

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated December 21, 2017 wherein the ministry denied the appellant’s request for assistance as a sole recipient because his relationship with Ms. P demonstrates a financial dependence or interdependence and a social and familial interdependence consistent with a marriage like relationship and thus meets the definition of “spouse” and “dependent” under section 1 and 1.1 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA).

PART D – RELEVANT LEGISLATION

EAPWDA sections 1 and 1.1.

PART E – SUMMARY OF FACTS

The appellant is a recipient with a dependent spouse Ms. P. who has Person with Disabilities (PWD) designation effective December 1, 2017.

A copy of the appellant's Certificate of Divorce shows their marriage was dissolved August 19, 2005.

On April 24, 2017 the appellant and Ms. P. completed an application for assistance form online.

- They selected the family type "Couple (married or common law)".
- They write "We are in dire need of shelter, money for food and money for my wife's medical condition".
- In the relationship status box they indicate that they are in a "Marriage-Like Relationship".
- They provided information on the appellant's bank account ending in ABC and
- Ms. P.'s bank account ending in XYZ.
- The appellant and Ms. P. electronically signed the application declaring that all information they have provided in the application is true and complete.

The ministry noted:

- "It is important to note that the Plan Lead Account number for both accounts is the same account ending in [XYZ]."

On May 2, 2017 the ministry began the application interview process with the appellant and his spouse noting that they were a homeless couple who had been living for the past 2 years off the generosity of family and friends.

In a note dated May 2, 2017 and inserted into a letter to CRA the appellant writes:

"*** UPDATE for May 2, 2017 – attn. BC Gov't Social Service Ministry** - while our legal relationship status has been declared as divorced according to this paper, [Ms. P.] and I have remained together since that time and we are in fact living 'Common-Law'."

On May 3, 2017 the ministry determined the appellant's eligibility for income assistance as a recipient with a dependent spouse and he was provided income assistance accordingly.

The appellant's assistance is directly deposited into Ms. P.'s bank account ending in XYZ.

On May 30, 2017 the appellant provided shelter information showing that he had secured accommodation at a residence in his previous home town starting April 28, 2017 and was renting a room only – the common area was shared with the landlord. The total number of people sharing the room was for 2 adults.

A current Residential Tenancy Agreement effective August 1, 2017 lists 4 tenants: the appellant, Ms. P., and their 2 adult children.

On August 11, 2017 the ministry received a PWD Designation Application for Ms. P.

- The Medical Report dated July 18, 2018 includes the following information:
 - The physician indicates that Ms. P. has been a patient in her practice since August 2016 and she has seen her 2-10 times in the past 12 months.
 - The physician writes that Ms. P. suffers from a severe uncontrollable health condition and her capacity for performing daily living activities is significantly restricted.
 - "Daily help from husband cooking, shopping, housework".
- The Assessor Report dated July 26, 2017 was completed by a social worker and includes the following information:
 - The social worker indicates this was her first contact with Ms. P. and the information source used to complete the report was an office interview with Ms. P. and the assessment provided by M. P.'s physician.
 - "Lives with her husband and 2 adult children".
 - "The help required for daily living activities is provided by: [*checkmark*] Family".
- In Ms. P.'s Self-Report dated July 10, 2017 which is attached to the PWD application she writes:
 - "my husband vacuums", "my husband does practically 100% of the cooking", "My husband does 80-90 % of the housework". "I go with my husband all the time". "I get rides from my husband."

In his letter dated October 5, 2017 a parson writes that he has known the appellant and Ms. P. since June 1987.

- He is aware that she and the appellant obtained a divorce “about 12 years ago”.
- Since that time he has encouraged them to consider remarrying but they have not been open to that option.
- For almost the past 2 and 1/2 years they resided in his home. During that time they did not live as husband and wife, they each occupied their own separate bedroom.
- Their relationship appeared to him to be more on the order of a brother and sister rather than a husband and wife.

On October 13, 2017 the appellant’s advocate submitted a letter noting that the intent of the letter was to request the ministry to review their spousal designation. Both Ms. P. and the appellant were requesting to be re-designated as 2 independent recipients. The advocate’s argument is reflected in Part F of the decision.

On October 25, 2017 the ministry called the appellant to discuss.

- The appellant advised that he and Ms. P. have been living together for approximately 7 years and he takes care of the majority of chores and meal preparations due to her disability.
- He also helps take care of their adult children who suffer from depression, and
- he stated that Ms. P. would not function well if he moved out.

The ministry advised the appellant that he was not eligible for assistance as sole recipient and that his request to have files split and to receive assistance as a sole recipient was denied because there was insufficient evidence to support they were single people.

In a letter dated November 17, 2017 the appellant states that

- Ms. P. suffers from health issues and requires “assistance with various tasks, of which [the appellant] does assist in his capacity of a care giver role.”
- “[the appellant] unfortunately used the incorrect term ‘common law’ when the correct term ‘care-giver’ should have been used. In his defence, he was unaware of the term ‘caregiver role’.”
- “Neither of the parties have any joint financial dealings, accounts or obligations.”

Attached are excerpts of “ministry of social services; guidelines, policies, procedures” interspersed with appellant’s comments. Argument contained in this letter is presented in section F.

On November 23, 2017 the appellant submitted a Request for Reconsideration and was approved an extension to December 21, 2017.

In a letter dated December 1, 2017 the appellant’s advocate writes that Ms. P. has a severe health condition and as her care-giver the appellant has the following tasks:

- If Ms. P. has suffered an acute health issue in the evening prior to going to bed the appellant will assist with changing her clothes and getting her ready for bed. When she has a severe acute health issue in the middle of the night the appellant attends to her needs immediately.
- The appellant does the vast majority of cooking and meal preparation. The adult son does about 20% and Ms. P. about 10%. The appellant opens jars for Ms. P. because she can’t exert the strength required to do that without risking triggering an acute health issue.
- The appellant’s presence in the house is required in order to motivate Ms. P. to eat regular and healthy meals.
- Ms. P. does her own laundry, other housekeeping is done by appellant, adult children and landlord.
- When they go shopping Ms. P. selects what she wants and the appellant takes things down from the shelves and pushes the shopping cart or carries the basket. Occasionally Ms. P. will push the shopping cart because she wants to be able to lean her weight on it. The appellant often has to do the shopping because Ms. P. can’t go shopping on her own because of anxiety that an acute health issue will occur when she is out in public, especially in large crowds.
- The appellant helps Ms. P. open doors and cupboards, pick up things from the floor, walk outdoors (she will hold onto him). Out in public the appellant’s presence is physically required and helps Ms. P. alleviate anxiety.
- The appellant does all the driving and drives Ms. P. when she needs to go somewhere.
- The appellant provides assistance to Ms. P. to manage finances. He reminds Ms. P. about rent being due, and about paying bills on time. Ms. P. and their adult children each give their portion of the rent and bills to

the appellant who then makes the payments. Ms. P. requires the appellant's help in online banking.

- “[The appellant’s] role as care-giver is to provide [Ms. P.] with some kind of socialization because she would otherwise be withdrawn and tend to isolate.”

Argument contained in this letter is represented in part F.

On December 7, 2017 the ministry received the appellant's Request for Reconsideration.

On December 21, 2017 the ministry completed the Reconsideration Decision.

In his Notice of Appeal dated January 9, 2018 the appellant states that Ms. P. and he “are not common law. Ministry erred at intake and the subsequent decisions are based on assumptive reasoning as opposed to factual evidence”.

On January 23, 2017 the appellant provided a 16 page submission that consisted primarily of argument which is represented in section F of the decision and included excerpts from ministry policy, case law, and definitions from a dictionary. He also stated that

- he attended at least one of Ms. P's appointments at the advocacy association.
- Someone at the advocacy association completed Ms. P.'s self-report on her behalf.
- The doctor has never asked about our relationship and assumed that he was Ms. P.'s husband.
- The social worker was working off the note set of the previous person also never questioned his status and assumed he was the husband.
- At no time in dealing with the above persons has Ms. P. and the appellant stated that they were married or were spouses.
- There are 2 adult children in the house to tend to any issues relating to Ms. P. that may arise during any time he is working.

At the hearing the appellant's advocate submitted 4 pages she called a summary of her previously submitted argument. She writes that “it was not the appellant but the ministry who filled out the HR80 form and submitted it for him and the intake worker changed the appellant's selection from “divorced” to “couple-married or common-law”. When the panel requested clarification the appellant confirmed that he himself had filled out the HR80 application for assistance form – he had answered questions online and an intake worker called him for clarification afterwards. He stated he had originally clicked “single” when he was applying.

To a question of the ministry the appellant confirmed that he and Ms. P. never lived apart since their divorce – they always lived at the same address. Currently they live in a 3-bedroom residence on the top floor of a house. Each child occupies 1 bedroom which leaves 1 bedroom for him and Ms. P.

The appellant stated that he sometimes goes into the doctor's office together with Ms. P. - he enters behind her. The doctor has never asked him what position he has in relation to Ms. P. because he has the same last name as Ms. P. The whole family shares the same doctor. When Ms. P. wants to do her banking he starts up the computer for her and then she does her transactions. He could also drive her to the bank. He pays for her groceries when he goes shopping for her – he uses the money she gives him for her rent portion. She pays him via e-transfer. He currently works part-time on-call outside of the home. He has Power of Attorney for Ms. P. since 2006 for medical care and for communications with government agencies. He does not have POA over her financial and real estate matters.

The ministry presented the reconsideration decision and added the following information:

To begin the application process everyone has to apply online. To submit their information clients have to input their BCID and confidential code. When an application is received an intake worker contacts the client to verify information, discuss, and make changes if necessary. If there are any changes made in the process, the application would have to be signed again by the applicants. The document in evidence would not be finalized like this if there were adjustments missing. The print version in evidence is the finalized version.

Ministry workers receive no personal benefits whether a client is approved or not.

The appellant let 5 months go by from the time he received his first assistance payment to his request for separating the files – this is an uncommonly long time.

With the exception of the appellant's statements about a Power of Attorney the panel admits the parties' oral testimonies, the appellant's Notice of Appeal statements and his submission of January 23, 2017, as well as the advocate's written submission at the hearing as in support of the records before the ministry at reconsideration under section 22(4) of the Employment and Assistance Act. The appellant's information about his POA is new information that was not before the ministry at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry reconsideration decision denying the appellant's request for assistance as a sole recipient because his relationship with Ms. P. demonstrates a financial dependence or interdependence and a social and familial interdependence consistent with a marriage like relationship and thus meets the definition of "spouse" and "dependent" under section 1 and 1.1 of the EAPWDA was a reasonable application of the legislation or reasonably supported by the evidence.

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;

"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.

Ministry Position:

It is the ministry's position that the appellant's relationship with Denise meets the definition of "spouse" in accordance with section 1.1.

The appellant has resided with Ms. P. for the past 7 years. He has provided a tenancy agreement showing he and Ms. P are tenants in the same residence and have been there since August 2017. The appellant's advocate also advises in the Request for Reconsideration submission that they share a bedroom. Accordingly, the minister is satisfied that the appellant has been residing with Ms. D. for at least 3 consecutive months. The appellant does not dispute this.

The appellant's advocate notes that "they live together because it is financially beneficial to do so." He notes further that the appellant provides assistance to Ms. P. to manage finances and reminds her about rent being due and bills being paid on time. Ms. P. and their 2 adult children each give their portion of the rent and bills to the appellant who then makes the payments. When it comes to any kind of online banking, Ms. P. requires the appellant's assistance with using the internet. Financial planning of any kind causes the Denise to suffer from severe anxiety and so the appellant has taken the responsibility of reminding her when payments are coming due.

The ministry finds that, as the appellant's assistance is directly deposited into Ms. P.'s bank account it would have been her and the appellant's choice to arrange for the ministry to deposit the assistance into her account. Therefore the ministry finds it difficult to understand that if Denise has difficulty managing finances why the assistance would be deposited into her bank account. In addition, this information also makes it difficult to understand how it is that Ms. P. is paying her portion of the rent and bills to the appellant when she has all the assistance for the both of them. The appellant has not provided any bank statements or banking interactions to indicate that his finances are managed separately. In addition, the appellant provides banking information with his application for assistance showing that both his and Ms. P.'s accounts have the same Plan Lead Account. Upon review with the bank website, a Plan Lead Account is described as the one account that has been designated to pay any fees required by his and Ms. P.s banking (i.e. monthly fees, transaction fees). Therefore the ministry is satisfied that their accounts are linked together and, based on all of the above information, their relationship demonstrates a financial dependence or interdependence.

The appellant resides with Ms. P. and their 2 adult children as a family. They share a bedroom. They help each other with caring for their home, cooking, grocery shopping, and the appellant helps Ms. P. when necessary. Although the advocate argues that her medical practitioner and social worker who completed the Medical and Assessor's Reports of her PWD application presumed their relationship was that of husband and wife, it is important to note that this would be a reasonable presumption seeing that Ms. P. also referred to the appellant as her "husband" in her self-report.

The social worker also noted she had met Ms. P. once and that the information source she used to complete her assessment was an interview with her. Therefore, the ministry finds that in order for the social worker to assume that the appellant was her husband, was because Ms. P. told her or that she represented herself in a marriage-like relationship with the appellant. The ministry is also satisfied that they represented themselves as a couple when they applied for assistance. The appellant completed the online application indicating that Ms. P. was his spouse and it is important to note that the terminology "common-law" was indicated on that application. He did not apply as a sole applicant. The fact that they are not married to each other is not being disputed. The fact that they are divorced is not being disputed.

Although the advocate argues that that the appellant's relationship with Ms. P. is strictly one of a care-giver, the ministry is satisfied that their relationship is more than that, it goes beyond medical care.

In addition, the advocate describes Ms. P.'s reliance on the appellant as if she could not be left without 24 hour care as he notes that is the appellant's reason for sharing a bedroom. However, the ministry notes that his file history shows that the appellant is working and has not provided any information as to how Ms. P. manages when the appellant is working. In addition, the ministry finds that the letter written by the parson dated October 5, 2017 confusing because he states that their relationship appeared to him more on the order of a brother and sister rather

than a husband and wife; however, he also noted that he has encouraged the appellant to consider re-marrying. He notes the appellant resided in his home for almost 2 and ½ years and it is important to note that he does not describe the appellant's relationship with Ms. P. as that of her caregiver.

It is for these reasons that the ministry is satisfied that Ms. P.'s and the appellant's relationship demonstrates a social and familial interdependence consistent with a marriage like relationship. Therefore the appellant is not eligible for assistance as a sole recipient because his relationship with Ms. P. meets the definition of "spouse" and "dependent" under the EAPWDA.

Appellant's Position:

The appellant argues that the ministry's decision is not reasonably supported by the evidence. The nature of his and Ms. P.'s relationship is not spousal; they live together because it is financially beneficial to do so and because Denise requires care and support from the appellant. His relationship with Ms. P. is that of a care-giver, roommate and friend.

The appellant argues that he and Ms. P. have no joint financial dealings, accounts or obligations, and there is no financial dependence or interdependence between them.

As a caregiver and friend the appellant provides assistance to Ms. P. to manage her finances. Financial planning of any kind causes D to suffer from severe anxiety and so in order to avoid that the appellant has taken the responsibility of reminding her when payments are coming due. He reminds her about rent being due and about bills being paid on time. Ms. P. and their 2 children each give their portion of rent and bills to the appellant who then makes the payments. Ms. P. requires the appellant's assistance with online banking: when Ms. P. wants to do her banking he starts up the computer for her and then she does her transactions. He pays for her groceries when he goes shopping for her – he uses the money she gives him for rent – it is included in her rent. She pays him her rent via e-transfer.

The appellant argues further that their financial independence is obvious as they have separate bank accounts. Only the plan lead account number is "similar" to the appellant's bank account number because the appellant still covers Ms. P.'s bank fees. The sole purpose of this arrangement is convenience. The fact that their combined assistance cheque is deposited in Ms. P.'s bank account is based on the necessity that one account had to be chosen.

The appellant argues that while he and Ms. P. have shared the same address since their divorce they have maintained their separate and divorced status. In the past they were residing and sleeping in separate rooms. While they share the same address each of them are listed as separate tenants on the rental tenancy agreement. Their arrangement is that of roommates sharing accommodation. They live together because they care for their children and because Ms. P. requires care and support from the appellant. Due to Ms. P.'s disability and medical issues the appellant has assisted her as a caregiver out of a sense of responsibility to the mother of his children and as a friend helping someone in need. When he is out working their 2 adult children are in the house to tend to Ms. P.'s health requirements.

They don't present themselves as a married couple, spouse or partner; he had used the word "common-law" incorrectly while he should have used the term "care-giver" but was unaware of the term.

As to the fact that Ms. P. refers to the appellant repeatedly as her "husband" in her PWD self-report the appellant argues that the person completing the self-report on Ms. P.'s behalf assumed the appellant was her husband. The appellant argues further that Ms. P.'s medical practitioner and social worker incorrectly presumed their relationship was that of husband and wife because of their same last name. The doctor has never asked about their relationship and assumed that he was Ms. P.'s husband. The social worker who was working off the note set of the "previous person" also never questioned his status and assumed he was the husband. Due to the appellant's intensive role as care-giver it is understandable that people misinterpret their relationship.

The appellant and Ms. P. did not represent themselves as spouses when they applied for assistance. "When assistance was originally applied for it was in the format of 2 individual applications of 2 divorced persons. It was during a telephone interview with an intake worker where [the appellant] was informed that the ministry was going

to regard us living in a spousal relationship. ...The worker insisted that this change was how the ministry classified persons such as [the appellant and Ms. P.] according to ministry procedures.”

After citing definitions of “familial” from a dictionary the appellant argues that he and Ms. P. neither have a social nor a familial interdependence. He affirms that they do not rely on each other for presentation, interaction, intra-action or dependency with social or family situations.

Panel decision:

EAPWAD section 1.1 (2) sets out that 2 persons who reside together are spouses of each other for the purpose of this Act if (a) they have resided together for at least the previous 3 consecutive months or 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.

Considering the evidence provided by the appellant the panel finds that the ministry reasonably determined that the appellant and Ms. P. have resided at together for at least the previous 3 consecutive months as set out in section 1.1(2) (a). The appellant does not dispute this.

Financial dependence or interdependence

While the appellant argues that he and Ms. P. have no joint financial dealings, accounts or obligations, and no financial dependence or interdependence exists between them panel finds that the ministry reasonably determined that the appellant’s and Ms. P.’s relationship demonstrates financial dependence or interdependence in accordance with section 1.1(2)(b)(i) because there is sufficient evidence to support the ministry’s determination; the ministry took the following evidence into consideration to determine financial dependence and interdependence:

- There are financial benefits for both the appellant and Ms. P. in living together.
- The appellant provides assistance to Ms. P. to manage finances.
- She pays her portion for rent and bills to him via e-transfer and he makes the rent payment to the landlord.
- The appellant’s assistance is directly deposited into Ms. P.’s bank account.
- Both his and Ms. P.’s bank accounts have the same Plan Lead Account, i.e. their accounts are linked together as the appellant’s account is designated to pay their monthly banking and transaction fees.

Social and familial interdependence consistent with a marriage – like relationship

The panel finds that the ministry reasonably determined that the appellant and Ms. P.’s relationship demonstrates social and familial interdependence consistent with a marriage – like relationship in accordance with section 1.1(2)(b)(ii), because there is sufficient evidence to support the ministry’s determination. The ministry based their determination of social and familial interdependence on the following information:

- In their application for assistance the appellant and Ms. P represent themselves as a common-law couple in a “marriage-like relationship”.
- The appellant writes that “while our legal relationship status has been declared as divorced ... [Ms. P.] and I have remained together since that time and were in fact living ‘Common Law’”.
- In her PWD self-report Ms. P. consistently refers to the appellant as her husband.
- In their respective reports a physician and a social worker refer to the appellant as Ms. P.’s husband.
- The appellant resides with Ms. P. and their 2 adult children as a family.
- He helps take care of their children.
- When the appellant is out working their children take care of Ms. P.s health needs.
- Ms. P. and the appellant share a bedroom.
- They have continued residing together immediately after their divorce until now.
- While the appellant, Ms. P. and their son share in preparing and cooking meals the appellant does the majority of this work.
- While Ms. A and the appellant help each other with caring for their home and grocery shopping the appellant also does the majority of housework and shopping.

- He drives Ms. P.
- He cares for her when she is dealing with her medical issues and helps her when necessary.

While the appellant argues that doctor, social worker and the person completing the self-report on Ms. P's behalf incorrectly assumed the appellant was her husband the panel finds there is insufficient evidence in support of this argument.

While the appellant argues that the nature of his and Ms. P.'s relationship is that of a care-giver, roommate and friend, the panel finds there is sufficient information that their relationship is more than that and demonstrates social and familial interdependence consistent with a marriage – like relationship.

Conclusion

The panel finds that the ministry decision that denied the appellant's request for assistance as a sole recipient was reasonably supported by the evidence and therefore confirms the decision. The appellant is not successful on appeal.