



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry's) reconsideration decision of April 14, 2016 wherein the ministry determined that the appellant was not eligible for assistance under section 5 of the Employment and Assistance Regulations (EAR) because he failed to apply for income assistance on behalf of his entire family.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Sections 1, 1.1
Employment and Assistance Regulation (EAR) Section 5.1

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Documents relating to the appellant's house that he owns jointly with his wife. Included is:
 - 2015 mortgage statement showing the names of the appellant and his wife.
 - A 2016 property tax statement showing the appellant and his wife as the property owners.
 - Two utility bills for the appellant's address in the name of the appellant's wife.
- An application for income assistance as a single person dated March 8, 2016 in the name of the appellant. In the application the appellant states his marital status is "separated as of December 20, 2015." The appellant states he lives in the same home as his wife and his two children.
- A form titled Employment Program of BC Action Plan completed in the name of the appellant dated March 1, 2016. The action plan states that the appellant "may need retraining to gain employment."
- A letter dated April 8, 2016 prepared and signed by the appellant. In the letter the appellant writes;
 - The family does not have enough money to separate.
 - Even if he and his wife were divorced he doubts he could touch the jointly owned house because it is where their two children live.
 - He and his wife tried to have a notary public to confirm their separation but they could not find a notary willing to do it.
 - He has applied with BC Housing for housing for himself.

At the hearing the appellant submitted new evidence to the panel. The appellant provided a document titled "Notice of Family Claim." The document bears the stamp of the BC Supreme Court dated May 4, 2016. The document reads in part that the appellant and his wife seek a divorce and that they have been living separately since December 12, 2011. The appellant told the panel that he has filed this document with the court but has not served his wife with a copy yet.

The ministry objected to the new evidence being admitted because it is relating to the appellant divorcing his wife, an issue that was not before the ministry at the time of reconsideration. The ministry told the panel that when the appellant requested a reconsideration of the ministry's initial decision he submitted that, although he was separated from his wife, he planned on remaining in the matrimonial home with his family because he could not afford to move out. Because the issue of divorce is new, the ministry argued that this new evidence should not be admitted for the panel to consider.

This document was admitted as evidence as per the Employment and Assistance Act section 22 (4). The panel found that the evidence contained in the document is in support of evidence that was before the ministry at the time of the reconsideration. The panel finds the document provides further details about the breakdown of the appellant's relationship with his wife. The panel is satisfied that although the new evidence indicates the appellant's intent to seek a divorce as opposed to simply being separated from his wife, the new evidence supports his argument that he should apply as a single person rather than as a family unit.

At the hearing, the appellant told the panel he has now begun the process of getting a divorce and that he and his wife plan on selling their home once the divorce has been completed. He added that

he has applied for subsidized housing on his sole behalf through the BC Housing Management Commission but he cannot commit to a rental unit until he has been approved for income assistance in order to pay his rent

At the hearing the ministry explained to the panel that, although the appellant intends to get a divorce, he is currently married to his wife and he lives in the same house. The ministry's position is that the appellant's relationship meets the legislated definition of spouse as defined in EAA section 1.1 and therefore he must apply for assistance on behalf of his family unit. The ministry added that if the appellant's living arrangement or marital status changes he could reapply for assistance based on his circumstances at the time.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in its determination that, because the appellant is currently married and living with his wife and children, he is not eligible for assistance under section 5 of the Employment and Assistance Regulations (EAR) because he failed to apply for assistance on behalf of his entire family. The ministry further found that his children and his wife and children meet the legislated definition as dependents and therefore he is required to apply for assistance as a family unit.

The relevant legislation is as follows:

Employment and Assistance Act (EAA), Sections 1, 1.1(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;

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 Regulation (EAR), Sections 5(1)

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.

Arguments of the Parties

The argument of the appellant is that, although he still lives in the same house as his wife and children, he has begun the process of getting a divorce and argues that he should be able to apply for income assistance as a single person. He argues that he needs money in order to secure housing for himself.

The ministry argues that the appellant is required to apply for income assistance as a family based on two factors. First, the EAA section 1 defines a dependent as anyone who resides with the person and is the spouse of the person, or is the dependent child of the person. The ministry argues that in the appellant's case he has both a spouse and dependent children living with him and therefore he must

include them in his application for employment assistance as required by EAR section 5(1). Secondly, the ministry maintains that the appellant's wife meets the definition as a spouse as defined by the EAA section 1.1(1) because they are married and therefore according to the EAR section 5(1) the appellant must apply for income assistance as a family unit.

Panel findings

The panel finds that the ministry reasonable determined that the appellant has a spouse as defined by EAA section 1.1(1). The panel notes that both the appellant and the ministry agree that the appellant is still married to his wife and resides her and and their two children at this time. Regarding the appellant's argument, and additional evidence he provided as support, that he is in the process of getting a divorce the panel finds that, while the process of divorce appears to be in progress, the appellant's marital status is still married and therefore the ministry was reasonable to require his application reflect his current status.

The panel finds the ministry reasonably determined that the appellant has dependents as defined by EAA section 1.1.

Based on the above findings the panel finds the ministry was reasonable to require the appellant to apply for income assistance as a family unit based on the EAR section 5(1). This section requires that in order for a family unit to be eligible for income assistance an adult must apply for income assistance on behalf of the family. The section includes two exceptions that the ministry reasonably determined do not apply in the appellant's situation.

The panel finds that the ministry decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(1)(a) and 24(2)(a) of the EAA.