

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision, dated November 7, 2017 (the “Reconsideration”), which determined that the Appellant was not eligible for disability assistance as a sole recipient by virtue of being in a relationship with the person who is an owner of the house in which she lives, the nature of which the Ministry viewed as being consistent with a “marriage-like relationship”, such that the Appellant and the Witness met the definition of “spouses”, as set out in section 1.1 of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”).

PART D – RELEVANT LEGISLATION

EAPWDA, sections 1(1) and 1.1(1)

PART E – SUMMARY OF FACTS

Information before the Ministry at Reconsideration

The following information was before the Ministry at the time of Reconsideration:

- Bank Profile and Consent form with a 49 page transaction history, detailing the period from January 3, 2016 to August 14, 2017 of an account held by the Appellant at the Bank of Montreal (the “BMO Bank Account”);
- Transaction code slip, describing the meaning of various transaction codes in the Appellant’s records for the BMO Bank Account;
- An undated note with the writing “I hope I got all deposits right!”, signed by the Appellant;
- Shelter Information form, dated January 19, 2016 (the “Shelter Information Form”), which described The Witness as the Appellant’s landlord at the property at which the Appellant resides (the “Property”);
- Copy of a letter, dated May 17, 2017, jointly addressed to the Appellant and the individual with whom the Appellant resides (the “Witness”), enclosing a copy of an insurance policy (the “Home Insurance”) in respect of the Property;
- Copy of a utility bill (the “Utility Bill”) from the municipality in which the Appellant lives, jointly addressed to the Appellant and to the Witness at the Property;
- Copy of the 2017 Property Tax Notice (the “Tax Notice”) from the municipality in which the Appellant lives, jointly addressed to the Appellant and to the Witness at the Property;
- An undated handwritten letter from the Witness, enclosing the Tax Notice, the Utility Bill, and the Home Insurance and stating that he and the Appellant were “NOT MARRIED”;
- Copy of a 7 page transaction history, detailing the period from February 2, 2017 to August 23, 2017, for an account at the Royal Bank that the Appellant holds jointly with the Witness (the “Joint RBC Account”) and which show a substantial number of transactions for items ranging from groceries to Telus and BC Hydro bills to medications, including at least one charge for London Drugs on August 2, 2017 that matches the amount showing on a Patient Medical Expense Report, submitted by the Appellant with her Notice of Appeal;
- Bank Profile and Consent form with a 2 page transaction history, detailing the period from February 1, 2016 to August 24, 2017, for an account at the Royal Bank that the Appellant holds in her own name (the “RBC Account”), showing only a small number of transactions per month;
- Copy of a Fortis Gas bill, dated June 26, 2017, in the name of the Witness, for the property that is described in the Shelter Information Form (the “Fortis Bill”);
- Copy of BC Hydro bills, dated July 6, 2017 and August 4, 2017, in the name of the Witness and the Appellant, for the Property (the “Hydro Bills”);
- Copy of Telus bills, dated June 25, 2017 and July 25, 2017, in the name of the Witness and the Appellant, for the Property (the “Telus Bills”), which indicate only one shared phone line between the Appellant and the Witness and with a handwritten notation on the July 25, 2017 bill which reads “I pay” next to the amount for Internet;
- A handwritten letter, dated September 11, 2017, from the Witness stating that he had asked the Appellant if he could put her name on some of the utility bills in the event that he was hospitalized so that she could make inquiries on the status of the accounts on his behalf;
- Copy of a receipt, dated September 1, 2017, from the Appellant to the Witness, for \$450.00;
- An undated handwritten letter from the Appellant, setting out that she suffers from seizures “several times a month” and detailing the drugs that she is required to take on a daily basis;
- Letter from the Ministry to the Appellant, dated September 6, 2017, with Review Checklist attached, describing the information that the Ministry required to assess the Appellant’s eligibility for disability assistance;
- Letter from the Ministry to the Appellant, dated August 6, 2017, with Review Checklist attached, describing the information that the Ministry required to assess the Appellant’s eligibility for disability assistance;
- The Appellant’s Request for Reconsideration (“RFR”), which included the following documents, not previously provided by the Appellant to the Ministry:

- An undated handwritten letter from the Appellant, setting out that she and the Witness are not married and held a “mock” wedding, after convincing a Minister who was to have given each of them blessings in respect of their respective illnesses, for the purpose of fooling persons in the Witness’s family by having photographs taken by the Appellant’s sisters posted to the Appellant’s Facebook profile;
- Consult report from a neurologist to the Appellant’s doctor, dated April 24, 2008, describing the results of a recent CT scan of the Appellant;
- An undated, typed, two page document describing the causes and treatments of restless legs syndrome;
- A one page information sheet describing a book about possible solutions for persons suffering from Tinnitus;
- An undated black and white image of a head scan;
- A one page information sheet describing the risks of neurosurgical procedures;
- A radiological report from an MRI of the Appellant’s head, dated April 24, 2016 (the “April 2016 MRI”);
- Consult report from a neurologist to the Appellant’s doctor, dated April 27, 2016, describing the results of the April 2016 MRI;
- Consult report from a neurologist to the Appellant’s doctor, dated June 2, 2017, describing the Appellant as having migraine issues and restless legs syndrome;
- Two Medical Expense Reports, prepared by a drug store, describing the amounts of various prescriptions filled by the Appellant in the months of July and August, 2017;
- An undated handwritten letter from the Appellant, setting out that the reasons why on her Facebook profile her name includes the surname of the Witness and providing further medical information about Meningiomas that she has had and the seizures that they cause her to have now;
- An undated handwritten letter from the Appellant, setting out that one of the reason why her name is on the Telus Bills, the Hydro Bills, and the Fortis Bill is to assist her with building her credit rating;
- Copy of a VOID cheque and a one page of transaction history in respect of an account at the Bank of Montreal in the names of the Appellant and her mother (the “Joint BMO Account”);
- An undated handwritten letter from the Appellant, setting out the reasons for both her name and the name of the Witness being on the Tax Notice, the House Insurance, and title to the property described in the Shelter Information Form;
- An undated handwritten letter from the Appellant, setting out the reasons why she has two joint bank accounts, one with the Witness and one with her mother;
- A two page article published in the Province newspaper on September 27, 2017 titled “Homelessness Rising Across Metro”;
- An undated handwritten letter from the Appellant, addressed to a variety of media outlets and government officials, commenting on the “Homelessness Rising Across Metro” article and describing her experiences with the homeless and views on the Ministry;
- An undated handwritten letter from the Appellant, submitted with her RFR and describing her as having been presumed “guilty” because of an “anonymous” letter to the Ministry describing her as being married;

With her Notice of Appeal, submitted November 16, 2017, the Appellant submitted a number of new documents, including:

- Patient Medical Expense Report from London Drugs, detailing the Appellant’s medication expenses for the month of August, 2017;
- Patient Medical Expense Report from London Drugs, detailing the Appellant’s medication expenses for the month of July, 2017;
- A handwritten note from the Appellant, describing the medications that she currently takes and the cost for same;

- A handwritten note from the Appellant in which she submits:
 - She is being discriminated against as a disabled person by being forbidden to marry;
 - Currently, she is suffering from panic attacks as a result of the Ministry decision to deny her disability assistance as a sole recipient;
 - She is taking many medications that are currently being paid for by the Ministry but will no longer be covered if she loses her disability assistance;
 - She never knows when she will suffer a seizure and suffers from slurred speech. She is currently afraid of suffering a stroke as a consequence of the two brain tumours she has had in the past;
 - She suffers from memory lapses and has recently developed tinnitus;
 - She suffered from two brain tumours called Meningiomas, which were benign; and
 - In addition to seizures, the Appellant also suffers from issues with balance, hearing loss, and double vision;

In addition to the above, the Appellant re-submitted a number of other documents that formed part of her RFR, including consult reports, a radiological scan, and the article about the book entitled “A Solution for Ringing in the Ears.”

The panel admits the Patient Medical Expense Reports under section 22(4) of the *Employment and Assistance Act* as written evidence in support of information that was before the Ministry at Reconsideration, in that it describes medications that the Appellant is taking for medical conditions described in the information that was before the Ministry at Reconsideration.

The balance of the documents contained in the Appellant’s Notice of Appeal are argument and are admitted as such by the panel.

Immediately prior to the hearing, the Appellant also submitted a packet of documents for the panel to consider. The packet included the following new documents that had not previously been submitted:

- A handwritten note from the Appellant, dated December 4, 2017, which explained her history with the Witness, who she met approximately 32 years ago when he was the maintenance person for a duplex the Appellant lived in and who she describes in the note as “a brother I never had.” The Appellant also confirmed in this note that she had moved into the Property in or about 2005.
- The Appellant’s Notices of Assessment from Canada Revenue Agency (“CRA”) for the years 2015 and 2016;
- A handwritten note from the Appellant which describes the reasons for her having joint accounts with both her mother and the Witness, whose health conditions include Pulmonary Fibrosis and heart problems, which require him to be on oxygen and make it difficult for him to do his own banking;
- A letter, dated December 1, 2017, from the bank at which the Appellant holds an account jointly with the Witness, which sets out that the Appellant can not be removed as a joint account holder but that the account could be closed and a new account could be opened in the Witness’ sole name and which includes a handwritten note from the Appellant that her name will be removed from the account;
- A bank slip, dated December 2, 2017, showing a withdrawal of \$460.00 from an account which the Appellant stated in her oral evidence was hers and which includes a handwritten note from the Appellant;
- An undated handwritten note from the Appellant, explaining that multiple names can be on utility bills for the Property and that she contributes \$70.00 per month to the utilities for the Property;
- An undated, handwritten note from the Witness, stating that he can not afford to take care of the Appellant and will have to ask her to move out if she is denied disability assistance;
- An undated handwritten note from the Appellant that sets out that the Witness will explain how and why the Appellant’s name was added to the title of the Property;

- An undated handwritten note from the Appellant explaining that her name was on the insurance for the Property because the insurance agent advised her that the insurance should include her name because she is on the title to the Property;
- An undated handwritten note from the Appellant, describing:
 - how the Witness allows her to live at the Property with her dog, who is able to tell when she is about to have a seizure;
 - how the Property is located next door to where the Appellant's mother lives;
- An undated handwritten note from the Appellant setting out that she was at her neurologist on Friday due to having had more seizures;
- A requisition for an awake EEG on January 12, 2018 and a sleep EEG on January 17, 2018;
- An undated handwritten note from the Appellant, setting out that the Ministry had no business accessing her Facebook page; and
- An undated handwritten note from the Appellant, thanking the tribunal for hearing her appeal.

The panel admits all of the Appellant's handwritten notes as argument, with the exception of the last page. The handwritten note, thanking the tribunal for hearing her appeal, which is neither argument nor testimony in support of any documents that were before the Ministry at Reconsideration.

The panel does not admit the Appellant's Notices of Assessment from CRA for 2015 and 2016 as neither is a document in support of information before the Ministry at Reconsideration.

The letter from the Bank at which the Appellant holds a joint account with the Witness and the Bank Slip from the Appellant's account are not admitted as both refer to matters which took place after Reconsideration and, by definition, are not in support of information that was before the Ministry at Reconsideration. The Appellant's notes on each of those documents is admitted as argument.

Likewise, the requisition for the two EEG tests, one an awake EEG and one a sleep EEG, are not admitted as both relate to future events and are not in support of information that was before the Ministry at Reconsideration.

Oral Evidence of the Witness

The Witness gave evidence about what he understood to have been the Appellant's health history, stating that she had suffered brain damage after giving birth to her daughter. He stated that he believes that the hospital had been negligent in its treatment of the Appellant but that no legal action had been taken because the Appellant was eligible for disability assistance thereafter.

The Witness stated that he and the Appellant are not married and are just good friends.

The Witness explained that he removed his daughter from title to the Property and added the Appellant's name to title of the Property approximately seven months ago but stated that the Appellant is not an owner and merely holds her interest in Trust. The witness confirmed, in questions from the panel, that the Appellant will inherit the Property on his death and that it is his wish that she do so. The Witness indicated that the Appellant did not own any specific percentage of the Property. The Witness stated that he worked hard for the Property and would not just hand it over.

The Witness also stated that the marriage that was documented on the Appellant's Facebook profile was a sham for the sole purpose of fooling members of his family.

Finally, the Witness indicated that without the disability assistance that the Appellant receives, he would have to give the Appellant notice to leave as the funds are imperative to what he describes as his wish to help the Appellant out as much as he can while he is alive.

Oral Evidence of the Appellant

In her oral evidence, the Appellant reiterated much of what she had set out in the numerous handwritten notes which were included with her RFR, her Notice of Appeal, and in the documents submitted shortly before the hearing of this appeal.

In short, the Appellant stated that:

- she and the Witness have known each other for many years, including at times when the Witness was happily married;
- she has always been independent and has been living on her own even after the discovery of her brain tumours;
- she and the Witness did not legally marry and that the idea for a mock marriage came about when she went to see a minister to receive a blessing in respect of her brain tumour and the Witness decided that he also wanted a blessing in respect of his health issues;
- The photographs of the wedding, taken by her sister, were only visible to a small number of people and have since been taken down;
- one need not be married to be on utility bill;
- she had, in the past, done the Witness' shopping and banking because of his health conditions but that she now pays him rent directly in the amount of \$450.00 and also contributes \$70.00 to utilities;
- the Witness will not be able to take care of her if she is denied disability assistance and that the Ministry will need to help her locate alternative housing that will accommodate her dog;

The panel admits the oral evidence of the Appellant and of the Witness under section 22(4) of the *Employment and Assistance Act* as oral testimony in support of information that was before the Ministry at Reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry reasonably determined that the Appellant was not eligible for disability assistance as a sole recipient by virtue of being in a relationship with the Witness, the nature of which the Ministry viewed as being consistent with a “marriage-like relationship,” such that the Appellant and the Witness met the definition of “spouses”, as set out in section 1.1 of the EAPWDA.

Relevant Statutory Provisions

Section 1.1 of the EAPWDA sets out the meaning of “spouse” for the purpose of eligibility for disability assistance as a sole recipient under the EAPWDA as follows:

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.

The Appellant's Position

The position of the Appellant is that she and the Witness are not only not legally married but that they are also not in a marriage-like relationship.

The Appellant's position is that the marriage referenced in her Facebook profile was a fake/mock marriage, that her name being on the bills for and title to the Property are merely for convenience, and that the Witness' decision to put her name on the title to the Property was to provide her with some security.

Although the Appellant made reference, in both her written submissions to the Ministry, in the RFR and Notice of Appeal, and in her oral evidence before the panel, to the Witness taking care of her, she described the Witness as being like a brother that she never had and that, in the result, she and the Witness are not in a “marriage-like” relationship.

The Ministry's Position

The position of the Ministry is that the Appellant is not eligible for disability assistance by virtue of being in a "marriage-like" relationship, as defined in section 1.1(2) of the EAPWDA, with the Witness.

The Ministry cites, in support of its position, the Appellant's name being on the Joint RBC Account, the Telus Bills, the Fortis Bill, the Property Tax Notice. The Ministry also cites a Facebook profile belonging to the Appellant which made reference to the alleged marriage of the Appellant and the Witness as evidence of them holding themselves out to the community that they are married.

Panel Decision

In order for two people to be considered spouses under the EAPWDA, either the criteria under subsection (1) or (2) of section 1.1 of the EAPWDA must be satisfied.

Section 1.1(1) of the EAPWDA sets out that two people are spouses of each other, for the purposes of the EAPWDA, if they are married to each other or acknowledge to the Ministry that they are residing together in a marriage-like relationship. There is some evidence suggesting that the Appellant and the Witness did get married. Both admit to having participated in a marriage and the Appellant admits to using the Witness' last name on her Facebook profile. However, both the Appellant and the Witness steadfastly denied that their "marriage" was a legal one. Likewise, the Appellant's evidence is that her use of the Witness' last name on her Facebook profile is merely for convenience so that the Witness need not set up his own account, permitting the Appellant to post information about the Witness on his behalf. The Appellant and the Witness also deny being in a "marriage-like" relationship. While the Appellant and Witness both admit that their "wedding" took place, there is no evidence before the panel confirming that they either are or are not legally married. Neither the Appellant nor the Ministry representative provided any documentation to the panel on this issue and the Facebook postings, although seemingly relied upon by the Ministry in reaching their decision to discontinue disability assistance to the Appellant as a sole recipient, was not before the panel nor does it appear to have been part of the documents the Ministry had at Reconsideration. As such, there is no evidence before the panel which would permit a conclusion that the Appellant and the Witness are legally married and, clearly, neither the Appellant nor the Witness acknowledge being in a marriage-like relationship.

Section 1.1(2) of the EAPWDA is a deeming provision that grants the Ministry the statutory authority to deem two people as spouses if they meet the criteria under subsections (a) and (b).

Subsection (a) of section 1.1(2) of the EAPWDA require the two people to have resided together for at least the previous 3 consecutive months or 9 of the 12 previous months.

Subsection (b) of section 1.1(2) of the EAPWDA requires the Ministry to be satisfied that the relationship in question demonstrates "financial dependence or interdependence" and "social and familial interdependence" that is consistent with a "marriage-like" relationship.

In order for two persons to be deemed as spouses, the criteria under both of subsections (a) and (b) of section 1.1(2) of the EAPWDA must be met.

In this case, it is clear that the Appellant and the Witness meet the criteria under subsection (a) of section 1.1(2) of the EAPWDA as the Appellant's evidence is that she moved in with the Witness in or about 2005 and the Shelter Information Form is dated January 19, 2016, indicating that the Appellant has lived at the Property since at least that date.

With respect to the criteria set out in subsection (b) of section 1.1(2) of the EAPWDA, there is considerable evidence of a relationship between the Appellant and the Witness that contains a high degree of both "financial dependence or interdependence" and "social and familial interdependence."

The evidence of financial dependence or interdependence includes:

- The Appellant's name appearing on the Utility Bill, the Telus Bills, the Fortis Bill, and the BC Hydro Bills;
- The sharing of the Joint RBC Account, from which it appears that a number of shared expenses were paid, including BC Hydro and Telus accounts, by the Appellant and the Witness;
- The fact that the Appellant's RBC Account shows significantly fewer expenses being paid from it than does the Joint RBC Account;
- The Appellant's evidence that, in the past, she would make purchases of a number of expenses, such as groceries for the Witness, rather than pay rent in a set amount; and
- The evidence of both the Witness and the Appellant that the Ministry's decision to discontinue the Appellant's disability assistance as a sole recipient means that the Witness will no longer have the ability to "take care" of the Appellant.

The evidence of social and familial interdependence includes the following:

- The Witness' decision to add the Appellant's name to the title of the Property and his evidence that it is his wish for the Appellant to have the use of the Property after his death, a benefit often conferred on a family member;
- The Witness agreeing to put the Appellant's name on utility accounts that would not only enable her to pay bills for those accounts on his behalf, which she could have presumably done merely by having access to the Joint RBC Account, but also to have the same access to information about those accounts that the Witness himself had;
- The Witness asking the Appellant to put her name on the RBC Joint Account, which indicates a significant amount of trust in the Appellant;
- The Appellant using the Witness' last name on Facebook, even if only to post information about the Witness, which suggests a significant involvement by the Appellant in the life of the Witness;
- The Appellant and Witness attending at a minister together to receive blessings related to their respective health and jointly convincing the minister to officiate over a wedding ceremony that was allegedly fake;
- The Appellant's participation in a marriage ceremony which, even if not intended to convince the community at large of their marriage, as alleged by both the Appellant and the Witness, had as its purpose, by the admission of both the Appellant and the Witness, to at least convince the Witness' family that they were married; and
- The participation of the Appellant's sisters in the wedding ceremony, whether to document it as the wedding of the Appellant and the Witness or merely to assist the Appellant and the Witness in convincing the Witness' family that the Appellant and Witness were married.

Conclusion

In view of all of the foregoing, the panel finds that the Reconsideration decision, which held that the Appellant was no longer eligible for disability assistance as a sole recipient by virtue of being in a relationship with the Witness that was consistent with a "marriage-like" relationship, was reasonably supported by the evidence and was a reasonable application of section 1.1(2)(b) of the EAPWDA. In the result, the panel confirms the Ministry's decision. The Appellant is not successful on this appeal.