

PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") June 17, 2015 reconsideration decision that the appellant is no longer eligible for income assistance because she is residing with a spouse as defined by Employment and Assistance Act section 1.1(2) and has failed to apply on behalf of the entire family unit.

PART D – Relevant Legislation

EAA	Employment and Assistance Act, section 1.1(2)
EAR	Employment and Assistance Regulation, section 5(1)

PART E – Summary of Facts

The evidence before the ministry at reconsideration was

- The appellant's income assistance file was opened December 23, 2014 as a single parent with two dependent children, B being the father of the youngest.
- June 8, 2014-15 ICBC Owner's Certificate of Insurance and Vehicle Licence showing the appellant as vehicle owner and B as principal operator, a payment record with three NSF transactions and a plan closing date of July 10, 2014.
- Shelter information form signed February 2, 2015 showing \$700 rental amount
- ministry note February 3, 2015 - the appellant requested a crisis supplement for shelter. She advised the ministry she owned a trailer but paid monthly pad rent, that she had been issued an eviction notice because she thought B. was paying the monthly fees, but he had moved out, and about \$2448 was owed.
- ministry note February 4, 2015 - the appellant submitted a crisis grant request form, a Notice of Dispute Resolution concerning her residence, and a 10 day Notice to End Tenancy with supporting documents in the name of B.
- ministry note February 4, 2015 - the appellant contacted the ministry again, and reported she had reconciled with B about 2.5 weeks before, when he had moved back in with her.
- ministry note February 13, 2015 - the appellant advised she had missed the appointment to add B to her file, because he had moved out and was no longer residing with her.
- ministry note February 18, 2015 - the appellant provided a handwritten note from the person with whom B was staying.
- ministry note April 15, 2015 - the Ministry of Children and Family Development (MCFD) reported the children were removed from the appellant's care in January 2015, that the appellant was residing with B in his trailer, and that he was working full time.
- April 28, 2015 the ministry determined the appellant was ineligible for assistance as a single person.
- June 15, 2015 the appellant submitted a Residential Tenancy Agreement form signed March 13, 2015 by B for an address different from hers, and a June 15, 2015 letter from a lawyer who had represented the appellant and B on separate matters commencing in December 2014. The lawyer stated they independently advised him they had not been cohabiting since December 2014, and that he communicated and corresponded with them at different addresses .

Upon appeal an advocate on behalf of the appellant submitted a June 23, 2015 letter explaining the appellant was in a common law relationship until December 20, 2014, that she and B were jointly in a rent-to-own agreement for a trailer, the trailer and pad rental information is in B's name because outstanding rent she is unable to pay is holding back the transfer of the trailer into the appellant's name. The rental agreement signed by the landlord is in the appellant's name.

The advocate stated the vehicle was given to a scrap yard on January 5, 2015, and the insurance report shows the insurance plan was closed on July 10, 2014. The letter further states B has not worked since December 20, 2014. He was laid off and has been receiving Employment Insurance benefits. He was "couch surfing" with friends until he secured his own rent as of March 2015, during which time he used the address of his friend as noted in the lawyer's letter, then came to live there permanently. The advocate says that despite a few very fleeting attempts at reconciliation, the two have lived apart since December 20, 2014.

At the hearing the appellant stated the ministry made its decision based on information from the Ministry of Children and Family Development that she was living with B and he was employed, but the MCFD had not attended her home. She said she is not living with B and that he had not been employed as of December, when he was let go from his job after he was charged criminally for assaulting her. She said she requested a confirmation letter from his employer, but because they were not together the employer would not provide her with one. B is not working now. Until he entered into the March 13, 2005 tenancy agreement he was "couch surfing" with friends, but used the friend's address as his mailing address.

The appellant said she had not reported the removal of her children by the MCFD to the ministry because initially she had been told it would be for fifteen days, although the time was extended. She had a no contact court order against B arising from the assault charges, but she discontinued it because of B's relationship to the children. She said that of the 2.5 weeks referred to in the ministry's February 4, 2015 note there were only two days when they were residing together, and the rest of the time he was coming by, doing maintenance on her home, but not sleeping there. She said she doesn't trust him, fears what might set him off. She said between December 20, 2014 and February 4, 2015 they did not live together. She did book an appointment with the ministry to add him to her file, but because they were together only two days, she did not attend the appointment.

The ministry representative referred to the summary of facts in the reconsideration decision. The ministry pointed out an inconsistency between the shelter information document showing the client's portion of rental amount as \$700, when the case file showed \$300. In her crisis supplement request the appellant said she had thought B was paying the rent, which the ministry questioned why B would be paying if not for himself. On April 15, 2015 the ministry was notified by the MCFD the appellant's children had not been with her since January 15, 2015, and that the appellant was living with B. The ministry representative did not have further information about the basis of MCFD's report of the living arrangements and B's employment status. The ministry representative acknowledged the vehicle insurance documentation showing coverage issued for June 8, 2014-June 5, 2015, was cancelled July 10, 2014.

The appellant responded the back rent she had thought B was paying was when he was living there, that he is not paying anything now. She said she is still fighting with the seller of the trailer, they won't give her the necessary paperwork until she pays the rent owed. The \$300 was for the pad rental, but the \$700 also included back rent, tax, insurance and administration fees.

The panel determined the additional oral evidence given by the appellant was admissible under section 22(4) of the EAA as it was in support of the records before the minister at reconsideration.

PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's reconsideration decision that the appellant is no longer eligible for income assistance because she is residing with a spouse as defined by Employment and Assistance Act section 1.1(2) and has failed to apply on behalf of the entire family unit.

Relevant Legislation

EMPLOYMENT AND ASSISTANCE 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.

EMPLOYMENT AND ASSISTANCE REGULATION

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.

Appellant's Position

The appellant argues she has not cohabited with B since December 20, 2014, and is not being supported by him. She says the note from the person with whom her ex-spouse was staying, the tenancy agreement form, and the letter from her lawyer support her evidence.

Ministry's Position

The ministry argues the appellant has a spouse as defined in the legislation, that they have resided together for at least the previous three months, there is financial dependence or interdependence, and a social and familial interdependence. The ministry says it gives greater weight to the information provided by MCFD.

Panel's Decision

The portion of the legislation applicable in this case defines *spouses* as two persons who reside together, 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.

The panel finds the ministry's determination that the appellant resided with B for at least the previous three consecutive months, or nine of the past 12 months, was not reasonably supported by the evidence. The ministry relied on the April 15, 2015 report by the MCFD that the appellant was residing with B and that he was working full time, but did not offer any evidence for the basis of the MCFD statements. The ministry referred to dispute resolution document and pad rental statements documents (not in the appeal record) in support of its determination that B owns the trailer and has been the tenant responsible for the pad rent at the appellant's address since at least November 2012. The dispute resolution document and ten day notice to end tenancy from January 2015 identifying B as the legal tenant, and the pad rental summary of the rents owing for B at the appellant's address from July 2014 – January 2015, are not proof of cohabitation for the time at issue. The November 2012 – June 2014 summary of rent owing is not relevant to the period at issue.

The appellant denied that she was residing with B after December 20, 2014, and said B was not working after December 20, 2014, having been let go from his job. Her evidence is they were in a common law relationship until December 20, 2014, that she and B were jointly in a rent-to-own agreement for the trailer, the trailer and pad rental information is in B's name because outstanding rent she is unable to pay is holding back the transfer of the trailer into her name. The appellant's explanation of the living arrangements after December 20, 2014 is supported by the lawyer's letter, her oral evidence that a no contact court order was issued as a result of the assault, that in February she booked an appointment with the ministry to add B as a spouse, and B's March 13, 2015 tenancy agreement. After a short-lived reconciliation attempt the appellant advised the ministry on February 13, 2015 that B was no longer residing with her. A February 18, 2015 ministry note states the appellant provided a handwritten note from the person with whom B was staying (not in the appeal record).

The panel finds the ministry's determination of financial dependence or interdependence was not reasonably supported by the evidence. The ministry relied on insurance documentation to illustrate the appellant insured a vehicle for June 2014 - June 2015 at a cost of \$1531, showing B as principal operator. However the documentation also showed the insurance was cancelled July 10, 2014 after three NSF transactions, and therefore does not support the ministry's position. The reconsideration decision also referred to the shelter information/tenancy agreement that shows the appellant's portion of rental amount as \$700. At the hearing, the ministry stated their case file showed \$300 rent, and appellant gave evidence that the rent is \$300 but the \$700 figure included unpaid back rent and other charges.

The panel finds the ministry's determination of social and familial interdependence to be reasonable to the extent that B is the father of the appellant's youngest child, but that the statements B is employed and he and the appellant are residing together as a couple as reported by MCFD are not reasonably supported by the evidence, for the reasons stated above.

The panel finds the ministry's reconsideration decision was not reasonably supported by the evidence and rescinds the decision.