

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated May15, 2017, in which the Ministry determined that the Appellant is not eligible for assistance as a sole recipient and must apply for assistance on behalf of her entire family unit under section 5 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Act (EAA) sections 1, 1.1

Employment and Assistance Regulation (EAR) section 5

PART E – Summary of Facts

Information before the minister at reconsideration included:

- A copy of the Appellant's application for income assistance signed February 14, 2011.
- A copy of the Appellant's application for income assistance signed March 6, 2017.
- A copy of the Appellant's landlord information signed February 6, 2017.
- The Appellant's Request for Reconsideration signed April 13, 2017.

At the hearing, the Appellant submitted copies of two Statutory Declarations dated April 18, 2017, one signed by herself and one signed by her husband, her 2013, 2014 and 2015 Tax Return Summaries and a copy of a receipt for rent paid by the Appellant to her husband dated February 1, 2017. The Appellant stated that these documents were part of the material she submitted with her Request for Reconsideration. The Ministry stated they did not know why this material was not included with the appeal record provided to the Tribunal. The Panel admitted these documents under section 22 of the EAA as they were before the minister at reconsideration. The Ministry did not object to the admission of these documents.

The Statutory Declaration signed by the Appellant states that she is disabled by severe and chronic back pain, that her children live in another country, that she married her husband in 1995 and lived with him, they separated in 2013 and she attempted to find her own apartment but was unsuccessful, that she and her husband changed bedrooms, rearranged their finances, established separate bank accounts, file taxes as separated, and she pays her husband rent. She stated that she had back surgery in 2013 which left her unable to care for herself for a long period of time, that she has become more disabled after a second operation in 2014 and she is unable to clean or shop, that her husband shops and she pays for the food and she cooked for herself until her condition deteriorated further in 2016, and she now requires assistance with all tasks of daily living, including shopping, cleaning, getting out of bed, dressing, bathing, toileting and cooking. She stated that she has no savings, no friends and no family to assist, and her relationship is not marital but one of dependency due to her disability and need for care.

The Statutory Declaration signed by the Appellant's husband states that they separated in 2013, that the Appellant looked for an apartment, then they rearranged their apartment and he gave up the larger bedroom for her, that they closed their joint bank accounts and maintain separate bank accounts, that the Appellant began paying him rent, that they file their taxes separately, that the Appellant began to have disabling back pain which affected her ability to find her own apartment, that the Appellant had surgery in 2013, after which she was bedridden and needed assistance, that she has no other family or friends to assist, that her pain began to increase, and if she needs assistance during the day she phones him and he helps her. He stated that he also has to help the Appellant during the night sometimes, and she is severely disabled by her pain, Parkinson's Disease and serious depression and anxiety, and he feels responsible to continue to provide shelter and caregiving for her. He stated that he and the Appellant do not have a marital relationship, that they live as separately as possible under the same roof. He stated that they have not obtained a divorce only because of the cost and because he has been overwhelmed by the Appellant's medical and mental health needs, and that she pays him rent when she can, but when she does not have enough money she does not pay. He stated that he does all of the shopping and cleaning because the Appellant is not physically able, that she was able to do her own cooking until recently, and they do not cook or eat together, and for the past two months she has not been able to cook for herself, so he has cooked for her. He stated that they do not have a marriage-like relationship and they do not spend time together except in a caregiving context.

The Appellant submitted a copy of the Ministry policy "Determination of Residing Together", which the Panel accepted for reference.

The Ministry responded that they rely on the legislation, section 1.1(2) of the EAA, which states that for the purposes of this Act, two persons are spouses if they are married to each other.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the decision in which the Ministry determined that the Appellant is not eligible for assistance as a sole recipient and must apply for assistance on behalf of her entire family unit under section 5 of the Employment and Assistance Regulation (EAR).

Legislation

EAA

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;

"**spouse**" has the meaning in section 1.1

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.

Determination of Residing Together

Effective: September 21, 2016

The amount of assistance issued is reflective of a *family unit's* composition. For the purposes of determining eligibility, the ministry must establish whether two persons are residing with each other as a family unit. 'Resides with' refers to sharing the same living space, and includes a person who ordinarily resides with the applicant or recipient but is away from the home for periods of time for employment. A person living at the same address but in a separate living area (such as a self-contained suite) is not considered as residing with the applicant or recipient. In addition to a self-contained suite, a separate living space may also include:

- A developed basement with separate living and/or sleeping quarters but no separate kitchen and the individual resides in the space with the intent of maintaining a separate living space;
- A separate structure on the same property that, though it is not 'zoned' as a living space, the individual resides in the space with the intent of maintaining a separate living space.

If an applicant or recipient has advised they are not 'residing with' their spouse but is living in a separate living space at the same address, as described above, and the applicant or recipient has indicated that domestic abuse is a factor, policies and policy exemptions for Persons Fleeing Abuse still apply. Fleeing Abuse Policy and Exemptions apply, including but not limited to:

- Adding the Person Fleeing Abuse Alert
- Moving, Transportation and Living Costs Supplement
- Additional Security Deposit Supplement
- Sponsorship Undertaking Default

[For more information, see Related Links – Persons Fleeing Abuse – Health and Safety Concerns]

Persons, including persons who are married, may temporarily share accommodation without being considered to be "residing together" if the applicant or recipient confirms they are not in a spousal, marriage-like or dependency relationship and that they are sharing accommodation temporarily due to an emergency situation such as loss of housing due to health and safety concerns, eviction or house fire. The ministry intends to ensure that applicants or recipients in these exceptional circumstances are not treated as a family unit for the purpose of determining eligibility for *income assistance*, *disability assistance* or *hardship assistance*.

The Appellant's position is that she is a sole applicant; that she is not in a marriage-like relationship; she is not divorced because she cannot afford it and she resides with her husband because they have a caregiver relationship and they live as independently as possible. The Appellant argued that she has been separated from her husband since 2013. She started to look for an apartment, but she became increasingly disabled and she has little income. She argued that she has done everything possible to be separate – filing income tax returns as a single person, paying rent to her husband when possible, that she has her own bedroom, where she stays as much as possible. She argued that she could not find affordable housing, so she decided to live

separately in the same two bedroom apartment. She argued that she and her husband are socially separate, they do not present as a couple, and they are basically in a caregiver relationship due to her disability. The Appellant referred to the Ministry policy on Determination of Residing Together, which states that persons, including persons who are married, may share accommodation without being considered to be residing together if the applicant or recipient confirms that they are not in a spousal, marriage-like or dependency relationship. The Appellant argued that the word temporary is relative, considering the local housing situation. The Appellant argued that this situation is not very different from two persons living in a basement suite, and they are trying to do things separately. With respect to the definition of spouse in the legislation, the Appellant argued that her situation is the reverse – they are not living in a marriage-like relationship, and it will be very difficult for her to move on without independent funding. She argued that she has done the utmost to live separate and apart, they are not residing together and they do not meet the legislative test set out in section 1.1, EAA.

The Appellant argued that denial of her application is contrary to the B.C. Human Rights Code.

The Ministry's position is that their decision is based on the legislation, not policy, and that two persons who are in a dependency relationship cannot apply for income assistance as a sole applicant. The Ministry argued that the policy referred to by the Appellant refers to a temporary situation which is different to the Appellant's situation, which is continuous. The Ministry argued that the Appellant and her spouse applied for assistance in 2011 as a couple, and their situation has not changed; they still reside at the same address. The Ministry stated in response to a question from the Panel that there is no guideline for the word temporary in the policy.

The Panel notes that the Appellant acknowledges that she and her husband are married to each other, which is the test set out in section 1.1(1)(a) of the EAA, Meaning of Spouse. The subsections which follow refer to two persons who reside together and the requirements to determine if they are spouses for the purposes of the Act. The facts relating to the degree of independence, social or financial, exercised by the Appellant and her husband are not in dispute; however, the applicable legislation states that two persons are spouses of each other for the purposes of the Act if they are married to each other. There is no exception in the legislation for the circumstances of the Appellant, that she and her husband live as separately as possible.

With respect to the Ministry policy regarding determination of residing together submitted by the Appellant, the Panel notes that it refers to situations where a person lives at the same address but has a separate living area, such as a self-contained suite, situations involving domestic abuse and persons temporarily sharing accommodation. None of these circumstances are those of the Appellant.

Section 1 of the EAA defines dependant, in relation to a person as anyone who resides with the person and who (a) is the spouse of the person. As the Appellant's relationship meets the legislative test of spouse and she resides with her spouse, the Panel finds that the Ministry reasonably determined that the Appellant's spouse is her dependant and therefore she must apply for assistance on behalf of her family unit under section 5, EAR, including her spouse.

The Appellant made an argument under B.C. Human Rights Code. Section 19.1(f) of the Employment and Assistance Act provides that section 46.3 [*tribunal without jurisdiction to apply the Human Rights Code*] of the Administrative Tribunals Act applies to the Tribunal. The Tribunal does not have jurisdiction to apply the *Human Rights Code*.

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