

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated March 3, 2016, which held that the appellant is not eligible for disability assistance in accordance with section 5 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because she has not applied for assistance on behalf of her family unit which includes X, who is both her “spouse” and “dependant” as defined respectively in sections 1.1(1) and 1(1) of the Employment and Assistance for Persons with Disabilities Act (EAPWDA).

PART D – Relevant Legislation

EAPWDA, sections 1(1) and 1.1(1)
EAPWDR, section 5

PART E – Summary of Facts

Information before the ministry at reconsideration

The appellant and X are legally married and are joint owners of a property on which they both reside. The appellant advised the ministry that she lives in the house on the property while X lives in a travel trailer on the property. X uses electricity from the house via an extension cord, uses the kitchen and bathroom in the house, and watches TV in the house. The appellant is not allowed into the trailer. The appellant told the ministry that she did not have the funds to move and that X refuses to provide any of the documents required to add him to her file. The appellant and X separated 3 years ago, do not socialize and merely tolerate each other's presence. The appellant pays for the hydro while X pays the mortgage and property taxes.

Information provided on appeal

In her March 31, 2016 appeal submission, the appellant writes that the travel trailer is a fully equipped self-contained unit with a 4 piece bathroom and a kitchen area with a fridge, stove top, oven, sink and storage. There is also a dining/lounge area with additional storage. It is equipped with an electric/propane furnace and all the needed "hook ups" for power, water sewer, TV/cable etc. None of these services are set up. As co-owner of the house, X feels it is his right to use the bathroom, kitchen, and laundry at his convenience with no regard for the appellant's privacy and personal space. The appellant also describes long-standing difficulties and abuse in her relationship with X. Once separated, X withdrew all financial support for the appellant. The appellant is currently without running hot water and the gas heat is disconnected. She relies on a small space heater and must boil water for bathing and cleaning. Since her ministry assistance was discontinued in November 2015, she has had no choice but to beg and borrow in order to get medication and food; her main reason for applying for assistance was to get help to pay for her inhalers. The appellant has been unable to find an affordable place to rent.

The appellant also submitted a March 24, 2016 letter from a friend who describes difficulties experienced by the appellant during her marriage to X, and that they have not been an intimate couple for years, and an undated note from her aunt who states that to the best of her knowledge, the appellant and X lead separate lives.

The appellant's advocate provided a 39-page submission which restates some of the available information but is largely comprised of argument with attached case law. The argument is summarized in Part F of the panel's decision.

At the hearing, the appellant stated that there have been no attempts to sell the house, noting that its value wouldn't be realized given the need for major repairs. The appellant states that when applying for assistance she disclosed her living arrangements and does not know why ministry records don't reflect that fact. She acknowledged that she was identified as a dependant on X's most recent bankruptcy documents but that she does not know why X did that and only became aware of X's bankruptcy application after it was made.

At the hearing, the ministry reviewed information in the appeal record, and sought to clarify that the

appellant was provided with assistance, despite shelter documents not being provided at the time of application, because she was fleeing an abusive relationship. The ministry was aware that the appellant and X jointly owned a home when the appellant applied for assistance but was not aware that the appellant and X were in the same house.

The ministry did not object to the admission of the additional information provided by the appellant on appeal. As the new information comprised additional details consistent with the previous information, it was admitted by the panel as information in support of the information and records before the ministry at reconsideration pursuant to section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision which held that in accordance with section 5 of the EAPWDR the appellant is not eligible for disability assistance because she did not apply on behalf of her family unit is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. That is, was the ministry reasonable in determining that X is both the spouse and dependant of the appellant and therefore part of her family unit as defined in sections 1.1 and 1 of the EAPWDA?

Relevant Legislation – sections 1(1) and 1.1 of the EAPWDR and section 5 of the 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,
- (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;

"spouse" has the meaning in section 1.1;

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

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- (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.

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's position is that while legally married to X, she does not reside with him and therefore he is not her dependant or a member of her family unit. She does not consider herself to be "living" with X as they lead separate lives. They share services and facilities, despite the appellant's objection, but they do nothing together other than argue and "exist" on the same property.

In support of this argument, the appellant's advocate notes that "reside" is not defined in the legislation and argues that when considering other legislative schemes respecting family and tax law, and Canada Pension Plan (CPP) benefits legislation, the courts have held that married individuals under the same roof may be viewed as "living separate and apart" so that individuals are not penalized by loss of access to benefits or entitlements because of their financial situations. A number of cases are referenced, including *Gartner v. Canada*, in which the court held that the wife was eligible for the Canada Child Tax Benefit as assessed solely on her income because she and her spouse were living separate and apart while under the same roof. The advocate also cites section 3(4) of the provincial *Family Law Act* which provides that "spouses may be separated despite continuing to live in the same residence..." In the appellant's circumstances, having been separated from X, she has the right to seek a divorce, apply for spousal support, and to seek a division of CPP pension credits earned during the marriage prior to its breakdown.

That "reside" should be interpreted so as not to include X as the appellant's dependent family member is also supported by section 8 of the *Interpretation Act*, jurisprudence and the principles of statutory interpretation, which require a large and liberal interpretation of benefits conferring

legislation and that doubts or ambiguities arising from the language of the legislation be resolved in favour of an applicant.

The advocate argues that by forcing the appellant to apply for assistance on behalf of X as part of her family unit, she is being stripped of the benefits of separation. Furthermore, to view X as part of the appellant's family unit gives rise to possible exposure to liability for debts incurred by X subsequent to the time the marriage broke down because the *Family Law Act* assesses what are considered to be family debts for which both spouses are equally responsible as those incurred prior to separation.

If the appellant is forced to apply for assistance on behalf of X, she will not be able to meet her basic needs, including her medications, will lose her transportation and telephone resulting in further isolation and risk due to her health issues, and will be forced back into an abusive relationship. This would be an absurd result which is not consistent with a principle objective of the EAPWDA and EAPWDR which is to promote the health and well-being of persons with disabilities, specifically those with limited financial means.

Ministry's position

The ministry's position is that because the appellant and X live on the same property with X using electricity from the house, the bathroom and kitchen facilities, and the house to watch TV, X is using the house on a regular basis for daily living activities and therefore the house is still considered as his residence. The trailer is not self-sufficient as a stand-alone or separate suite; rather, the trailer is more of a bedroom/sitting room adjacent to the house. As the appellant resides with X, and he is her spouse, he is the appellant's dependant and part of her family unit as defined in the EAPWDA and in accordance with section 5 of the EAPWDR, to be eligible for assistance the appellant must apply for it on behalf of her family unit.

Panel Decision

In this case, there is no dispute that the appellant and X are spouses as defined in section 1.1(1)(a) of the EAPWDA as they are legally married to each other. Consequently, the panel finds that the ministry reasonably considered them as spouses for the purposes of the EAPWDA and EAPWDR. If the appellant and X were not legally married, the assessment of whether or not they were spouses would be determined under section 1.1(2) which requires a length of residency together with financial and social and familial interdependence. These markers of the nature of the relationship between two persons are not a consideration for spouses who are legally married.

The issue in this case is whether X is a spouse who "resides with" the appellant and is therefore a dependant as defined in section 1(1) of the EAPWDA. The appellant's advocate argues that in accordance with the case law, the appellant and her spouse live separate and apart and therefore do not reside together.

The courts have long held that married persons can be found to "live separate and apart" within the same dwelling. Each case is determined based on its unique facts with factors including conjugal

relations, division of domestic chores, intention to separate, social interactions, and financial constraints on one or both parties, being among those considered by the court. The appellant's advocate has provided case law where the courts determined that married spouses were living separate and apart for the purposes of determining eligibility to seek benefits that arise from separation including *Gartner v. Canada* in which the court found as fact that both spouses lived in the same "Residence" and held that two "co-habiting" spouses can be considered as living separate and apart under the same roof for the purpose of assessing eligibility for Canada Child Tax Benefit. However, in the cases cited, the issue was not where the spouses resided but whether the nature of the relationship between the spouses was such that they should be considered "separated." That the issue of whether spouses are "separated" in the eyes of the law is not the same as the issue of "residency" is also supported by the language of section 3(4) of the *Family Law Act*, which states that married spouses may be considered to be separated despite continuing to live in the same residence.

The issue in this case is not whether the nature of the relationship between X and the appellant is such that they are separated but whether X resides with the appellant. A person's residency denotes a physical presence, not a level of engagement in a relationship with any other person in the same residence. The Canadian Oxford Compact Dictionary defines "reside" as "(of a person) have one's home, dwell permanently." Black's Law Dictionary, Fifth Edition, defines "reside" as "Live, dwell, abide, sojourn, stay, remain, lodge." Where one resides is the physical place where one lives not how one engages with others who may share the same residence. The panel finds that the word "reside" is not ambiguous and cannot be interpreted so broadly as to encompass and be dependent upon the nature of the relationship between residents.

The panel must consider whether the ministry reasonably viewed the house the appellant resides in as also being where X resides. In reaching its decision, the ministry notes that the trailer is not a stand-alone or separate suite and that X regularly uses the house for his daily activities. That this is the case is apparent from the appellant's evidence that X regularly uses the bathroom, kitchen, laundry facilities, and watches TV in the home, irrespective of her objections. Based on the regular daily use by X of most areas of the house to attend to routine activities of living, despite having separate sleeping accommodation, the panel finds that the ministry has reasonably viewed the house as the residence of X. Therefore, the panel finds that the ministry reasonably determined that X resides with the appellant and as he is her spouse he is also her "dependant" and part of her "family unit" as defined in section 1 of the EAPWDA.

Conclusion

For the above reasons, the panel finds that the ministry's reconsideration decision that determined that the appellant is not eligible for assistance as she has not applied on behalf of her family unit as required by section 5 of the EAPWDR is a reasonable application of the legislation in the circumstances of the appellant. The ministry's reconsideration decision is confirmed.