemate [no indication the Appellant was being compensated as a caregiver as noted by the Ministry]. Further, the Appellant acknowledged that he deceived his two most recent landlords by presenting as a couple. The Ministry drew attention to the inconsistency between what the Appellant told his landlords about the nature of his relationship with his housemate and what he told the Ministry. In addition, the Ministry was unwilling to give weight to his explanation that he deceived the landlord in order to increase the chances of being accepted as tenants while in actuality he and the housemate were roommates. Given the lack of any formal caregiving documentation as well as the evidence from the Appellant's landlords confirming that he presented the housemate as his spouse, the panel finds that the Ministry was reasonably satisfied that the relationship demonstrated social and familial interdependence consistent with a marriage-like relationship pursuant to section 1.1(2)(b)(ii).

Conclusion

The panel finds that the Ministry's determination that the Appellant was ineligible for DA pursuant to section 5 of the EAPWDR was reasonably supported by the evidence. The panel confirms the reconsideration decision in accordance with sections 24(1)(a) and 24(2)(a) of the *Employment and Assistance Act*.