

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) Reconsideration Decision of March 7, 2017 in which the ministry determined that the appellant was ineligible for disability assistance (DA) because she failed to apply for DA on behalf of her entire family unit, specifically her spouse, as required by Section 5 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Sections 1, 1.1

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 5

## 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 appellant was in receipt of DA as a sole recipient until declared ineligible for benefits by the ministry on February 21, 2017.

The evidence before the ministry at reconsideration included the following:

- appellant's bank account activity statements for the months of October, November and December 2016 and January 3, 2017;
- bank account enquiry dated January 18, 2017 indicating a PWD deposit of \$614.24;
- copy of a banking record dated November 14, 2016 confirming a debit memo of \$3,000 from the husband's bank account and a credit memo of \$3,000 to the appellant's bank account, and a cash withdrawal of \$1,000 from the appellant's account.
- Request for Reconsideration received by the ministry on February 21, 2017 in which the appellant noted that:
  - her ex-husband was undergoing therapy for PTSD and she had not seen him for 4 days;
  - she has no food or medication;
  - her husband did not transfer \$2,000 into her account. That amount was taken out by him, leaving her with no resources;
  - she and her husband are still separated, and do not share the same room or bed.

In her Notice of Appeal dated March 23, 2017 the appellant stated that she and her husband are not in a marriage-like relationship and she is not financially dependent or interdependent upon him.

The ministry relied on the reconsideration decision, summarized as follows:

- on December 15, 2016 the appellant submitted a shelter information form indicating that she had moved to a residence in which her husband was the owner/landlord;
- on December 29, 2016 the appellant informed the ministry that she was back with her husband and was advised by the ministry that he was required to be added as a dependent on her file;
- on January 10, 2017 the appellant notified the ministry that she and her husband were not living as spouses and had separate bedrooms. She further advised that she was providing housekeeping services in lieu of rent;
- a ministry enquiry confirmed that on November 14, 2016 \$1,000 was transferred from the husband's bank account to the appellant's bank account and an additional \$2,000 was transferred on November 21, 2016 for a total of \$3,000 deposited into the appellant's account;
- on November 14, 2016 \$1,000 was withdrawn from the account;
- on February 15, 2017 the appellant's husband told a ministry worker that he and the appellant were still legally married. The appellant's husband also informed the ministry worker that he refused to be added to the appellant's file as a dependent.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of March 7, 2017 in which the ministry determined that the appellant was ineligible for disability assistance (DA) because she failed to apply for DA on behalf of her entire family unit, specifically her spouse, as required by Section 5 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Relevant legislation:

### EAPWDA:

#### *Interpretation*

1 (1) In this Act:

**"applicant"** means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit, and includes

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

**"family unit"** means an applicant or a 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.

The appellant argues that she should not be required to add her husband as a dependent on her ministry file because he is not a client of the ministry. She asserts that she no longer lives in a spousal relationship with her husband, sleeps in a separate bedroom, and provides housekeeping duties in lieu of rent. She also argues that \$3,000 was deposited from her husband's account into her account by mistake, and that her husband removed these funds from the account on November 21, 2016 for payment of taxes and insurance. She adds that she is not financially dependent or interdependent upon him.

The ministry argues that the appellant is not eligible for PWD because she has failed to apply for assistance on behalf of her entire family unit, as required by Section 5 of the EAPWDR. Specifically the ministry argues that the appellant's husband is defined as a dependent for the purposes of the EAPWDA because he is legally married to the appellant and resides with her in the same house, and that because he is a dependent he comprises part of the appellant's family unit.

The ministry also argues that the appellant's husband has transferred \$3,000 into the appellant's account, of which \$1,000 remains unexplained. The ministry finds that the sharing of money between accounts and that the appellant's rent free living arrangement in her husband's house are indicative of financial dependence or interdependence.

### Panel Decision

EAPWDR Section 5 (1) states that in order to be eligible for DA an adult must apply on behalf of the family unit. In EAPWDA Section 1(1) "family unit" is defined as "an applicant and his or her dependants. "Dependant" is defined as "anyone who lives with the applicant and who is the spouse of the person".

The definition of "spouse" is set out in EAPWDA Section 1.1 (1): "two persons are spouses of each other for the purposes of this act if (a) they are married to each other".

Both the appellant and her husband have confirmed to the ministry that they are still legally married to one another and reside at the same address. The legislation does not provide an exception for legally married spouses who reside together in an arrangement that is not consistent with a marriage-like relationship. No separation agreement or divorce certificate has been tendered by the appellant.

The panel therefore finds that the ministry reasonably determined that they are "spouses" within the meaning of EAPWDA Section 1.1(1), and also reasonably determined that because the appellant's husband is a "spouse" he must be considered a dependant who comprises part of the appellant's family unit. The panel also finds that the ministry reasonably determined that the appellant is not eligible for DA because she failed to apply for assistance on behalf of her family unit, as required by EAPWDR Section 5 (1).

The panel also finds that the ministry reasonably determined that the evidence of shared financial assets and the appellant's rent-free residency in her husband's home is indicative of financial dependence or interdependence, but notes that the finding of financial dependence or interdependence between two persons residing together as set out in EAPWDA Section 1.1(2) is not applicable to the determination of the appellant's eligibility for DA because the spousal relationship between the appellant and her husband was already determined under Subsection 1.1(1).

In conclusion, the panel finds that the ministry's determination that the appellant is not eligible for DA because she failed to apply for DA on behalf of her family unit is a reasonable application of the applicable legislation in the appellant's circumstances, and confirms the decision.