

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 12, 2016 which found that the appellant is not eligible for assistance as a sole recipient because she is residing with a "dependant" with whom she must be assessed as one family unit, pursuant to Sections 1 of the *Employment and Assistance Act* (EAA) and Section 5 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 5
Employment and Assistance Act (EAA), Sections 1 and 1.1

PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

- 1) Undated note in which the landlord for the appellant's rental unit wrote that the appellant has been residing in the unit for 2 ½ years. The landlord has sent many letters, faxes, as well as their rental agreement to the ministry stating that the appellant is still living at the address. The appellant "is a single mother with six children." Her "former spouse" does come by to visit his children. *Handwritten note added that: "landlord signature does not match landlord signature" [on the Shelter Information form].*
- 2) Shelter Information form dated July 5, 2013 for the appellant's rental unit, with the landlord's signature affixed, and indicating there is one adult and 6 children at the given address;
- 3) Vehicle description stamped October 31, 2015 identifying the appellant and the alleged dependant residing at the same address and the tax declaration described as "gift to spouse";
- 4) Gift of a Vehicle document stamped February 24, 2016 with the appellant as donor and the alleged dependant as the recipient and their relationship described as "spouse husband/ wife," with different addresses indicated for the appellant and the alleged dependant;
- 5) Agreement dated June 1, 2016 between the appellant and the alleged dependant, which states that the appellant has "all the kids" at the rental unit and "has full custody". The alleged dependant is allowed unlimited calls and may see the kids with advance notice by phone. He can stay over sometimes with some notice. The alleged dependant can take the kids out and have them overnight as well, with discussion of both parents. *Handwritten note added that: "signature not matched with spouse's signature on vehicle buyer's copy";*
- 6) Student Information Verification form dated June 1, 2016 which identifies the appellant as the child's mother, and indicates that she lives with the child, and that the child's father resides with the child. The alleged dependant is identified as the child's "step father" and emergency contact; and,
- 7) Request for Reconsideration dated June 24, 2016.

In her Request for Reconsideration, the appellant wrote that:

- The statement in court was not said at all about the alleged dependant and her.
- The school refused to provide the documents.
- The worker is incorrect about her living with the alleged dependant. She is not living with him at all and she never said that in court. Her lawyer can and will confirm.

Additional Information

In her Notice of Appeal dated August 2, 2016 the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she had kids living with her whole time this was not true.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Copy of the undated note from the landlord with a handwritten note added stating that the ministry called the landlord and confirmed that he wrote the note.
- 2) Shelter Information form dated July 5, 2013 for the appellant's rental unit, with a handwritten note added, that states calls were made by the ministry to verify that the signature was done by the landlord;
- 3) Handwritten note dated May 12, 2016 addressed to "Your Honour" in which the alleged

dependant wrote that he is the father of the children T, C, G and Ch and he agrees and consents with any order or agreement that his wife [the appellant] may consent to with respect to his children with her. *Handwritten note added, stating that: "Means he doesn't live with [the appellant] and needs these letters to file in lieu of no appearance;"*

- 4) Copy of the Agreement dated June 1, 2016 between the appellant and the alleged dependant with a handwritten note added, stating that the ministry called the alleged dependant to verify signatures and that it was he who wrote the agreement;
- 5) Letter dated July 11, 2016 to the appellant from the ministry informing her that the children S and D may be re-added to her file but her other four children may not be re-added to her file;
- 6) Letter dated July 29, 2016 to the appellant in which a representative of the Canada Revenue Agency (CRA) wrote that a review of the appellant's marital status has been completed and, based on the information provided, "the adjustment made to your marital status will be reversed"; and,
- 7) Print out dated August 4, 2016 from the appellant's Tax Return Summary for the 2015 taxation year.

The ministry relied on the reconsideration decision, as summarized at the hearing. The ministry's information indicated that the ministry confirmed with the social worker that the appellant is residing with the alleged dependant. At the hearing, the ministry stated that:

- On June 16, 2016 the social worker confirmed with the ministry that the appellant was residing with the alleged dependant, as verified by the appellant in court.
- The ministry did not rely on the documents submitted by the appellant where the signatures on the document did not match the signature that the ministry had on file. Specifically, the undated note from the landlord was not considered as a statement by the landlord because the signature did not match the landlord's signature on the Shelter Information form. The Agreement dated June 1, 2016 was not considered as a statement by the alleged dependant because the signature did not match the signature on a document in the ministry's file, specifically the vehicle description.
- From a review of the ministry file notes, the ministry indicated that the ministry called the landlord twice but there was no conversation with the landlord.
- Although there was a note on the June 1, 2016 agreement stating that the ministry called the alleged dependant, there is no record in the ministry file of a conversation with the alleged dependant.
- A review of the ministry file indicated that the social worker provided information indicating that although the appellant is stated to reside in an "upper" portion of the residence, there is no separate suite and there is only one kitchen in the appellant's home.

Admissibility of Additional Information

The ministry did not object to admitting the additional documents submitted by the appellant. The panel considered the information in the additional documents as corroborating the previous information from the appellant regarding who resides in her home, which was before the ministry at reconsideration. The panel also considered the oral testimony provided by the ministry at the hearing as corroborating the information provided by the ministry at reconsideration regarding information from the social worker and the ministry's attempts to verify the signatures of the landlord and the alleged dependant. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for assistance as a sole recipient because she is residing with a "dependant" with whom she must be assessed as one family unit, pursuant to Sections 1 of the EAA and Section 5 of the EAR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Section 5 of the EAR sets out the following eligibility criteria:

Applicant requirements

5 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.

Section 1(1) of the EAA 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 EAA provides definitions:

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 she has not applied for assistance on behalf of her family unit, including her spouse, as per Section 5 of the EAR. The ministry noted that Section 1 of the EAA 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 [Section 1(1)(a)] or indicates a parental role for the person's dependent child [Section 1(1)(c)]. The meaning of "spouse" for the purposes of the EAA, as set out in

[]

Section 1.1(1)(a), includes two persons who are married to each other.

The ministry argued that the residency requirement has been met as a social worker provided information confirming that the appellant and the alleged dependant reside together, as confirmed by the appellant's children to the social worker and as witnessed by the social worker in court. The ministry stated that the appellant has not provided information from her lawyer to support her claim that the social worker is incorrect and the ministry therefore relied on the information from the social worker as credible. The ministry argued that the appellant and the alleged dependant are spouses of each other for the purposes of the EAA as the appellant advised the ministry that they are married to each other and there is no evidence that they are divorced or legally separated. The ministry argued that the alleged dependant also indicates a parental role for the appellant's dependent child as he is identified as an emergency contact on the Student Information Verification form and his relationship to the child is described as "step father."

The ministry argued that, as the alleged dependant meets the definition of the appellant's "spouse" and also indicates a parental role for the appellant's dependent child, he is the appellant's "dependant" and part of her "family unit" and, in order to be eligible for income assistance, the appellant must apply on behalf of her entire family unit. The ministry argued that the appellant did not apply for assistance on behalf of her entire family unit and, therefore, she is not eligible for income assistance as a sole recipient with dependent children.

Appellant's position

The appellant's position is that her family unit does not include the alleged dependant as he is not a "dependant" because he does not reside with her. In her Request for Reconsideration, the appellant argued that the statement in court was not said at all about the alleged dependant and the worker is incorrect about her living with the alleged dependant. The appellant wrote that she is not living with the alleged dependant at all and she never said that in court, and her lawyer can and will confirm.

Panel decision

Pursuant to section 5 of the EAR, for a family unit to be eligible for income assistance, an adult in the family unit must apply for income assistance on behalf of the family unit. "Family unit" is defined in Section 1(1) of the EAA as the applicant and her 'dependants' and the first part of the definition of "dependant" is "...anyone who resides with the person." The ministry received information from a social worker indicating that the appellant was residing with the alleged dependant, as the social worker had witnessed the appellant providing evidence in court that she was living with the alleged dependant. Although the appellant wrote in her Request for Reconsideration that the worker is incorrect about her living with the alleged dependant, that she is not living with him at all and she never said that in court, and her lawyer can and will confirm, there was no further information provided by the appellant or her lawyer to call into question the information from the social worker. While the Gift of a Vehicle form stamped February 24, 2016 shows different addresses for the appellant and the alleged dependant, the ministry received confirmation from the social worker on June 16, 2016 and the panel finds that the ministry reasonably relied on the more recent information from the social worker who witnessed testimony provided by the appellant in court and the appellant would therefore have been under solemn assurance to tell the truth. Based on the information provided to the ministry by the social worker, which the appellant has not refuted with the confirmation from her lawyer that she said would be forthcoming, the panel finds that the ministry reasonably determined that the alleged dependant was residing with the appellant.

As the word “or” is used in the definition of “dependant”, Section 1 of the EAA provides three different options for falling within the definition of dependant and these include being the spouse of the person under sub-paragraph (a). The meaning of “spouse” for the purposes of the EAA is set out in Section 1.1 of the EAA and includes the two persons being “married to each other” [Section 1.1(1)(a)]. The ministry argued that the appellant had advised the ministry that she is married to the alleged dependant and there was no evidence to support that they are divorced or legally separated. The appellant did not directly dispute that she is married to the alleged dependant but she submitted a letter dated July 29, 2016 in which a representative of the CRA wrote that a review of the appellant’s marital status has been completed and, based on the information provided, “...the adjustment made to your marital status will be reversed.” The panel notes that the CRA does not detail the information that was provided by the appellant nor does the letter indicate the appellant’s current marital status or the nature of the reversal and, therefore, does not confirm that the appellant is living as a single parent. Both the appellant and the alleged dependant refer to each other as spouses in various documents, including the Vehicle Description form stamped October 31, 2015, the Gift of Vehicle form stamped February 24, 2016, and the May 12, 2016 note addressed to “Your Honour.” The panel finds that the ministry reasonably determined that the appellant and the alleged dependant are married to each other and are therefore “spouses” in accordance with Section 1.1(1)(a) of the EAA.

Section 1 of the EAA provides another option for falling within the definition of "dependant" where a person “indicates a parental role for the person’s dependent child,” under sub-paragraph (c). The ministry relied on the Student Verification form dated June 1, 2016 which identified the alleged dependant as an emergency contact for one of the appellant’s children and his relationship to the child was listed as “step father.” However, there was no information provided in this appeal that this child is the “dependent child” of the appellant, as required by the definition in sub-paragraph (c), and there was also no indication by the alleged dependant that he identifies as this child’s step father or that he has taken a parental role for this child. The panel finds that the ministry’s conclusion, drawn from the information in the Student Verification form, that the alleged dependant indicates a parental role for the appellant’s dependent child was not reasonable.

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 the ministry reasonably determined that the appellant and her spouse reside together, he is her “dependant” and was reasonably included by the ministry as part of the appellant’s family unit.

Conclusion

The panel finds that the ministry’s reconsideration decision, which found that the appellant is not eligible for assistance as a sole recipient because she is residing with a "dependant" with whom she must be assessed as one family unit, pursuant to Sections 1 of the EAA and Section 5 of the EAR, was reasonably supported by the evidence. The panel confirms the decision and the appellant’s appeal, therefore, is not successful.