



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry)'s reconsideration decision dated November 21, 2016, finding the Appellant is not eligible to receive income assistance as a single person for the month of August 2016 because her "family unit" included both herself and a "dependent" who was her "spouse" during that month which means that she was applying for assistance for both herself and her spouse in accordance with section 5 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA).

PART D – Relevant Legislation

The relevant legislation is sections 1 and 1.1 of the EAPWDA and section 5 of the EAPWDR.

PART E – Summary of Facts

In August 2016, the ministry provided disability assistance to the appellant in an amount based on the appellant living with a “spouse” (as that term is defined in sections 1 and 1.1 of the EAPWDA). That amount was \$279.38 less than the amount the appellant would have received had she been a “sole recipient”.

According to the ministry’s records, the following is the sequence of events relevant to this appeal.

On August 5, 2016 the ministry issued a cheque to the appellant for a crisis supplement for food.

On August 11, the appellant first contacted the ministry to request that her spouse be removed from her disability assistance file. She told the ministry that they were fighting constantly, that her spouse was drinking heavily and using drugs and that he would be away for days at a time. The ministry opened a service request and began the process.

Also on August 11, the appellant requested a crisis supplement for a new mattress, stating that after paying rent she and her spouse had only \$400 left for groceries and so could not afford to purchase a new mattress. The ministry opened a service request and began the process.

On August 12, the appellant’s spouse attended the ministry offices to pick up the cheque for the crisis supplement for food. He advised the ministry that the appellant was sick and requested that the cheque be issued in his name rather than the appellant’s, which the ministry did.

On August 23, the ministry issued a cheque for a crisis supplement for a mattress. As per the appellant’s request, the cheque was issued in her spouse’s name.

On September 1, the appellant contacted the ministry regarding whether her spouse had been removed from her file. Asked by the ministry if they were still living together, the appellant stated that she had barely seen him and he only came by to collect his mail.

On September 27 the appellant contacted the ministry and asked that the difference between the amount she had received for August and September as a two person family unit and what she should have received as a sole recipient be paid to her as her spouse had now been removed from her file. The ministry issued a “top-up” cheque for September on September 30.

At the same time, the ministry determined that the appellant was not eligible for a top-up cheque for August because she had not informed the ministry of the change in her family status until August 11, so that she was determined to be eligible as a two-person family unit for that month.

On October 13, the ministry informed the appellant of this decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's reconsideration decision dated November 21, 2016, finding the Appellant is not eligible to receive income assistance as a single person for the month of August 2016 because her "family unit" included both herself and a "dependent" who was her "spouse" during that month which means that she was applying for assistance for both herself and her spouse in accordance with section 5 of the EAPWDA.

The relevant legislation is sections 1 and 1.1 of the EAPWDA and section 5 of the EAPWDR:

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 a recipient and his or her dependants;

...

"recipient" means the person in a family unit to or for whom disability assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult 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.

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.

This appeal was held by written hearing by consent of the parties in accordance with section 22(3)(b) of the *Employment and Assistance Act*.

The Appellant's Position

The appellant did not make any statements in her appeal submission. In her Request for Reconsideration the appellant stated:

In July, I spoke of his drinking and not seeing him for days and wanting him off my file. At the end of July I waited a couple of days and asked why he was still on my file and got a reply of “I don’t know” and again said take him off my file. Answer was “No. but someone is working on it” Later approximately August 11, 2016 I needed food etc. and asked for crisis. Was told \$20 per person and later in the day \$40 would be ready. At this time [my spouse] was still getting mail here and I had to find him to pick it up for me.

The Ministry’s Position

The ministry relied on its reconsideration decision in which it states that it has no record of a discussion with the appellant in July regarding removing her spouse from her file. The ministry’s records of conversations between the appellant and the ministry in July indicate that they concerned the impact of the appellant’s spouse’s CPP benefits on the appellant’s disability assistance amounts and possible eviction.

The Panel’s Decision

The evidence before the ministry at the time of the reconsideration decision consisted of its own records of conversations between ministry workers and the appellant in July and August 2016, which indicate that the appellant did not ask to have her spouse removed from her file until August 11, on the one hand, and the appellant’s statement that she did in fact ask to have her spouse removed from her file in July on the other. The appellant has offered no corroborating evidence to substantiate her statement, or even a date upon which that conversation may have occurred. In addition, we have the fact that during August the appellant asked the ministry to make out cheques in her spouse’s name and that he picked them up from the ministry offices.

In the face of contemporaneous written records versus the unsubstantiated contradictory statement of the appellant, and the fact that the appellant’s cheques were being made out to and picked up by the appellant’s spouse during August, it was reasonable for the ministry to find that the appellant was still in a spousal relationship at the time of her application for disability assistance for August.

According to section 5 of the EAPWDR, one member of a family unit must apply on behalf of all members of the “family unit”. In this case, the appellant’s spouse was a “spouse” as defined in section 1.1(2)(b) of the EAPWDA and so a “dependant” as defined in section 1 of the EAPWDA making them a “family unit” as defined in section 1 of the EAPWDA, so that the appellant was applying on behalf of both herself and her spouse as a family unit.

Accordingly, the Panel finds that the ministry’s decision that the appellant is not eligible to receive disability assistance as a single person for the month of August 2016, was reasonably supported by the evidence and confirms the ministry’s decision.