

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated March 20, 2017, which found the Appellant ineligible for income assistance as a sole recipient because he did not apply on behalf of his family unit as required under section 5 of the Employment and Assistance Regulation. The Ministry determined that the Appellant's family unit includes a spouse as defined in sections 1(1) and 1.1(1)(a) of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 1, Interpretation: "applicant", dependant", "family unit"; section 1.1

Employment and Assistance Regulation (EAR) section 5

PART E – Summary of Facts

Information before the minister at reconsideration included:

- A statement from the Appellant, undated.
- The Appellant's Application for Income Assistance, signed January 26, 2017, indicating "family type" as "single person", and "marital status" as "separated (previously married)".
- A notarized declaration dated October 31, 2016 from a friend of the Appellant stating that the Appellant lives in the same unit with other persons, but lives separate and apart from his spouse and they keep separate and apart and do not hold themselves out socially as a couple.
- A notarized declaration by the Appellant dated October 31, 2016, in which the Appellant states details of his living arrangement and states that he has no financial dependence or interdependence with his spouse and no social and familial interdependence with her other than their shared parenting obligations.
- The Appellant's Request for Reconsideration, signed March 6, 2017, with a statement, undated and unsigned, submitted on behalf of the Appellant, stating that the Appellant is not in a spousal, marriage-like or dependency relationship.

At the hearing, the Appellant submitted material printed from Clicklaw Wikibooks on the definition of separation. This was accepted by the Panel as argument.

The Appellant submitted copies of business cards of social workers and a physician and a copy of his Security Worker Licence. The Ministry objected to the admission of these documents. The Panel did not admit these documents under section 22(4), EAA, as they are not written testimony in support of the information and records that were before the minister when the decision being appealed was made.

The Appellant stated that he is legally married to his spouse; however in every way other than living together they are separated. The Appellant stated that he consulted a lawyer who told him it is possible to be separated and live under the same roof.

The Ministry responded by referring to the legislation. The Ministry stated that the Appellant is legally married and resides with his spouse.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry decision which found the Appellant ineligible for income assistance as a sole recipient because he did not apply on behalf of his family unit as required under section 5 of the Employment and Assistance Regulation. The Ministry determined that the Appellant's family unit includes a spouse as defined in sections 1(1) and 1.1(1)(a) of the Employment and Assistance Act.

Legislation

EAA

Interpretation

(1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income 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.

EAR

Applicant requirements

5 (1) 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.

- (2) A child who is not residing with his or her parent is not eligible to receive assistance unless, after reasonable efforts by the minister to have the parent assume responsibility for the financial support of the child, the minister decides to grant income assistance to the child.
- (3) If a family unit includes a parenting dependent child, an application under subsection (1) may include in the family unit both the parenting dependent child and his or her dependent child.
- (4) Despite subsection (1), if
 - (a) a parenting dependent child is a dependent youth residing with his or her parent, and
 - (b) the parent of the dependent youth is a recipient under the Act or a recipient within the meaning of the *Employment and Assistance for Persons with Disabilities Act*,the dependent youth may apply for income assistance or a supplement for a family unit composed of the dependent youth and any dependant of that dependent youth.
- (5) The minister may provide income assistance or a supplement to a family unit described in subsection (4) if the minister considers that this is appropriate in the circumstances.
- (6) If income assistance or a supplement is provided to a family unit described in subsection (4), the minister may not provide income assistance or a supplement on account of a person in that family unit as part of any other family unit.

The Appellant's position is that his situation is unique; he acknowledges that he resides with his spouse, however his presence in the home is necessary, and other than the fact that he is still legally married, there is no marriage-like relationship with his spouse. The Appellant argued that due to his spouse's emotional instability and his son's mental illness, he is needed in the home to keep stability. The Appellant argued that his spouse became suicidal when he planned to leave her. He argued that his son has a borderline personality disorder that causes him to become violent towards his mother, and the Appellant's presence helps to subdue his behaviour. The Appellant stated that with respect to finances, he does not share a bank account with his spouse, he pays half of the rent and the electric bills and his spouse pays for the cable and their son's food. He stated that he is making efforts to become financially independent.

The Ministry's position is that the legislation is clear, although the Appellant's situation may be difficult. The Appellant is legally married and lives with his spouse. The Ministry argued that the Appellant and his spouse reside together with no separate living area and he is deeply involved with his family, therefore the definition of spouse in the legislation fits the Appellant's circumstances and it must be applied consistently.

The Panel notes that although the Appellant argued that he is independent, he agreed that he is legally married and resides in the same residence where his wife resides. The EAA section 1.1(1) states that two persons are spouses of each other for the purposes of the Act if they are married to each other. The definition of "dependant" in section 1 of the EAA means anyone who resides with the person and is their spouse. The definition of "family unit" means an applicant and his or her dependants. The Ministry determined that the Appellant resides with his spouse and he is married to her, therefore she is a dependant and must be included in the Appellant's family unit. The Appellant argued that there is no financial dependence or interdependence and that it is possible to be separated and remain living under the same roof, however he also stated that he pays half of the rent and the electric bill and that the reason he remained with his spouse was to assist with the care of their son. The Panel notes that the Appellant and his spouse share the same residence, each paying a portion of the rent and utilities. The panel finds that the Ministry reasonably determined that the Appellant's spouse is a dependant for the purposes of the Act and is therefore part of the Appellant's family unit. The Panel finds that the Ministry reasonably determined that the Appellant is ineligible for income assistance as a sole recipient because he has not applied on behalf of his family unit, including his spouse.

The Panel confirms the Ministry decision, The Appellant is not successful on appeal.