

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 the appellant is not eligible for income assistance (IA) as a sole recipient pursuant to Section 5 of the Employment and Assistance Regulation (EAR) because she is residing with her “spouse” who meets the definition of a “dependant”, pursuant to Sections 1(1)(c) of the *Employment and Assistance Act* (EAA).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 5(1)

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

PART E – Summary of Facts

The appellant and the ministry did not attend the hearing. After confirming that the appellant and ministry were 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. Shelter Information form dated July 5, 2013 for the appellant's upper rental unit, with the landlord's signature affixed, and indicating there is 1 adult and 6 children at the given address;
2. Birth certificate for one of the appellant's children that lists the appellant and the "spouse" as parents of the child;
3. Letter dated June 10, 2015 in which family services wrote that two children are currently residing with the appellant and their father (the "spouse") and are in the interim care of the Director. On June 23, 2016, the Director will be applying for an Order to return the children to the care of their parents;
4. Student Information Verification dated June 1, 2016 for one of the children indicating that the appellant "lives with student" as does the "spouse" who also is a parental authority or guardian;
5. Student Information Verification dated June 1, 2016 for another child indicating that the appellant "lives with student" and the "spouse" is a parental authority or guardian;
6. Vehicle description stamped October 31, 2015 identifying the appellant and another person residing at the same address with the description of "gift to spouse"; and
7. Request for Reconsideration (RFR) signed and dated June 28, 2016, which states:
 - "ministry did not contact me by mail or phone";
 - "school reg[istration] means in a house, downstairs suite not upstairs";
 - "no I did not live in the same suit as ["spouse"]" which was proven at tribunal; and
 - "he's not my spouse, I'm married but separated to" another person.

Evidence on Appeal

In the Notice of Appeal (NOA), signed and dated August 10, 2016, the appellant states that the allegations against her are incorrect.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for IA as a sole recipient pursuant to Section 5 of the EAR because she is residing with her "spouse" who meets the definition of a "dependant", pursuant to Sections 1(1)(c) of the EAA, 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.

Ministry's position

The ministry's position is that the appellant is not eligible for IA, pursuant to Section 5 of the EAR, because she is living with her spouse. 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 ministry argued that the residency requirement has been met as a social worker provided information confirming that the appellant and her "spouse" reside together. The ministry stated that the appellant has not provided information 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 same social worker confirms that the home in which the appellant resides does not have a separate downstairs suite. The ministry also argued that the "spouse" also indicates a parental role for the appellant's dependent child as he is identified as the father who lives with the child on the Student Information Verification form. Finally the ministry argues that on July 6, 2016 and July 7, 2016 the appellant and her "spouse" tried to apply for IA as a couple.

Appellant's position

The appellant's position is that the alleged "spouse" is not her "dependant" as he does not reside with her. She states that she was married to and now separated from another person and that the social worker is incorrect. The appellant provides her shelter information as proof that she lives in the upper

portion of the home and that the alleged "spouse" lives in the downstairs portion.

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 her "spouse". Although the appellant argues that the worker is incorrect about her living with the "spouse", that she is not living with him at all, and that the shelter information form demonstrates she lives separate from the alleged "spouse", there was no further information provided by the appellant to call into question the information from the social worker. Furthermore, although the appellant provides a vehicle description from October 31, 2015 which shows someone else as her spouse, the panel finds that this is outdated information and the social worker's information is more current. In addition, the appellant and her "spouse" attempted to apply for IA as a couple on two occasions.

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 "spouse" as a parent or guardian for one of the appellant's children, his relationship to the child was listed as "father", and that he lives with the child. The June 10, 2016 letter from the social worker also confirms that the "spouse" is the father of two children and lives in the same home.

Conclusion

The panel finds that the ministry's reconsideration decision, which found that the appellant is not eligible for IA because she is residing with her "spouse" pursuant to Sections 1 of the EAA and Section 5 of the EAR, was reasonably supported by the evidence and is a reasonable application of the applicable legislation. The panel confirms the decision and the appellant's appeal, therefore, is not successful.