

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 11, 2016 which found that four of the appellant's six children may not be re-added to her file as they are not a 'dependant' and, therefore, not part of her family unit pursuant to 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), Section 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 decision 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 landlord states 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 that there is one adult and 6 children at the given address;
- 3) Letter dated June 10, 2015 in which family services wrote that two children ("D" and "S") are currently residing with the appellant and their father and are in the interim care of the Director. On June 23, 2016, the Director will be applying for an Order to return S and D to the care of their parents;
- 4) Letter dated May 16, 2016 to the appellant in which the ministry wrote that additional information is required, specifically: school registration for the children, custody agreement, confirmation from the landlord verifying the children are living in the home, and confirmation from the landlord that only the appellant and the children reside in the rental unit;
- 5) Agreement dated June 1, 2016 between the appellant and the father of [some of] the children which states that the appellant has "all the kids" at the rental unit and "has full custody". The father is allowed unlimited calls and may see the kids with advance notice by phone. He can stay over sometimes with some notice. The father 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 dated June 1, 2016 for the children S and D indicating that the appellant "lives with student"; and,
- 7) Request for Reconsideration- Reasons dated June 24, 2016.

In her Request for Reconsideration, the appellant stated that:

- She submitted a letter from the worker that she has "kids living with me."
- Letter from the landlord is correct. She is single upstairs with her kids.
- Her ex-spouse and landlord did confirm that their own signatures were theirs.

Additional Information submitted after reconsideration

In her Notice of Appeal dated August 2, 2016, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she has evidence to prove that the worker from family services was not truthful and she has pictures and court documents to prove it.

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

- 1) Copy of the undated note from the landlord with a handwritten note added that states the ministry called the landlord and confirmed that he wrote the note.
- 2) Copy of the 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 father of

[Redacted]

some of the appellant's children 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. ("with her" is underlined)
Handwritten note added 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 father of [some of] the children with a handwritten note added stating that the ministry called the father to verify signatures and that it was the father who wrote the agreement;
- 5) Copy of the Request for Reconsideration dated June 24, 2016 in which the appellant wrote that the statement in court was not said about her ex-spouse with her. The school refused to provide documents. The family services worker is incorrect about living with her ex-spouse. She is not living with him and never said that in court;
- 6) Letter dated July 11, 2016 to the appellant from the ministry informing her 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;
- 7) Letter dated July 29, 2016 to the appellant in which a representative of the Canada Revenue Agency wrote that a review of the appellant's marital status has been completed and, based on the information provided, the adjustment made to her marital status will be reversed; and,
- 8) 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 on June 14, 2016 the ministry confirmed with the social worker that the children G, C, T and Ch are currently in foster care. At the hearing, the ministry stated that:

- The social worker confirmed with the ministry that two of the appellant's children, S and D, are residing with the appellant but stated that the appellant's other children are in foster care.
- The ministry did not rely on the documents submitted by the appellant because the signatures on the documents did not match the signatures 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 father of some of the appellant's children because the signature did not match the father's signature on a document in the ministry's file.
- From a review of the ministry file notes, the ministry called the landlord twice but there was no conversation with the landlord. A voice message was left by the ministry and there was no return call by the landlord.
- On June 14, 2016, the appellant's third party administrator provided information that the landlord's telephone was stolen and a new number was provided. The ministry called this number and the voice message was that of a woman and not the landlord and, therefore, no message was left.
- Although there was a note on the June 1, 2016 agreement stating that the ministry called the father, there is no record in the ministry file of a conversation between the ministry and the father.
- The ministry often relies on information from others, for which there are information sharing agreements in place, to determine who is residing in a home, especially the Ministry of Children and Family Development (MCFD) and other services that will conduct home visits

[Redacted]

and are involved with the family. The ministry is not able to get information directly from the children's school and relies on information provided to the ministry by the parents.

- There is a file entry for June 15, 2016 indicating an email response from the social worker who stated that all of the children resided with the appellant until May 6, 2016 until some of the children were removed from the home. The two children, S and D, refused to leave the home and continue to reside with the appellant.
- On June 16, 2016 a form was received from the social worker that indicated that the children are legally in the interim care of the Director with four of the children residing outside the family home.

Admissibility of Additional Information

The ministry did not object to the admissibility of 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 where her children reside, which was before the ministry at reconsideration. The panel also considered the oral testimony provided by the ministry at the hearing as corroborating the ministry's information from the social worker and the ministry's attempts to verify information from the landlord and the father of some of the children. 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 decision, which found that four of the appellant's six children may not be re-added to her file as they are not a 'dependant' and, therefore, not part of her family unit pursuant to 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 provides in part:

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 defines

"family unit" to mean "...an applicant or recipient and his or her dependants"

and also defines:

"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.

"dependent child", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2).

Ministry's position

The ministry's position is that the appellant is not eligible for assistance as a single parent with six dependent children because four of her children are not a 'dependant' and, therefore, not part of her family unit pursuant to Section 5 of the EAR. The ministry noted that Section 1 of the EAA defines "family unit" to include a recipient and her "dependants," which includes a "dependent child," and the definition of "child" is an unmarried person under 19 years of age. The ministry stated that the social worker confirmed that four of the appellant's children do not reside with the appellant and the appellant has not provided any evidence to verify this arrangement has changed and, therefore, these four children do not meet the definition as "dependants." The ministry argued that as the signatures of the landlord and the ex-spouse did not match the signatures on file with the ministry, the letter from the landlord and the father were not considered as confirmation that these four children reside with the appellant. At the hearing, the ministry stated, in the alternative, that the letter from the landlord and the father do not confirm that the four children named by the social worker reside with her in the home. Consequently, the ministry argued that the appellant is not eligible for assistance as a single parent with six dependent children.

Appellant's position

The appellant's position, as set out in her Request for Reconsideration, is that she submitted a letter from the worker that she has "kids living with me" and the letter from the landlord is correct, that she is single upstairs with her kids. The appellant argued that the father and the landlord confirmed that their own signatures were theirs and, therefore, the ministry should have considered the signatures as confirmation that the four children reside with her. In her Notice of Appeal, the appellant added that she has evidence to prove that the social worker was not truthful and she has pictures and court documents to prove it.

Panel's decision

Section 1 of the EAA defines "family unit" to include a recipient and her "dependants," which includes anyone who resides with the person and who is a "dependent child." The definition of "dependent child" in sub-section 1(1)(c) further requires that the child reside with the parent more than 50% of each month and that the child relies on that parent for the necessities of life. As the ministry received credible evidence from a social worker involved with the appellant's family that four of the appellant's children no longer resided with her as they had been placed in foster care in May 2016, the panel finds that the ministry reasonably requested that the appellant provide confirmation of her claim that the four children continue to reside with her. Although the appellant wrote in her Notice of Appeal that she has evidence to prove that the worker from family services was not truthful and she has pictures and court documents to prove it, there was no information provided by the appellant refuting the credibility of the social worker.

At reconsideration the appellant provided an undated note, which purported to be written by the appellant's landlord, and which stated that the appellant has been residing in the unit for 2 ½ years and she is still living at the address and the appellant "...is a single mother with six children." The ministry did not rely on this note as being a statement by the appellant's landlord because the ministry determined that the landlord's signature on the note does not match the signature in the ministry's file, specifically the signature on the Shelter Information form. At the hearing, the ministry clarified that several attempts were made by the ministry to contact the landlord directly to question him about this document but no contact was ever made. The panel finds that, in view of discrepancies detected in the signatures, the ministry was reasonable to require further confirmation that the statement was that of the appellant's landlord and, where that confirmation is not forthcoming, to not rely on the note as a statement of the landlord.

At reconsideration, the appellant also provided an Agreement dated June 1, 2016 between the appellant and the father of some of the appellant's children, which states that the appellant has "all the kids" at the rental unit and "has full custody". According to the agreement, the father is allowed unlimited calls and may see the kids with advance notice by phone, he can stay over sometimes with some notice, and the father can take the kids out and have them overnight as well, with discussion of both parents. The ministry did not rely on this agreement as being an agreement with the father of some of the appellant's children because the ministry determined that the father's signature on the agreement does not match the father's signature in the ministry's file, specifically on a "vehicle buyer's copy." Although the appellant provided a copy of the agreement with a note that the ministry called the father to verify signatures and that it was the father who wrote the agreement, the ministry stated at the hearing that the ministry file notes were reviewed and there is no record in the ministry file of a conversation between the ministry and the father. The panel finds that, in view of discrepancies detected in the signatures, the ministry was reasonable to require further confirmation that the statement was that of the father of some of the appellant's children and, where that

confirmation is not forthcoming, to not rely on the note as a statement of the father.

On the appeal, the appellant provided a handwritten note dated May 12, 2016 address to “Your Honour” in which the father of some of the appellant’s children 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, and “with her” is underlined. At the hearing, the ministry noted that the signature of the father on this note differs from that on the agreement dated June 1, 2016 and the ministry argued, in the alternative that, aside from the signatures on the documents, there is not sufficient evidence that four of the appellant’s children reside with her.

To meet the definition of a “dependant” as set out in Section 1 of the EAA, the child must reside with the appellant, and to meet the definition of “dependent child,” the child must reside with the parent “more than 50% of each month.” The panel notes that the information in the undated note, that the appellant is a single mother with six children, and in the agreement dated June 1, 2016, that the appellant has “all the kids” at the rental unit, and in the note dated May 12, 2016 underlining “with her” does not confirm that the appellant’s four children specifically reside with her and or in particular that the reside with her more than 50% of each month. The agreement dated June 1, 2016, purported to be between the parents, states that the father is permitted to take the children and have them overnight as arranged through discussion of the parents and there was no further evidence of how often the children reside with the father under this arrangement to thereby show that it is not more than 50% of each month. The panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that four of the appellant’s children meet the definition of “dependant,” in terms of residing with her, or that the four children meet the definition of “dependent child” by residing with her for more than 50% of each month.

Conclusion

The panel finds that the ministry’s reconsideration decision, which found that four of the appellant’s six children may not be re-added to her file as they are not a 'dependant' and, therefore, not part of her family unit pursuant to Section 5 of the EAR, is reasonably supported by the evidence. The panel confirms the decision and the appellant’s appeal, therefore, is not successful.