

## 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 December 7, 2015 which held that the appellant is not eligible for disability assistance as a sole recipient because her relationship with “G” meets the definition of “spouse” under section 1.1(2) and “dependant” under section 1(1) of the Employment and Assistance for Persons with Disabilities Act (EAPWDA).

## PART D – Relevant Legislation

EAPWDA, sections 1(1) and 1.1(2)

## PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in her absence in accordance with section 86(b) of the Employment and Assistance Regulation.

### Information before the ministry at reconsideration

Prior to moving in with G in BC, the appellant lived in another province where she received disability assistance and previously resided with G. The appellant had continued to receive assistance from the province from which she moved through December 2014 as documented in her December 2014 bank statement. Ministry records indicate that it was contacted by the appellant on October 3, 2014, at which time she reported that she was in BC and required BC medical coverage. At the ministry's request, the female owner of the rental property in which the appellant and G reside provided a copy of a rental agreement signed by the appellant and G, showing a cash deposit of \$800 was received and applied towards rent as of possession date May 15, 2014.

The appellant began receiving income assistance from the ministry effective March 2015 and began receiving disability assistance effective June 2015. The appellant provided several documents identifying G as either the landlord or property manager of the rental property, including rental receipts, Notice to End Tenancy forms, and an eviction notice; however, the ministry was unable to verify that G was the property landlord or manager via telephone calls with the female owner of the rental property and BC Assessment Authority. The ministry also reviewed Canada Revenue Agency records which showed the appellant's marital status as single for 2013 and common-law for 2014.

Additional Documents before the ministry included:

- Four (4) 10 Day Notice to End Tenancy for Unpaid Rent or Utilities forms signed by G as the landlord:
  - 1) Dated March 12, 2015, respecting \$1650 rent owed (2 months at \$550) due January 1<sup>st</sup> ;
  - 2) Dated March 15, 2015, respecting \$1650 rent owed (rent due February and March 1<sup>st</sup>);
  - 3) Dated May 21, 2015, respecting \$550 rent owed for May 1<sup>st</sup>; and
  - 4) Dated August 11, 2015, respecting \$550 rent owed for August 1<sup>st</sup>.
- March 1, 2015 Notice of Eviction for failure to pay \$550 rent for the months January, February and March with G, as landlord, writing that he can no longer carry the appellant.
- Copies of three (3) receipts signed by "G", indicating receipt of \$550 rent on June and July 1<sup>st</sup> 2015 and \$325 on August 1<sup>st</sup> (balance of \$225 is noted as still owing).
- Shelter Information forms
  - Dated October 5, 2014, signed by G, as landlord or property manager/agent at the same address, identifying the appellant as "client" with monthly rent of \$575 with a rental start date of January 1<sup>st</sup> (the year is obscured but is presumably 2015)
  - Dated March 15, 2015, signed by G, as landlord or property manager/agent, showing a rental start date of January 1, 2015. No information respecting the amount of rent and number of adults to reside at the residence is provided.

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- July 5, 2015 Promissory Note to Repay, signed by G and the appellant, stating that G has loaned the appellant the sum of \$5,000 to be paid back in full via payment plan until balance is paid. It provides that any prior promissory notes are now void and replaced by this note. Two (2) previous promissory notes, February 1, 2015 for \$2,500 for medical transportation, and November 15 (the year is unclear as “15” and “14” have been written on top of each other) for \$1,000 for medication, gas/fuel, etc. are also included.
  - August 11, 2015 letter “To Whom it may Concern” which appears to be a request from the appellant to the ministry for urgent funding for medical transportation and medications.
  - Bank account statements for the appellant for the months of December 2014 (only 1 of 2 pages), January, February, March (only 1 of 2 pages), June and July 2015. There is no April 2015 statement.
  - An undated note, with signatures identified as those of the male owner of the rental property and G, stating that rent is paid by G who is the “property agent.”
  - An August 26, 2015 letter to the ministry from the appellant. The appellant writes that she and G did claim as a couple many years ago with Revenue Canada and that she has provided a copy of her GST/HST credit notices for April 10 and May 4 of 2015 which show her marital status as single. She writes that she is not in a spousal relationship with anybody, she has few acquaintances and her roommate’s friends are unknown to her for the most part.
  - 3-page typewritten November 24, 2015 Request for Reconsideration submission. The appellant writes that in December 2014 her name was added to the existing rental agreement G had with the landlords and that she moved at the end of December or beginning of January. Under the strict expectation for repayment, she borrowed money from G due to mounting medical bills and her inability to cover her living expenses. The appellant confirms that she called the ministry on October 3, 2014, to advise that she was in BC and required support – she had come out to BC a few times prior to her move. The appellant explains that she had been advised by the other province that as she was in BC she would need to seek assistance in BC, and was then told by the ministry that as she was just visiting BC the ministry was not responsible for her either.

Case Ministry Information System File notes - history of contact with the appellant from October 2014 – October 2015.

- October 3, 2014, the appellant called and stated that she is currently on income assistance in another province and requires BC medical coverage within the hour
- Crisis supplement for \$375 for shelter issued May 26, 2015 as well as for March 2015. Direct rent payment was to be set up after August 14, 2015.

Information provided on appeal

Neither the appellant nor the ministry provided additional evidence on appeal. At the hearing, the ministry reviewed the reconsideration decision and the evidence upon which it relied.

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## PART F – Reasons for Panel Decision

### Issue under appeal

The issue under appeal is whether the ministry decision which held that the appellant is not eligible for disability assistance as a sole recipient because her relationship with “G” meets the definition of “spouse” under section 1.1 and “dependant” under section 1 of the EAPWDA, is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

### Relevant Legislation

#### **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 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.

## **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.

### Panel Decision

Under section 1.1(2) of the EAPWDA, persons are considered to be spouses if three conditions are met: they have resided together for at least 3 consecutive months and the minister is satisfied that their relationship demonstrates financial dependence or interdependence and social and familial interdependence, consistent with a marriage-like relationship. Under section 1(1) of the EAPWDA, a person's spouse is also considered to be a dependant and a member of the person's family unit. Section 5 of the EAPWDR requires that a person must apply for disability assistance on behalf of his or her family unit in order to be eligible for disability assistance.

#### *Reside together for at least 3 consecutive months – section 1.1(2)(a)*

While the appellant disputes that she began residing with G in BC as of May 15, 2014, which is the date set out in the document provided by the female owner of the rental property, she does not dispute that she has resided with G in the rental property as of January 2015, the date set out in both the October 2014 and March 2015 Shelter Information forms. While both the rental agreement provided by the female owner of the rental property and the request for BC medical coverage prior to January 2015 are indicative of the appellant's residency in BC prior to January 2015, the legislation requires only that the parties in question reside together for the previous 3 consecutive months. As there is no dispute that the appellant and G have resided together since January 2015, the panel finds that the ministry reasonably determined that the appellant has resided with G for at least the previous 3 consecutive months as required under section 1.1(2)(a).

*Financial dependence or interdependence consistent with a marriage-like relationship – section 1.1(2)(b)(i)*

The appellant's position is that she is not financially dependent or interdependent upon G in a way that is consistent with a marriage-like relationship. Rather, G is a long-time friend with whom she previously resided in another province to reduce each other's living costs. The financial assistance, in the form of a repayable loan provided by G upon the appellant's relocation to BC, was simply G, as a friend, helping the appellant until her assistance in BC was provided. The appellant argues that if she and G were in a marriage-like relationship, repayment would not have been expected. The appellant also argues that she pays her share of the rent to G who in turn pays the landlord and that by collecting the rent and attending to the maintenance of the property, G is acting as the landlord's agent or property manager.

The ministry's position is that based on the information provided, it is satisfied that the appellant's relationship with G demonstrates financial dependence or interdependence consistent with a marriage-like relationship. The ministry points out that although the appellant provided eviction notices signed by G indicating that the appellant was being evicted for failing to pay her rent, she has also provided information showing that G lent her money because she needed help while awaiting assistance. The ministry also argues that the rent receipts signed by G, indicating that the appellant paid \$550 for July 2015 rent and \$325 for August 2015, are not supported by her bank statements which do not show these payments. The ministry also argues that the appellant has not provided any evidence to support that she is paying back the loan from G. Based on this information, the ministry is satisfied that the appellant has a financial dependence or interdependence to cover her shelter costs.

The panel finds that the documentation respecting rent owing and paid by the appellant has a number of inconsistencies. As the ministry notes, the rental receipts signed by G for July and August 2015 are not substantiated by corresponding withdrawals from the appellant's bank account. Additionally, the rental receipt for August 2015 which is dated August 1<sup>st</sup>, shows that \$325 was paid by the appellant but the subsequent Notice to End Tenancy dated August 11, 2015, does not reflect the partial payment of \$325 as it indicates that \$550 is still owing. The matter is further complicated by conflicting information respecting the amount of rent the appellant was paying. Most of the documentation indicates the appellant was responsible for \$550 rent per month. However, the October 5, 2014 Shelter Information form indicates that the appellant's monthly rent was \$575. The appellant argues that G loaned her money to cover her rental and medical costs during the time she was not yet in receipt of assistance in BC, \$5000 according to the July 2015 promissory note signed by G and the appellant, and that she is required to repay this loan demonstrates that this financial arrangement is not consistent with a marriage-like relationship. However, as the ministry notes, even by the time of her request for reconsideration, some 10-11 months after receiving the loan at the beginning of 2015, the appellant has not provided evidence to support that she has been repaying the loan, despite having been in receipt of assistance in BC since March 2015 and having also received crisis supplements for shelter costs in both March and May of 2015.

Based on the available information, the panel finds that the ministry was reasonable to conclude that the appellant relied on G to pay her rent for July and August 2015 and that together with the absence of information substantiating that she is repaying the loan from G, there is a financial dependence or

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interdependence respecting shelter costs which is beyond that of friends and is consistent with a marriage-like relationship as required under section 1.1(2)(b)(i).

*Social and familial interdependence*

The appellant's position is that G is a friend who assumes the majority of the household maintenance because of the appellant's health problems. While she and G claimed as a couple for income taxes in 2000, they went their separate ways since then and are simply friends who share accommodation, with the appellant maintaining her own room and washroom facilities. She is appealing Revenue Canada's decision that she is currently in a common-law relationship with G, which the appellant argues is based on her tax filing status in 2000 and the fact that she currently resides with G, but the decision will not be made until approximately six weeks after she submits the requested documents.

The ministry's position is that it is not satisfied that the relationship between the appellant and G is one of landlord and tenant. The ministry argues that the information establishes that the appellant moved from another province to BC to continue to reside with G. Additionally, the appellant acknowledges having claimed to Revenue Canada that she was in a common-law relationship with G in the past, and has not provided any evidence to support that she is appealing the decision of Revenue Canada that she is presently in a common-law relationship. Additionally, the female owner of the appellant's residence advised the ministry that when the appellant signed the tenancy agreement in May 2014 she and G represented themselves as being in a relationship. Upon reviewing all of the information provided, the minister is satisfied that the appellant's relationship with G indicates a social and familial interdependence consistent with a marriage-like relationship.

While the appellant argues that she and G are just friends, she has not provided information from G or anyone else in support of her description of the nature of their relationship. Nor has the appellant specifically addressed the information given to the ministry by the female owner of the rental property that the appellant and G represented themselves as a couple when signing the rental agreement. Respecting the information from Revenue Canada, the appellant asserts that the ministry incorrectly assumed that she was in a common-law relationship. Rather, she argues that this reflects an error on the part of Revenue Canada. However, as the ministry notes, the appellant has not provided information to substantiate that she is currently appealing the matter to Revenue Canada and the panel notes there is no indication that she raised any objection with Revenue Canada at the time of her 2014 income taxes were assessed. As discussed above, the information provided by the appellant has a number of inconsistencies and the panel is not prepared to dismiss the information from the rental property owner in the absence of substantiating information to the contrary. Similarly, in the absence of substantiating evidence to the contrary, and again noting that there is no evidence of the appellant disputing her common-law status with Revenue Canada prior to the ministry's decision respecting eligibility for disability assistance, the panel finds that it is more likely than not that the information from Revenue Canada is indicative of the appellant having filed her 2014 income taxes as a person in a common-law relationship. Therefore, the panel finds that the ministry was reasonable to place significant weight on the information from the property owner and Revenue Canada that the appellant has presented to other parties as being in a common-law relationship with G and was reasonable in being satisfied that the appellant's relationship with G demonstrates a social and familial interdependence consistent with a marriage-like relationship.

*Conclusion*

As the panel has found that the ministry reasonably determined that G is the appellant's spouse as defined in section 1.1(2) of the EAPWDA, the panel also finds that the ministry reasonably determined that G is both the appellant's dependant and a member of her family unit as defined in section 1(1) of the EAPWDA. Consequently, the panel finds that the ministry has also been reasonable in determining that the appellant is not eligible for disability assistance as a sole recipient because she has not applied for disability assistance on behalf of her family unit as required under section 5 of the EAPWDR. The panel confirms the reconsideration decision as being reasonably supported by the evidence.