

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision dated August 2, 2018 which held the appellant's spouse ineligible for social assistance because she does not meet the citizenship requirements under the *Employment and Assistance for Persons With Disabilities Act* ("the Act") and which did not provide for hardship assistance.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance for Persons with Disabilities Act (The Act)*

*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*

## **PART E – SUMMARY OF FACTS**

The evidence before the ministry at the time of reconsideration included:

1. An Employment and Assistance for Persons with Disabilities Review Application dated June 14, 2018 in which the Appellant seeks to add his spouse to his file.
2. A copy of an email confirming that his spouse has a valid Electronic Travel Authorization (eTA) for travel to Canada with an expiry date of May 24, 2020.
3. Copies of his spouse's drivers license and passport from a country that is approved under the eTA program run by Immigration, Refugees and Citizenship Canada.
4. A completed Shelter Information Form from the ministry which confirms the appellant's rent is \$718, of which the appellant pays \$526 and the remainder is subsidized by the ministry.
5. Documents from the Appellant's landlord pertaining to an income review which show an increase in the rent he pays based on having a spouse; a statement from his Registered Disability Savings Plan; and financial information related to his spouse.
6. A Statutory Declaration of Common-Law Union signed by a Commissioner of Oaths and dated April 24, 2018 attesting to cohabitating for a continuous period of 1.5 years.
7. A letter from the appellant to the ministry dated July 6, 2018 requesting a confirmation letter that his common-law spouse has been added to his file and requesting that the new rent amount and damage deposit be sent to his landlord.
8. A Request for Reconsideration (RFR) signed by the appellant and dated July 18, 2018 in which he states he is applying for Hardship Assistance for reasons beyond his control.

## PART F – REASONS FOR PANEL DECISION

At the start of the hearing the appellant acknowledged that he knew the ministry representative that was in attendance at the hearing and confirmed that he was comfortable proceeding with that person being present.

The issue on appeal is whether the ministry's decision, which held the Appellant's spouse ineligible for social assistance because she does not meet the citizenship requirements under the *Employment and Assistance for Persons With Disabilities Act* ("the Act"), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Particularly, was the ministry's interpretation that section 6(2) of the Act does not apply to the appellant's common-law spouse reasonable?

The relevant legislation is as follows:

### The Act

**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;

...

### **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 Regulations:

**Citizenship requirements**

- 6** (1) *For a family unit to be eligible for disability assistance at least one applicant or recipient in the family unit must be*
- (a) a Canadian citizen,*
  - (b) authorized under an enactment of Canada to take up permanent residence in Canada,*
  - (c) determined under the [Immigration and Refugee Protection Act \(Canada\)](#) or the [Immigration Act \(Canada\)](#) to be a Convention refugee,*
  - (d) in Canada under a temporary resident permit issued under the [Immigration and Refugee Protection Act \(Canada\)](#) or on a minister's permit issued under the [Immigration Act \(Canada\)](#),*
  - (e) in the process of having his or her claim for refugee protection, or application for protection, determined or decided under the [Immigration and Refugee Protection Act \(Canada\)](#), or*
  - (f) subject to a removal order under the [Immigration and Refugee Protection Act \(Canada\)](#) that cannot be executed.*
- (2) *If a family unit satisfies the requirement under subsection (1), disability assistance and supplements may be provided to or for the family unit on account of each person in the family unit who is*
- (a) a Canadian citizen,*
  - (b) authorized under an enactment of Canada to take up permanent residence in Canada,*
  - (c) determined under the [Immigration and Refugee Protection Act \(Canada\)](#) or the [Immigration Act \(Canada\)](#) to be a Convention refugee,*
  - (d) in Canada under a temporary resident permit issued under the [Immigration and Refugee Protection Act \(Canada\)](#) or on a minister's permit issued under the [Immigration Act \(Canada\)](#),*
  - (e) in the process of having his or her claim for refugee protection,*

or application for protection, determined or decided under the [Immigration and Refugee Protection Act \(Canada\)](#),  
(f) subject to a removal order under the [Immigration and Refugee Protection Act \(Canada\)](#) that cannot be executed, or  
(g) a dependent child.

- (3) If a family unit includes a person who is not described in subsection (2),
- (a) the person's income and assets must be included in the income and assets of the family unit for the purposes of determining whether the family unit is eligible for assistance, except as otherwise provided in this regulation, and
  - (b) the family unit is not eligible for any disability assistance under Schedule A, hardship assistance under Schedule D or supplements under Part 5 of this regulation on account of or for the use or benefit of that person.

[am. B.C. Regs. 253/2005, s. (b); 69/2008, s. 2 (a) and (b).]

### **Exemption from citizenship requirements**

**6.1** (1) Despite section 6 (1), a family unit that does not satisfy the requirement under that section is eligible for disability assistance if the minister is satisfied that all of the following apply:

- (a) the applicant is a sole applicant or, in the case of a recipient, the recipient is a sole recipient;
- (b) the applicant or recipient has one or more dependent children who are Canadian citizens;
- (c) the applicant or recipient has separated from an abusive spouse;
- (d) the applicant or recipient has applied for status as a permanent resident under the [Immigration and Refugee Protection Act \(Canada\)](#);
- (e) the applicant or recipient cannot readily leave British Columbia with the dependent children because
  - (i) a court order, agreement or other arrangement with respect to one or more of the dependent children provides custody, guardianship or access rights to another person who resides in British Columbia and leaving British Columbia

*with the dependent children would likely contravene the provisions of the court order, agreement or other arrangement,*

*(ii) another person who resides in British Columbia is claiming custody, guardianship or access rights with respect to one or more of the dependent children and the person's claims have not yet been resolved, or*

*(iii) the applicant or recipient, or a dependent child of the applicant or recipient, is being treated for a medical condition and leaving British Columbia would result in imminent danger to the physical health of the applicant, recipient or dependent child.*

*(2) If the family unit satisfies the requirement under subsection (1), disability assistance and supplements may be provided to or for the family unit on account of*

*(a) the sole applicant or sole recipient in that family unit, and*

*(b) each person in the family unit who is a dependent child.*

*[en. B.C. Reg. 198/2012, Sch. 2, s. 3.]*

The appellant's position is that he met with more than one ministry worker and was reassured that his spouse would be added to his file. He was assured that the information had been entered in the computer and was told his shelter allowance would be increased to \$1750 a month to reflect that his spouse was part of his family unit. He notified his landlord who increased his rent anticipating there would be two occupants in the rental unit. However, the appellant was unable to get confirmation that his spouse was added to the file and he did not receive the expected increase to his allowance. He therefore requested a review of the decision and subsequently filed a request for reconsideration.

The appellant maintains that he and his common-law spouse have been together for more than the required three months in the legislation and that she is not yet permitted to work in Canada therefore she is a dependent of his and part of his family unit. He also argues that section 6(1) of the EAPWDR is satisfied because it only requires one applicant or recipient in the family to be a Canadian Citizen and he is a Citizen. He also submits that his wife has applied for status as a permanent resident under the *Immigration and Refugee Protection Act* (Canada) so she should be exempt from any other requirement because Regulation 6.1(1)(d) should apply making her eligible for assistance.

The appellant argues that in either case he should be eligible for "hardship assistance" under Chapter 7 of the ministry policy manual which provides for assistance to be advanced while an

applicant is waiting for benefits or settlements from Old Age Security, Workers Compensation, Canada Pension, Veteran's Affairs, Insurance Corporation of British Columbia or Employment Insurance benefits, and that he is anticipating receiving benefits/settlements from both ICBC and WCB and that he would be willing to repay any amount advanced while he is in such dire need for money and that he is willing to sign an agreement to that effect. He clarified that he obtained this information online and did not have a copy of the policy to enter as evidence for this hearing.

In his Notice of Appeal he stated that he disagreed with the ministry decision because they failed to add his wife to his file and did not allow the extra money for shelter to cover the increased rent as of July 1, 2018. This was creating an unexpected financial burden for him and his family.

The ministry agrees that the appellant's common-law spouse is a dependent as defined in the Act and that they have cohabitated in a marriage like relationship for the required period to be eligible to be included as part of the family unit as defined under the Act.

The ministry states that for the purposes of the Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under the Act. Part of that eligibility requirement is meeting the citizenship requirements identified in section 6 of the EAPWDR.

The ministry states that the appellant is a Citizen and thus is eligible for assistance because section 6(1) is satisfied. In order for his spouse to also be eligible, she must meet the requirements of section 6(2) and 6(3). The ministry notes that because the appellant's spouse has not been granted permanent residency in Canada she cannot qualify for assistance. As an example, if these regulations were intended to cover non-residents, then anyone travelling through Canada could potentially apply and receive assistance and that is not the purpose of the Act.

The ministry also takes the position that the exemptions in section 6.1 of the regulations do not apply here because those provisions are intended specifically for single parents with dependent children.

The ministry relies on the reconsideration decision to make the case that they have acted reasonably in interpreting the legislation in the case of the appellant.

### **The Panel's Decision**

The panel notes that the parties agree that the appellant's spouse meets the definition of "dependent" and "spouse" and therefore can be included as part of the appellant's family unit for the purposes of determining eligibility for assistance according to the Act. However, being part of the family unit does not automatically mean that all members of the family unit are eligible for assistance. Each member of the family unit still has to satisfy the other provisions of the Act and the Regulations.

The Citizenship requirements are stipulated in the EAPWDRs at section 6 and the parties agree that the appellant is a Canadian Citizen and therefore section 6(1) qualifies the family unit for disability assistance.

One has to next look at section 6(2) to determine the eligibility of the remaining family unit members. In terms of the appellant's common-law spouse, section 6(2)(a) does not apply because she is not a Canadian Citizen, 6(2)(b) does not apply because she is not yet a resident and is here on an eTA which permits entry for a finite period of time but not the right to be a resident, 6(2)(c) does not apply in her case because she is not a refugee, 6(2)(d) pertains to individuals on a temporary resident permit which she does not have, and the remaining sections of the regulation do not apply to her situation. The panel notes that the appellant stated his spouse has applied for residency. If that application is approved, then the appellant may wish to reapply within the provisions of the Act and the Regulations.

Section 6.1 deals with exemptions to the citizenship requirements and was another argument proposed by the appellant. This regulation is meant to address a very specific situation where a sole applicant with dependent children who are Canadian citizens is escaping an abusive spouse and who has applied for residency and is awaiting a decision, or for some other conditions specified in the regulation is unable to leave Canada. This regulation specifies that all of the conditions under subsection 6.1(1)(a-e) must apply. Section 6.1 therefore does not apply in the appellant's case. She does not fall in the category of exemptions to citizenship covered by this section of the regulations.

The panel cannot make a ruling on Section 7 of the policy referred to by the appellant because we did not receive a copy and in any case a policy must still be in compliance with the *Act* and *Regulations*.

### **Conclusion**

The Panel finds that the ministry reasonably concluded that the evidence establishes that the appellant's common-law spouse did not meet the legislative criteria set out in section 6 of the EAPWDR to be eligible for assistance because she is not yet a resident. Therefore, the Panel confirms the ministry's decision. The Appellant is not successful in his appeal.



**PART G – ORDER**

THE PANEL DECISION IS: (Check one)       UNANIMOUS       BY MAJORITY

THE PANEL       CONFIRMS THE MINISTRY DECISION       RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?       Yes       No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a)  or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

Fazal Bhimji

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018-09-04

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-09-04

PRINT NAME

Carla Tibbo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-09-04