

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated April 17, 2019 wherein the ministry determined that the appellant’s spouse currently does not meet citizenship requirements as set out in section 6(2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and is therefore ineligible for assistance from the ministry. As such, the ministry is unable to provide the appellant’s family unit with disability assistance and supplements on his behalf.

**PART D – RELEVANT LEGISLATION**

EAPWDA sections 1, 1.1 and 3

EAPWDR sections 6 and 6.1

**PART E – SUMMARY OF FACTS**

The appellant is a Canadian citizen and receives disability assistance as a sole recipient.

In July 2017 the appellant reported to the ministry that her boyfriend moved in.

In October 2017 the appellant requested her spouse be added to her file as a dependent. Documents provided at the time confirmed that her spouse was a U.S. citizen. The appellant included his passport, driver's licence, and a partially completed Application to Sponsor her spouse as a Common-Law Partner for the purposes of his application for Permanent Residence in Canada, along with other financial documents. The ministry determined that the information provided was insufficient to confirm that he met citizenship requirements.

In a letter dated October 29, 2018 Immigration advised the appellant's spouse that his Application for Permanent Residence did not meet the requirements for immigration to Canada, and as such refused his application for permanent residence and refunded any fees paid. Should the appellant's spouse wish to reapply he will be required to submit a new application and pay a new processing fee.

On January 22, 2019 the appellant provided a copy of the immigration letter to the ministry for review as she was again requesting assistance on his behalf.

On January 24, 2019 it was noted that the appellant's spouse's application for permanent residence status in Canada had been rejected and that his work permit had been cancelled.

On January 25, 2019 the appellant requested a written decision of the denial.

On February 20, 2019 the appellant was advised of the denial. [At the hearing the appellant confirmed that she received a written denial]. She stated that her spouse had not yet applied for Permanent Resident Status and that she could not afford to pay the fees for the same. It was determined that he did not meet citizenship requirements and did not have a temporary resident permit.

On February 21, 2019 the ministry prepared the request for reconsideration and sent it to the appellant via the online access provided by "MySelfServe" ("MySS").

On March 18, 2019 the ministry received the appellant's signed request for reconsideration via MySS. She requested an extension of 30 days due to a delay in her Freedom of Information Access ("FOIA") request.

On April 10, 2019 the ministry sent her a message via MySS to advise her that the deadline to complete the reconsideration decision, and for any new information, had been extended to April 15, 2019, the maximum available under the EAPWDR.

In her letter dated April 14, 2019 the appellant stated that on January 21, 2019 the ministry told her that her application to have her spouse added to her family unit on October 10<sup>th</sup>, 2017 was accepted but subsequently removed on the same day. She was never told that her spouse had been removed from her family unit the day he was added and was requesting a written explanation as to why that happened - she still has not received one. She is seeking retro-active compensation for benefits for the period of November 2017 through November 2018; her spouse met the criteria necessary to be added as a dependent on her file on October 10<sup>th</sup>, 2017. She experienced financial hardship as a result of supporting 2 adults on her single PWD income.

On April 15, 2019 the ministry received her additional information. She indicated that there were inaccuracies on the request for reconsideration prepared by the ministry and noted:

- She originally requested her spouse be added October 2017.
- January 25, 2019 she requested a written explanation pertaining to the decision to remove her spouse from her file October 2017 (the same day he was initially added) and has yet to receive that written explanation.
- She had applied for permanent resident status in 2017 and paid all necessary fees, and the statement by the ministry that indicates that she could not afford to pay fees to apply for permanent resident status is regarding the new application in 2019.
- The appellant is seeking retro-active compensation for benefits not received on behalf of her spouse from November 2017 through November 2018.

On April 15, 2019 the ministry requested an update from IRCC (Immigration, Refugees and Citizenship Canada) to confirm her spouse's status in Canada.

On April 17, 2019 IRCC reported that the appellant's spouse is in Canada as a Visitor from 2019/01/29 to 2019/07/28.

In her Notice of Appeal dated April 22, 2019 the appellant wrote: "While my spouse does not currently meet citizenship requirements due to a recent change in our circumstances, he did meet those requirements in October 2017 when I applied to have him added to my family unit. Ministry errors resulted in him not remaining on file. I am seeking Retro - Active [sic] Compensation for Benefits not received during the period of November 2017 through to November 2018."

At the hearing the appellant submitted copies of 5 documents:

- 1) A history report dated February 13, 2019 of 15 pages, containing ministry notes on the appellant's file from October 2, 2014 to February 8, 2019. The panel notes that this document has been submitted by the appellant 3 months after it was dated.
- 2) 3 Releases of Information dated May 15, 2019 for the appellant's mother, the appellant's spouse, and an advocate who did not attend the hearing.
- 3) A ministry form titled Employment and Assistance Review / Employment and Assistance for Persons with Disabilities Review (7 pages), dated November 20, 2017 and signed by the appellant and her spouse, containing financial and shelter related information and the appellant's spouse's moving date to BC, Canada (May 2, 2017).
- 4) A 4 page computer print-out titled procedures Proof of Status in Canada Requirements.
- 5) A 4 page submission by the appellant dated May 16, 2019 wherein she re-states her argument.

At the hearing the appellant reiterated her story and argument. She answered a panel question saying that until January 21, 2019 she was under the impression that she received monthly assistance on her spouse's behalf since November 2017. She stated that she thought that benefits received on behalf of her husband were applied to an overpayment she had to pay back. It had not come to her attention that her monthly cheque did not include assistance on behalf of her spouse and she never inquired why the ministry kept issuing assistance to her as a sole recipient.

The ministry summarized the reconsideration decision and added the following information: The history report is a snapshot of quick notes. While there was ongoing communication between the ministry and the appellant throughout the application process this communication could have been better; the ministry apologized that the appellant did not receive a letter explaining the removal of her spouse from her file on the same day he was added. The onus to demonstrate eligibility is on the appellant.

The ministry decision about retro-active eligibility as requested by the appellant is in progress.

Ministry and appellant agreed that the recent decision (the one this appeal is about) was given orally and in writing.

The panel admits the parties' oral testimonies, the appellant's Notice of Appeal, the history report, the Employment and Assistance Review / Employment and Assistance for Persons with Disabilities Review document, the computer print-out titled procedures Proof of Status in Canada Requirements, and the appellant's submission, as in support of the records before the ministry at reconsideration under section 22(4) of the Employment and Assistance Act. The ministry did not object to having these documents admitted into evidence.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the ministry reconsideration decision which determined that the appellant's spouse currently does not meet citizenship requirements as set out in section 6(2) of the EAPWDR and therefore the ministry is unable to provide the appellant's family unit with disability assistance and supplements on his behalf is a reasonable application of the legislation or reasonably supported by the evidence.

**EAPWDA****Interpretation**

**1** (1) In this Act:

**"applicant"** means the person in a family unit who applies under this Act for disability 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;

**"spouse"** has the meaning in section 1.1;

**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.

### **Eligibility of family unit**

**3** For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) 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 this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

### **EAPWDR**

#### **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.

### **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.

Ministry Position:

The ministry is satisfied that the appellant's spouse is a dependent in the appellant's family unit as set out in sections 1 and 1.1 of the EAPWDA given that she is requesting assistance on his behalf, reports they have resided together since July 2017, and acknowledges to the ministry that they are residing in a marriage-like relationship.

The appellant is eligible for disability assistance as she is a Canadian citizen and has PWD designation. However, her spouse does not meet citizenship requirements. Although he is part of her family unit, to receive assistance on his behalf he must also meet citizenship requirements. Immigration has confirmed that he is currently in Canada as a Visitor only, and therefore the ministry is unable to provide her family unit with disability assistance and supplements on his behalf.

Based on the information provided, the appellant's spouse does not meet any of the conditions in section 6(2) of the EAPWDR:

- He is not a Canadian citizen (he has US citizenship).



- He is not authorized to take up permanent residence in Canada (was denied permanent Residence status October 2018).
- He is not determined to be a Convention refugee nor has he applied for refugee protection.
- He is not in Canada under a temporary resident permit or minister's permit.
  - Temporary Resident Permits are issued by immigration in exceptional cases only when the person is considered inadmissible or not meeting requirements under the immigration and refugee protection Act however the reasons to travel to Canada justify the temporary resident permit.
  - A visitor permit is not a temporary Resident Permit or Minister's Permit and is provided as permission to visit Canada only.
  - A person that holds a Temporary Resident Permit must provide an Immigration document IMM1442 that will specify the status and category the person was admitted to enter Canada under. The appellant has not provided an IMM1442 document and IRRC has since confirmed he is a Visitor only.
  - The minister's permit no longer exists (it was replaced by the Temporary Residence Permit in June 2003).
- He is currently not subject to a removal order that cannot be executed.

The exemption from citizenship requirements, noted in section 6.1 of the EAPWDR, does not apply to the appellant's family unit. Her family unit does not include a dependent child.

The ministry noted that it is unable to include a review of past eligibility in its reconsideration decision as a review of past eligibility is a new request and was not part of the original decision. The ministry has opened a new service request on the appellant's behalf to review past eligibility of the appellant's spouse.

The ministry provided the following explanation of why the appellant's spouse was added and immediately removed on October 2017: "The process of adding and immediately removing the spouse is standard ministry practice when a family includes a person who does not meet citizenship requirements. This practice ensures the person is recognized as being part of a family unit, ensures the family is receiving the correct amount of assistance and supplements, and prevents overpayments."

Appellant's Position:

The appellant argues that without the oversight committed by the ministry she would have been receiving assistance on her spouse's behalf starting October 2017. The ministry should have informed her when her spouse was removed from her file so that she did not have to go through the process of re-applying. The ministry did not follow its own protocols and policies when it failed to inform her of her spouse's removal in October 2017 but instead informed her 1 ½ years later. It is unclear to her on how to have her husband re-added to her file.

Her spouse met citizenship requirements in October 2017 when she applied to have him added to her family unit. As she had never been told that her spouse had been removed from her family unit on the same day he was added her request for reconsideration is not for benefits denied in February 2019 but for retroactive benefits.

The appellant argues further that she has been suffering financial hardship as she had to support 2 adults on her single PWD income due to a ministry error.

**Panel decision:**

While the appellant argues that a ministry oversight - she was not informed when her spouse was removed from her file - was responsible for her having to reapply for assistance on her spouse's behalf the panel finds that there is sufficient evidence that at the time of her January 22, 2019 application her spouse did not meet citizenship requirements and was therefore not eligible for disability assistance.

The panel finds that the ministry was reasonable in its determination that disability assistance and supplements may not be provided to the appellant's family unit on account of the appellant's spouse because there is no evidence that the appellant's spouse meets citizenship requirements as set out in section 6(2) of the EAPWDR for the period starting January 22, 2019. Specifically, there is no evidence

- he is a Canadian citizen;
- he is authorized to take up permanent residence in Canada;
- he is determined to be a Convention refugee under the Immigration and Refugee Protection Act or the Immigration Act;
- he is in Canada under a temporary resident permit issued under the IRPA or a minister's permit issued under the IA;
- he is in process of having his or her claim for refugee protection, or application for protection, determined or decided under the IRFPA; or
- he is subject to a removal order under the IRPA that cannot be executed.

On April 17, 2019 IRCC reported that the appellant's spouse is in Canada as a Visitor from 2019/01/29 to 2019/07/28.

The panel notes that as requested by the appellant the ministry has provided a written explanation in its reconsideration decision as to why the appellant's spouse was added to and immediately removed from her file on October 2017.

The panel notes further that the ministry has acknowledged the appellant's request for retroactive benefits and reports it has opened a service request on the appellant's behalf to review past eligibility of the appellant's spouse. The panel notes that this service request is not at issue in this appeal.

**Conclusion**

The panel finds that the ministry decision that denied the appellant's family unit disability assistance and supplements on the appellant's spouse's behalf was reasonably supported by the evidence and therefore confirms the decision. The appellant is not successful on appeal.

<b>PARTG-ORDER</b>	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRM THE MINISTRY DECISION <input type="checkbox"/> RESCIND THE MINISTRY DECISION	
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

<b>PARTH-SIGNATURES</b>	
PRINT NAME Inge Morrissey	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/05/16

PRINT NAME Marnee Pearce	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/05/16
PRINT NAME Bob Fenske	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/05/16