

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the ministry”) reconsideration decision of July 13, 2017 which held that the appellant is 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 (EAR). The ministry determined that the appellant’s family unit includes a person who is a dependant as defined in section 1(1) of the Employment and Assistance Act (EAA) as that person resides with the appellant and indicates a parental role for the appellant’s dependent children and is a spouse as defined in Section 1.1(2) of the EAA.

PART D – Relevant Legislation

Employment and Assistance Act, (EAA), Section 1 Interpretation: “applicant”, “dependant”, “family unit”; Section 1.1 Meaning of “spouse”

Employment and Assistance Regulation (EAR), Section 5

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

In the reconsideration documentation, the appellant's alleged spouse is identified by various names, one of which is the appellant's last name. Therefore, for the purpose of maintaining privacy of the appellant and the alleged spouse, she is referred to in this appeal decision as [Person A].

The appellant is a recipient of income assistance as a single parent of four dependent children. Ministry records show that his file opened in March 2016 at which time he lived with [Person A].

Information before the minister at the time of reconsideration includes:

- A Client Receipt dated March 1, 2016 for \$466.00 in the name of [Person A]. Noted on the receipt is "Advocate Return Damage Deposit Eviction". Ministry records indicate that the address listed is the address the appellant provided as his residence when he applied for income assistance in March 2016.
- An application for assistance from the appellant dated March 29, 2016, with a hand-written unsigned letter described by the ministry as being written by [Person A]. The writer explains "[The appellant] and his three children have been saying with me the last couple of months. We have been helping each other out. I look up to [him] and I've always loved his children. He's like a big brother. We made a verbal agreement that [the appellant] would pay half the rent and half the bills." The writer asked the ministry for funds to be provided to the appellant to help her pay utility bills at the residence they were sharing.
- A Shelter Information Form dated April 2016, listing two adults and four children as tenants.
- A Shelter Information Form dated September 15, 2016, identifying the appellant as the ministry client and listing two adults and four children as tenants.
- A Consent to Disclosure of Information allowing the Ministry to disclose all information relevant to the determination of eligibility for assistance for [Person A] whom the appellant identified as his sister living at a different address. When contacted by the Investigation Officer, [Person A] stated that she was living with her dad.
- On September 16, 2016, the ministry provided the appellant with a crisis grant for beds.
- An invoice for beds and bedding from a service organization dated September 27, 2016, and an order form for delivery identifying [Person A] as the appellant's sister and as the contact for delivery.
- The appellant contacted the ministry on December 22, 2016 to inquire about the retroactive Child Tax Benefit amount deducted from his income assistance and he requested that the ministry worker discuss the situation with [Person A].
- In March 2017, the appellant was evicted from his residence.
- On April 11, 2017, Canada Revenue Agency (CRA) wrote to the appellant stating that because the children were living with both him and [Person A], for him to be considered the one eligible for the Canada Child Benefit program, [Person A] must complete and return a letter they had sent to her earlier.
- On April 24, 2017, the appellant submitted a Shelter Information Form to the ministry. The appellant informed the ministry that his girlfriend would not be moving in with him. He also stated that although he has custody of four children, he receives Child Tax Benefits (CTB) for only two.
- On May 1, 2017, the appellant submitted a letter to the ministry stating that his girlfriend helps him out with the children but they do not reside together.
- On May 3rd, the ministry contacted the appellant's landlord, who confirmed that the appellant, [Person A] and four children moved into the residence listed on the Shelter Information Form.

- On May 28, 2017, the appellant and [Person A] admitted to a ministry worker that they were in a common-law relationship and scheduled an appointment to consolidate their files.
- On June 2, 2017, the appellant told the ministry he was not living with anyone in a common-law relationship and did not agree to have her added to his file as a dependent spouse.
- Documents submitted to the ministry on June 12, 2017:
 - A Student Application Form dated June 10, 2016, indicating that the mother and father have legal custody, naming the appellant as the father and listing [Person A] as the emergency contact person who is not a parent. Person A has the same last name as the appellant, is living at the same address as the appellant and the child, and is identified as being the child's "grandmother".
 - A Shelter Information Form for March and receipts from [Person A] for the months of March, April, May, and June 2017 for a residence that [Person A] said she was renting. The landlord of the residence, who was her father, later confirmed to a ministry worker that [Person A] did not live at that address.
 - A Student Application Form dated May 3, 2017, indicating that the mother and father have legal custody, naming the appellant as the father and listing [Person A] with no last name as a friend/babysitter and the emergency contact person who is not a parent and who is living at the address that is her father's residence.
 - A Student Information Verification Form dated May 31, 2016 naming the appellant as the father and listing [Person A] as the stepmother and emergency contact person.
 - A Student Information Verification Form dated June 1, 2017 naming the appellant as the father and listing [Person A] as parent/guardian not living with the child.
- A letter from CRA to the appellant advising that when a child resides with a male and female parent who are spouses or common-law spouses, the female parent is presumed to be primarily responsible for the child. The CRA informed the appellant that as he was residing with his spouse, he was required to provide a letter confirming which party was the primary caregiver. At that time, [Person A] was receiving Child Tax Benefits for two of the children. The appellant advised a ministry worker on this date that they were working on the letter.
- On June 13, 2017, a social worker at a youth program confirmed that [Person A] lived with the appellant and was co-parenting the children. Also on that date, during a phone conversation between the appellant and a ministry worker about crisis assistance, a female identifying herself as the appellant's fiancée took the phone to speak with the ministry worker.
- On June 19, 2017, during a conference call with the appellant and [Person A], the appellant provided verbal consent to the CRA and Child Tax Benefit program staff to release information to an Investigative Officer with the ministry. The CRA subsequently confirmed that the appellant filed his 2015 taxes declaring that [Person A] was his common law spouse. The CRA also confirmed that his common-law spouse was approved to receive the CTB benefits as they were a couple. The ministry advised the appellant he was not eligible for assistance as a sole recipient.

On July 13, 2017, the ministry denied the appellant's request for reconsideration and on July 26, the appellant submitted a Notice of Appeal. The appellant did not include Reasons for Appeal nor did he provide a submission for the hearing.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for assistance as a sole recipient because he is residing with a dependant who is a spouse with whom he must be assessed as one family unit, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Relevant legislation is as follows:

EMPLOYMENT AND ASSISTANCE ACT

Interpretation

1 (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 [spouse]s 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 [spouse]s 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.

EMPLOYMENT AND ASSISTANCE REGULATION

Part 2 – Eligibility for Income Assistance

Division 1 – Applications and Applicant Requirements

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.

[am. B.C. Regs. 48/2010, Sch. 1, s. 1 (d); 197/2012, Sch. 1, s. 5.]

Positions of the Parties

Ministry's Position

In its written submission, the ministry held by its decision at reconsideration.

For the purposes of administering the EAA and the EAR, Section 1 defines a family unit as the recipient and his/her dependants. A dependant is a person who resides with the recipient and who is the spouse of the recipient or who indicates a parental responsibility for the recipient's dependent children. A family unit includes an applicant or recipient and his or her dependants.

The ministry's position is that the appellant does reside with [Person A] and that Person A does indicate parental responsibility and therefore is the appellant's dependant and part of his family unit. Shelter Information Forms indicate that the appellant and [Person A] were residing together with four children in March 2016 and were still residing together as a family unit in May 2017. Further information in support of this position was provided by the CRA agent and the social worker who told the ministry that the appellant and [Person A] live together. [Person A] stated that "she only stays with [the appellant] for the sake of the children."

Section 1.1 of the EAA defines a spouse as two people who have resided together for at least three consecutive months, and the relationship demonstrate financial dependence or interdependence and social and familial interdependence consistent with a marriage-like relationship.

In the opinion of the minister, the appellant has a marriage-like relationship. It is the ministry's position that while the appellant's relationship with [Person A] meets the definition of a dependant in that she resides with the appellant and demonstrates a parental responsibility for his children, the relationship is also marriage-like in that they demonstrate a financial and familial dependence/interdependence. The appellant and [Person A] present in the public as a couple as confirmed by their landlord, the CRA agent and their social worker. They also rely on each other for financial support consistent with that of a marriage-like relationship.

Under section 5 of the EAR, a recipient is required to apply for assistance on behalf of the entire family unit. As [Person A] has been determined to be the appellant's dependant and his spouse, they are a family unit and eligibility for assistance is dependent on including [Person A] in his application for assistance.

Appellant's Position

The appellant did not provide reasons for appeal or reconsideration, but disputes the ministry's decision.

Panel Decision

Ministry records show that there are significant inconsistencies in the characterization of [Person A] and the relationship between the appellant and [Person A], as provided by both the appellant and [Person A]. In conversations with the ministry, and in legal documents, the appellant and [Person A] have both confirmed and denied that they reside together. Further, [Person A] has been identified as the appellant's girlfriend, sister, friend, fiancé as well as grandmother, stepmother and babysitter to the appellant's children. The appellant has not provided any explanation as to these inconsistencies. Therefore, the panel will rely on information from sources including the CRA, landlords and the social worker to make its decision.

Section 5(1) of the EAR provides that for a family unit to be eligible for income assistance, an adult in the family unit must apply for the income assistance on behalf of the family unit. Section 1(1) of the EAA defines a family unit as consisting of an applicant or a recipient and his or her dependants.

Definition of Dependant

Section 1(1) of the EAA defines a dependant as anyone who resides with the person and who is the person's spouse or who indicates a parental role for the person's dependent child.

The CRA confirmed that the appellant filed his 2015 taxes stating that [Person A] was his common-law spouse. Shelter Information Forms between March 2016 and April 2017 list the appellant and [Person A] as residing at the same address with the appellant's four children, which was confirmed by the landlord of the residence identified in the April 24, 2017 Shelter Information Form. In June 2017, a youth program social worker confirmed that the appellant and [Person A] live together. Also in June 2017, the CRA confirmed that [Person A] was approved to receive the Child Tax benefits for the appellant's children as they were a common law couple.

The panel finds that the ministry reasonably determined that the information provided demonstrates that the appellant and [Person A] do reside together and that [Person A] indicates a parental role for the appellant's dependent children and therefore [Person A] is a dependent in the family unit of the appellant.

Definition of spouse

Section 1.1(2) of the EAA specifies that two persons are spouses of each other for the purposes of the Act if they have resided together for at least the previous 3 consecutive months or 9 of the previous 12 months, and the minister is satisfied that the relationship demonstrates financial dependence or interdependence and social and familial interdependence consistent with a marriage-like relationship.

Residency

CRA records dating back to 2015 identify [Person A] as the appellant's common law spouse. Shelter Information Forms indicate that the appellant and [Person A] have resided together since March 2016.

The panel finds that the ministry reasonably concluded that this information demonstrates that the appellant and [Person A] have resided together for at least 3 consecutive months or 9 of 12 consecutive months.

Financial Dependence/Interdependence

In March 2016, [Person A] made a request to the ministry that funds be provided to the appellant to help pay for the utilities in the residence they share. In April 2017, the CRA wrote to the appellant stating that because the children were living with both him and [Person A], for the appellant to be considered the one eligible for the Canada Child Benefit Program, he and [Person A] had to submit a letter to that effect. In June 2017, the CRA approved [Person A] to receive Child Tax Benefits for the appellant's children because they were living as a common law couple.

The panel finds that the ministry reasonably determined that the appellant and [Person A] indicate a financial dependence/interdependence.

Social and Familial Interdependence

In December 2016, the appellant contacted the ministry by telephone to inquire about the retroactive Child Tax Benefit amount deducted from his income assistance and he requested that the ministry worker discuss it with [Person A]. In June 2017, a social worker with a youth program confirmed that the appellant and [Person A] live together. On that same day when the appellant was speaking with a ministry worker about crisis assistance, a woman identifying herself as the appellant's fiancé took the phone to speak with the ministry worker.

The panel finds that ministry reasonably determined that based on the information demonstrating the parental role that {Person A} has with the appellant's children, and the information demonstrating that the appellant and [Person A] interacted with others and represented themselves as a couple, the appellant and [Person A] indicate a social and familial interdependence.

Conclusion

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, which, as defined by Section 1(1) of the EAA, consists of an adult and a dependant who reside together.

Having considered all the evidence, the panel finds that the ministry reasonably determined that the appellant and [Person A] reside together and that [Person A] is a dependant who is the spouse of the appellant who indicates a parental role for the appellant's dependent children. In the case of the appellant, the definition of family unit is met.

The panel finds that that the ministry's reconsideration decision which found that appellant did not meet the criteria for eligibility as set out in the legislation because he did not apply on behalf of his family unit as required under Section 5 of the EAR was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances.

The panel confirms the ministry's reconsideration decision and the appellant is not successful on appeal.