

APPEAL NUMBER:

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated July 18, 2019 in which the ministry found the appellant is not eligible for disability assistance ("DA") as a sole recipient under sections 1 and 3 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA") because she is in a dependency relationship. The ministry determined that the appellant's family unit size is 3 because the two people residing in her home ("X" and his child "Y") are her dependents under section 1 and 1.1 of the Act.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act - EAPWDA - sections 1, 1.1, and 3

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 1

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision indicating that:

- The appellant was receiving disability assistance as a sole recipient with no dependents (\$1,223.42 per month);
- The appellant moved into her current residence in November 2014;
- The tenancy agreement completed in April 2015 lists the appellant and X as joint tenants. The rent is \$830 per month plus utilities for the 2-bedroom unit. The current rent for the residence is \$910 per month.
- On June 6, 2019 the ministry advised the appellant that she was no longer eligible for DA as a sole recipient. The ministry determined the appellant's family unit consists of 3 people with X and his child, Y as her dependents. The ministry notes that Y has been living at the residence since October 2015.
- The appellant stated that she and X share household responsibilities such as childcare and housecleaning.
- The appellant and X do not have joint bank accounts or joint credit cards. The appellant's bank statements show joint living expenses and deposits received by the appellant from X in cash or e-transfers for rent, utilities, food, and expenses for Y.
- The appellant owns a vehicle and pays the insurance premiums (\$287.69 per month). The appellant does not have a driver's license and X operates the vehicle.
- The appellant looks after Y when X is out of town. X does not pay the appellant for childcare. The appellant is listed as a guardian and emergency contact on Y's school documents. The appellant stated she would like to pursue legal guardianship of Y and confirmed that she provides day-to-care care for Y and is considered Y's guardian by the school in X's absence.
- On July 4, 2019 the appellant submitted a Request for Reconsideration ("RFR") with supporting letters and submissions attached.

2. The RFR, signed by the appellant on July 4, 2019 with the following attached documents:

- A submission from the appellant's advocate dated June 25, 2019 stating the appellant's argument and providing the following evidence:
 - The landlord's preference is to list all tenants on one agreement and the residential tenancy agreement includes both the appellant's and X's names as tenants.
 - The appellant lives with X because she needed a roommate at the time X was looking for a place to live. The appellant and X have separate bedrooms that are kept completely private. Y sleeps in X's bedroom and the appellant shares communal space such as the kitchen and living room. Shared cleaning is limited to shared spaces and the separate bedrooms are each tenant's own responsibility.
 - Rent and utilities are paid together based on the landlord's preference as the landlord does not want separate payments for one apartment. The applicant splits the rental cost with X and "acts as a middleman" between X and the landlord. The appellant does not share the cost of food with X; each tenant prepares their own meals.
 - The appellant covers minimal costs for Y "in extenuating circumstances" when X is out of town. She is then reimbursed for those expenses.
 - The appellant owns and insures a vehicle which she received from a family member. X uses the car in "extenuating circumstances" to drive the appellant to the grocery store to buy larger items. The appellant is unable to drive due to her disability. X does not use the car for his everyday tasks.
 - Y began residing with X and the appellant after leaving foster care. Initially, Y was expected to reside at the appellant's residence on weekends and live with the other parent (his mother, "M") full-time. The arrangement did not transpire as planned and Y's living situation "remains in flux" as he could move in with M at any time. Due to the instability of the situation, the appellant and X had not entered into a formal childcare arrangement. X has now agreed to pay the appellant for childcare.
 - The appellant performs "small childcare tasks" when X is out of town. The appellant is named as a guardian in school documents in case of emergency when the school cannot get in contact with X. The appellant is currently not Y's legal guardian; guardianship is something "she may or may not pursue."

- A letter from X dated June 2019 with an agreement to pay the appellant \$200 per week for childcare for Y. X states that he had previously offered to pay the appellant for childcare ("a couple of years ago") but she stated it wasn't necessary as she was more than happy to help. At that time, M was expected to help with childcare but remains unavailable to care for Y.
- A letter from X dated July 2019 regarding his living arrangements with the appellant. X confirms that he and the appellant are "no more than roommates" and that Y resided in foster care prior to living with X at the appellant's place of residence.
- A letter from the appellant's friend ("Friend A") dated June 2019, stating that she has known the appellant and X since 2017; her child is in the same class as Y. Friend A states that to the best of her knowledge, the appellant and X "are no more than roommates/friends."
- A letter from the appellant's friend ("Friend B") dated June 27, 2019 stating that she has known the appellant and X since 2016. Friend B states that she did not get to know X or see much of him as "he was always gone for work and other stuff." Friend B states that she has never witnessed anything "that indicates more than just roommates."
- 8 photos of various rooms at the appellant's residence with notations indicating which tenant uses the space pictured in each photo.

3. A letter from the ministry dated June 6, 2019 advising the appellant she is no longer eligible for DA as a single person under sections 1 and 3 of the EAPWDA. The ministry states that the appellant is in a dependency relationship with Y because they are financially dependent on one another as evidenced by the appellant's bank statements (that show joint expenses and payments) and the appellant taking on a parental role for Y. The ministry notes that the appellant is considered Y's guardian and emergency contact on school records.

4. Copies of Y's school records:

- A *Student Identification Emergency Release Form* dated May 24, 2019, completed by the appellant. The appellant's name and contact information is recorded in the space for *Guardian* and X's name is listed for *Parent*. X's work location is entered as "all of BC" and his days/hours of work "varies." Friend A and Friend B are listed as *Alternates*. Y's siblings (at separate addresses) are listed as *Next of Kin*.
- A *Registration form - Student Information* indicating that Y resides with *Father only* and *Guardian*. *Father and Stepmother* was originally check marked then crossed out. The appellant is listed as *Guardian*.

5. A landlord-tenant agreement dated and signed by the appellant and the landlord on October 14, 2015. The appellant as well as X and Y are listed as tenants. A change to the tenancy agreement is indicated: "Add Y to the tenancy."

6. A *Notice of Rent Increase* addressed to the tenants (the appellant and X) indicating current rent of \$890 per month and new rent of \$910 per month starting on April 1, 2019.

7. A Residential Tenancy Agreement dated April 1, 2015, listing the appellant and X as tenants.

8. A bank statement for the appellant's account dated May 23, 2019, covering the period November 1, 2018 to January 31, 2019. The statement shows payments for utilities (hydro, phone, cable, and cell phone accounts), car insurance and credit cards, as well as cash withdrawals and payments to stores/businesses (mostly grocery stores and food outlets). The statement also shows the following email deposits to the account ("e-transfers"):

- \$350 on Nov. 8, 2018;
- \$50 on Nov. 29, 2018;
- \$500 on Jan, 17, 2019;
- \$100 on Jan. 31, 2019;

and the following deposits represented by transfers-in from a savings account at the same bank:

- \$100 on Nov. 1, 2018;
- \$100 on Nov. 2, 2018.

The statement also shows deposits from the ministry for monthly DA allowance.

9. A letter from X dated May 23, 2019 stating that:

- The rent is \$910 per month and he pays \$455;
- He is the appellant's roommate;
- The reason for the e-transfers is "convenience and depending on his work status" as he is out of town sometimes and makes an e-transfer if Y needs anything.

10. An *Owner's Certificate of Insurance and Vehicle Insurance* for the period June 21, 2018 - June 20, 2019. The appellant is listed as the registered owner of the vehicle and the number of owners is one. The appellant is listed as the principal operator and a driver's license number is entered for the appellant. The annual insurance is \$3,274 including basic, third party liability, collision and comprehensive. The total annual amount due (with licensing and plate fees) is \$3,368.

11. A letter from the appellant's landlord dated May 22, 2019 indicating that monthly rental payments by the appellant are made by money order.

12. A letter from the ministry dated May 1, 2019 requesting the appellant's bank statements and rent receipts. The letter states that the appellant's assistance cheque for May 22, 2019 will be held until the ministry's receives the requested information. A decision on the appellant's eligibility will be made once all documentation is reviewed.

13. A *Tenant Ledger Card Monthly Summary* prepared by the appellant's and X's landlord indicating rent payments received by the landlord for each month from December 2017 - May 2019.

14. A ministry *Bank Profile and Consent* form completed by the appellant's bank confirming a savings account in the appellant's name. The form does not include recent banking activity but does indicate that the balance of the account on the date it was completed (May 8, 2019) was \$57. 27.

15. A bank statement for the appellant's account dated May 9, 2019, covering the period February 1 - May 9, 2019. The statement shows payments for utilities (hydro, phone, cable, and cell phone accounts) and car insurance, as well as credit card payments, a cash withdrawal, and payments to stores/businesses (mostly grocery stores, clothing/department stores, and pharmacies). The statement shows the following e-transfers to the account:

- \$140 on March 1, 2019;
- \$400 on March 15, 2019.

Additional information

The appellant filed a *Notice of Appeal* with a hand-written statement which the panel accepts as argument. Subsequent to the reconsideration decision the appellant provided a package of additional documents requiring an admissibility determination in accordance with section 22(4) of the *Employment and Assistance Act*. The package, received by the Tribunal on August 9, 2019, includes the following documents:

1. A submission dated August 8, 2019, signed by the appellant and her advocate and containing argument as well as the following information:

Financial arrangement with X

- The appellant and X have two separate bank accounts. Rent and utility bills are divided approximately 50/50 between X and the appellant and X pays a little more than 50% because Y also uses some of the utilities.

- The appellant used to pay the rent by bank draft. Currently, she pays utilities from her bank account and X then gives her his share of the amount owed, either as an e-transfer or in cash. The appellant uses the money X gives her to pay the rent which she usually pays by money order.
- X is solely financially responsible for Y's living expenses and reimburses the appellant in full for items that she occasionally purchases for Y.
- The appellant asked the landlord if she and X could pay their rent separately. The landlord denied the request.
- Since the ministry stopped the appellant's DA payments, she has been borrowing money from X and other sources to pay her share of bills and rent.

Appellant's vehicle

- The appellant owns the car that she got from a relative. The parking regulations at her residence require vehicles parked in the underground garage to be licensed and insured for road usage. Storage insurance on vehicles is not permitted.
- When the appellant inquired into changing the insurance to basic coverage for fire and theft, she was quoted an amount that is higher than her current insurance.
- The cost of the insurance was recently reduced to \$139.36 per month by listing X as the principal operator and applying his (safe driver) discount. The appellant and X agree that he only uses the car when she is in the vehicle and this occurs when the appellant requires assistance with shopping for larger items. The appellant's disability prevents her from driving the car herself.

Appellant's involvement with Y

- X moved into the apartment because the appellant needed a roommate at the time that X was looking for an apartment. At that time, Y was not living with X and had been placed with a Ministry of Children and Family Development ("MCFD") caregiver. On September 17, 2015, Y was returned to X's care with the aim of transitioning to M's care. The plan was for X, and M to share 50/50 parenting time with Y. The appellant agreed to Y living in the apartment with her and X under the belief that Y would transition into M's care. Until 2017, M had regular supervised visits with Y. Since then, the visits have become more infrequent.
- The appellant discussed the situation with X and he was adamant that he and M should remain as Y's guardians. The appellant initially refused to be the emergency contact for Y's school and the school listed M as the emergency contact. When the school could not reach M ("multiple times"), the school insisted on having another person as the contact. At that time, the appellant "felt that she had no other option" than to give the school her name.
- The appellant has made multiple attempts to encourage M to take a more active parental role. M's visits remain inconsistent and the appellant is concerned that Y will be returned to MCFD care if the appellant does not participate in Y's care.

2. Copies of money orders payable to the appellant's landlord for rent for the months May, July, Sept., Nov. and Dec. 2015; and Feb., May, and Aug. 2016.

3. Receipts for money orders for rent for Feb. 2018, Aug. 2017, Nov. 2018, and Feb. 2015 and two additional receipts for which the dates are not provided or are illegible.

4. A letter from the appellant's landlord dated July 26, 2019, addressed to the appellant and X. The landlord confirms that the tenants requested to pay the rent in two separate payments and states that only one payment is accepted as the appellant and X share a single tenancy agreement. The letter states that "each pay period, co-tenants collectively pay rent to the landlord and decide among themselves how to divide the cost."

5. A hand-written accounting statement dated August 8, 2019, prepared and signed by the appellant (with X's signature also at the bottom). The statement lists bills for June, July, and August 2019 with the following amounts:

- Rent (for 3 months), \$1,365;
- Cable/internet, \$218;
- Hydro, \$65;

- Car insurance \$280;
- Total for the above items, \$1,928.

In a separate column:

- "my phone", \$210;
- "my life insurance", \$107;
- Credit card, \$600;
- Total for the above items, \$917.

The appellant writes on the statement that she has been borrowing money from family and friends to pay \$845. The statement also indicates childcare costs received from X:

- Daycare for Y for June, July, and Aug. @ \$200 per week, \$2,000 received.

6. A copy of *Parking Rules and Regulations* for the appellant's residence stating that "all vehicles in the underground garage must be roadworthy, currently licensed and insured for road use. Storage insurance is not permitted."

7. A vehicle insurance, *Payment Plan Agreement* dated June 18, 2019, indicating that the policy is effective from June 21, 2019 - June 20, 2020. The appellant is named as the account holder. Total insurance premiums are \$1,671.88 and payments in the amount of \$139.32 per month are withdrawn from the appellant's financial institution.

8. A *Court Plan of Care* for Y dated May 7, 2015 and signed by an MCFD worker. The Plan includes the following information:

- X and M, as well as two half siblings are listed as Y's family;
- Y was removed from X and M's care on September 19, 2014 and from caregivers on October 17, 2014;
- Y was placed with MCFD approved caregivers;
- Y's parents are to receive counselling, as well as supervised access with Y pursuant to MCFD's direction and discretion;
- X and M would like to parent Y on a full-time basis and have agreed to attend counselling.

9. A letter from MCFD dated September 15, 2015 and addressed to Y. The letter states that MCFD will consent to returning Y to X's care under the supervision of MCFD for a period of six months. The letter indicates that it is X's hope to eventually have 50/50 parenting time with M. In order to accomplish this, M is required to obtain stable and affordable housing as assessed by a social worker. Once the home has been approved, MCFD will schedule a family planning conference to draft a transition schedule for Y so that Y can become comfortable in the new environment. The transition period will also allow M to adapt to parenting for longer periods of time.

10. A family court order dated November 30, 2015 indicating that X, and M shall be the guardians of the child and share all parental responsibilities and parenting time equally as agreed upon between them.

11. A family court document (*Reply*) dated November 6, 2015 and signed by M, stating that she disagrees with *guardianship* because it is in Y's best interest that she and X share guardianship with Y residing primarily with her.

Admissibility of additional evidence

The panel finds that all of the additional documents provide further details including background information and updates on the appellant's living and financial arrangements that are the subject of the reconsideration decision. The ministry did not raise any objections to the panel admitting the evidence in the submission and the panel admits the documents under section 22(4) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister when the decision being appealed was made.

Oral testimony

The appellant attended the hearing with her advocate and provided argument. The ministry attended the hearing by telephone.

The appellant also gave supplementary evidence regarding her living arrangement with X and Y:

Appellant's involvement with Y

- During the process of placing Y back into the care of the parents, the appellant reports that X "asked me to attend a couple of the planning meetings to be familiar with what was going on" given that Y would be residing at the appellant's residence. The goal was to place Y with both parents and it was unclear how much time Y would be spending at the appellant's residence as M wanted 50/50 guardianship with her home as Y's primary residence. The appellant states that six months after the paperwork was completed, the MCFD file was closed and MCFD has no current involvement with Y and the parents.
- The appellant states that she initially acted as a supervisor for access visits between Y and M. When asked by the panel what her intention was when she was "just trying to help out a friend" by assuming greater involvement with Y, the appellant explained that her intent was "to make it easier for the child" and "be there as a go between to give the parents stability until Y was transitioned to the mother." The appellant explained that X was her roommate and MCFD inspected the residence before Y was gradually transitioned there. The appellant reports that Y has taken X's bedroom and X mostly sleeps on the sofa.
- The appellant states that for the first two years (that Y lived at her residence), she "had no clue what was going on" with the arrangement between the parents as she received no clear communication from M. From 2017 until now, the appellant acknowledges being "more of a full-time caregiver" for Y "because X is either out of town or not around period." The appellant states that she feels an obligation to the child until the parents decide what they are going to do because Y is already living there and she wants to prevent Y from being put back into foster care. The appellant states that whenever she tried to talk to M (or X) "about putting Y on my file", they would "get all flippy" and feel that she was trying to take Y away from them.
- The appellant confirmed that when M's associations with Y petered out, the school took M's name off the contact forms because they could not always contact M. When asked by the ministry why X did not fill out the school forms for his child, the appellant explained that X was out of town at the time and the school asked the appellant to write "guardian" on the form given that Y was residing at the appellant's address. The appellant reports that the only choices on the form were "mother, stepmother, or guardian." The appellant states that she listed her friends as *alternates* on the form because Friend A is her neighbour and Friend B has continuous access to a vehicle.

Financial arrangement with X

- The appellant states that she initially requested separate rent payments to the landlord 2.5 years ago but only recently obtained a letter confirming that the housing supplier only accepts one payment on behalf of all of the tenants in a unit.
- The appellant reports "the same arrangement with her previous roommate" in which the roommate would provide e-transfers and cash for the roommate's share of the rent and utilities. The appellant explains that she would re-deposit cash that the roommate gave her and use those funds to pay the bills which were always in the appellant's name. The appellant states that she kept the same arrangement when X moved in and sometimes she has difficulty collecting money from X as he can be negligent in giving her his share of the bills.
- In response to questions from the panel, the appellant confirmed she did not retain a copy of the money orders/receipts for her rent for every month. The appellant explained that the e-transfers from X could go toward his share of the rent or utilities or could be reimbursements if she needed to buy occasional food items, shoes, etc. for Y. The appellant stated that X reimburses her for cable, internet, and hydro and "if he's tight, I will use my credit card and X will pay me back."

- The appellant explained that she tallies up what X owes her each month and writes out each bill on a piece of paper. She then divides the bills into X's and her share. In response to a question from the panel, the appellant explained that when she communicated a breakdown of the bills to X, "he would just tell me to let him know how much to give me for his share." The appellant reports that X has his own bank account and buys his own food. The appellant states that she has a special diet for her medical conditions and buys her own food.
- The appellant explained that X has his own bank account to which his paycheque is deposited bi-weekly and that he gives her his share of the rent which is \$455 but he gives her more because Y is residing with him. The appellant reports that her share of the rent is \$375 - \$400 per month. The appellant explained that she collects X's share of the rent and combines his amount with her share to pay the landlord by money order. In response to a question from the panel, the appellant said "no", she did not give X receipts for his share of the rent. In response to another question from the panel the appellant said that she makes occasional cash withdrawals from her bank account to make up the amount required to pay her share of the rent and so that she has the funds to purchase a money order to cover the rent every month.
- The appellant confirmed that when the ministry stopped her DA it did not reassess her eligibility with X and Y as her dependents (the ministry replied that they did not reassess her because the matter is still under appeal). The appellant states that she does not believe she would qualify because the ministry would look at X's income and expect him to support her. The appellant states that X would not support her because she is not his dependent. The appellant reports that a ministry worker at the office told her to put X's and Y's names down as her dependents but she refused to do so because they are not her dependents and she doesn't want to lie to the ministry.

Appellant's vehicle

- The appellant explained that she originally had storage insurance on the vehicle but was unable to continue with that arrangement once the landlord asked for proof of the type of insurance and said that storage insurance was not allowed on vehicles parked in the underground garage.
- In response to a question about her vehicle insurance, the appellant explained that the insurer initially said she could not get regular insurance without having a driver's license. When the appellant attended a different insurance agency, the agent took her void cheque and set up monthly payments for road insurance. The appellant reports that she had her learner's licence "but never did get an operator's licence" as it is not safe for her to drive given her medical conditions.
- The appellant asked about basic insurance but the insurer told her it would cost \$75 per month more than what she was already paying. The appellant confirmed that X does not drive the car for his personal use but only to help her attend appointments and transport heavier groceries. The appellant reports that she cannot walk very far or stand for very long due to her disabilities.
- The appellant states that she did not understand her options with the car insurance but her premiums have finally gone down now that X has been added as the primary operator. The appellant states that the insurer gave her a form to take to her doctor to qualify for a 25% disability discount but she has not done so yet.

Admissibility of oral evidence

As with the additional documents submitted on appeal, the panel finds that the appellant's testimony provides further detail regarding her living and financial arrangements that are the subject of the reconsideration decision. The ministry did not raise any objections and the panel admits the oral submissions under section 22(4) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister when the decision being appealed was made. The panel accepts the rest of the testimony as argument in support of the appellant's position at the reconsideration.

The ministry relied on the reconsideration decision and did not submit any new evidence.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's determination that the appellant is ineligible for DA as a sole recipient under sections 1 and 3 of the EAPWDA is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Was the ministry reasonable in finding that the appellant's family unit size is 3 because she is living in a dependency relationship with X and Y?

The ministry based the reconsideration decision on the following legislation:

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;

"**child**" means an unmarried person under 19 years of age;

"**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;

"**dependent child**", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

"**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

Definitions

1 (1) In this regulation:

"parent" , in relation to a dependent child, includes the following other than for the purposes of section 17 [assignment of maintenance rights] of this regulation and section 6 [people receiving room and board] of Schedule A of this regulation:

- (a) a guardian of the person of the child, other than
 - (i) a director under the Child, Family and Community Service Act, or
 - (ii) an administrator or director under the Adoption Act;
- (b) a person legally entitled to custody of a child, other than an official referred to in paragraph (a) (i) or (ii);

Analysis

Legislative definitions and legal test for "spouse"

To be eligible for DA pursuant to section 3 of the EAPWDA, each person in the family unit must satisfy the initial and continuing conditions of eligibility and the family unit must not have been declared ineligible for assistance under section 3(b). "Family unit" as defined in section 1(1) of the Act includes the applicant's dependents and a "dependent" includes the applicant's spouse, dependent child, or a person in a parental role for the applicant's dependent child.

"Dependent child" with respect to a parent is defined in section 1(1) of the EAPWDA as a child under 18 who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life. Under section 1(1) of the EAPWDR, "parent" in relation to a dependent child includes "a guardian of the person of the child" as well as a person legally entitled to custody of the child.

"Spouse" is defined in section 1.1 of the EAPWDA. For two people who are not married or do not acknowledge to the minister that they are residing together in a marriage-like relationship, section 1.1(2) is instructive. First, two persons must have resided together in accordance with the time frame set out in section 1.1(2)(a). This criterion is not in dispute as the appellant acknowledges that X and Y have lived at her residence since 2015 and the ministry was satisfied that the 3 of them have resided together for at least 9 of the last 12 months.

Additionally under section 1.1(2)(b), the minister must be satisfied that the relationship demonstrates specific elements of dependency:

- financial dependence or interdependence, and
- social and familial interdependence.

Further, the legislation requires all three types of dependency to be consistent with a marriage-like relationship

If all conditions of the legal test are not met, the two people cannot be considered spouses under the legislation. Thus, under the following non-exhaustive scenarios, two people who have resided together for more than 9 months would not satisfy the definition of spouse where:

- They are financially dependent on each other and also have social and familial interdependence but these dependencies are not consistent with a marriage-like relationship.
- They have social and familial interdependence consistent with a marriage-like relationship, but are not financially dependent on each other.
- They have familial interdependence consistent with a marriage-like relationship, but are not financially and socially interdependent.

The legislation gives the ministry discretion to determine whether the dependency requirements are met and both parties agree that the minister's determination must be based on an assessment of the evidence in its entirety. The advocate notes that the length of time living together is not sufficient on its own to establish a marriage-like relationship and at the hearing when presented with hypothetical questions about friends living together, the ministry stressed that any one factor in the arrangement is not sufficient to demonstrate a dependency relationship. The ministry explained that the client's living arrangements are assessed on a case by case basis.

"Marriage-like relationship" is not defined in the legislation. The reconsideration decision indicates that the ministry took a fact specific approach to assessing whether the appellant has a marriage-like relationship with X. In particular, the ministry considered the appellant's banking activity and submissions about her financial arrangements with X to determine whether the relationship is financially dependent or interdependent consistent with a marriage-like relationship. In assessing whether the relationship is marriage-like in its social and familial aspects, the ministry considered the appellant's involvement with Y including the school's perception of her role.

The ministry found that the appellant and X meet the definition of dependents under the legislation and X must therefore be included as part of the appellant's family unit. Specifically, the ministry argues that the appellant and X are spouses under section 1.1(2)(b) of the EAPWDA because their relationship meets the dependency requirements in all 3 of the areas set out in the legislation. The appellant submits that she and X are roommates rather than spouses.

Arguments - financial dependence/interdependence

Ministry: shelter expenses, vehicle, and childcare services

The ministry submits that:

- The appellant's bank statements are inconsistent with her report that the transfers and deposits from X were only for his share of the utilities and occasional reimbursement of purchases for Y. The ministry argues that the amounts and dates of the transfers do not support that X is paying for half of the utilities

because the amounts and dates do not correspond with the payments the appellant made for phone and hydro.

- The appellant reports one bank account and no other source of income yet there is no record on her bank statements to support that she is paying her share of the rent or that she has been paying the full \$910 per month on behalf of herself and X when X is out of town. The ministry argues that the banking activity does not establish that the appellant acts as a "go-between" with the landlord for X's share of the rent.
- The appellant has not included any documentation, bills, or receipts to justify the amounts of X's transfers and to support the contention that he is paying his share of the living expenses. The ministry argues that the financial arrangement is not consistent with a roommate situation.
- The appellant registers and insures a vehicle that X drives. The ministry finds that it is unclear why the appellant would spend \$287.69 per month on insurance when she does not have a driver's license or other source of income. The ministry suggests that the appellant would have only basic insurance for fire and theft if she were not in a dependency relationship with X. The ministry argues that the activity in the appellant's bank statements and her financial arrangements with X are "more representative of marriage-like financial interdependence than that of just roommates."
- The appellant has cared for Y "for free" for almost 4 years and greater weight should be given to that evidence than to the information that X is now paying the appellant for childcare.

At the hearing the ministry added that it looks for proof of separate contributions to shelter expenses consistent with a roommate relationship but the deposits from X do not match the information in his letter where he states that his share of the rent is \$455 per month. The ministry argues that the appellant's documents only show that the rent and utilities are being paid.

The ministry added that it is unclear why the appellant would insure a vehicle that is only used "in extenuating circumstances" and that applying X's discount to reduce the insurance cost serves to further substantiate a dependency relationship. The ministry submits that a roommate would insure his or her own car and that the inter-lending of money (the appellant waiting for reimbursements from X and X currently lending her money for shelter expenses) further reinforces the existence of a marriage-like relationship.

Appellant

Shelter expenses

The appellant argues that she only lives with X because she needed a roommate at the time X was looking for a place to live. The appellant explained that when her previous roommate moved out it was essential to find a new roommate because her income from DA is not sufficient to cover the rent on her own. The landlord does not accept separate payments for the rent and the appellant maintains that her roommates have always paid their share of the rent and utilities through deposits and cash that they give her. In her oral testimony the appellant added that the ministry never questioned the financial arrangement with her previous (female) roommate.

The appellant argues that X does not transfer funds to her account on a set schedule or in set amounts because he often gives her cash. The appellant submits that she tallies up the amounts owing each month for rent and bills and uses the money she receives from DA to pay her share of the shelter costs and the money she receives from X for his share. Currently, she is borrowing money from X and other sources for her share of the expenses because the ministry stopped her DA payments.

Vehicle

The appellant argues that the only way she could keep the car is to have full road insurance because the landlord does not allow storage insurance on vehicles. The appellant argues that it made practical sense to name X as the principal operator to reduce her insurance cost. The appellant submits that she would ask any roommate to help her out in that situation.

The appellant argues she can still benefit from having a vehicle when X drives her to pick up heavy grocery items or to attend appointments especially since her mobility is compromised due to her disabilities. The advocate wonders how the ministry expects a person with disabilities to get tasks done if she cannot rely on a roommate to assist her. The appellant stresses that the vehicle remains in her name with the insurance premiums as her responsibility.

Childcare services

The appellant explains that she and X never had a formal agreement because Y's living arrangement was always in flux and still isn't set in stone. The appellant argues that she now has an agreement with X and receives \$200 per week to care for Y.

Panel's decision - financial dependence/interdependence

Bank statements

On reviewing all of the evidence, the panel finds that the ministry unreasonably concluded that the appellant and X have financial dependence or interdependence consistent with a marriage-like relationship on the basis of the appellant's bank statements. The ministry considered the arrangement with the vehicle and the childcare services provided by X but was focused on the bank statements which it argues do not provide a clear record of X's contributions toward rent and utilities.

The appellant acknowledges that there are no notations on the bank statements to indicate exactly what the transfers from X are for. The appellant confirmed that she did not give X receipts for his share of the shelter costs.

The panel has tallied the bank statements and analyzed the submissions on rent, and finds as follows:

- The bank statements show that X e-transferred a total of \$1,540 to the appellant over a 6 month period between Nov. 1, 2018 and April 30, 2019, or approximately \$267 per month.
- The statements show that the appellant paid bills totaling \$525 for hydro, and \$905.00 for cable/internet for cable during the same 6 month period (total amount of bill payments = \$1,430).
- The appellant submits that she and X each pay roughly half of the utilities. Therefore, each tenant's share for the 6 month period from Nov. 2018 - Apr. 2019 would be \$765 (\$1,530 divided by 2) or \$127.50 per month.
- The appellant and X submit that they each pay half of the rent (\$910 per month divided by 2 = \$455 each per month).
- Averaging the rent and utilities for the 6 month period, each tenant would owe \$582.50 per month, assuming the shelter costs are split 50/50. As noted, the amount of the e-transfers from X averaged \$267 per month, leaving a shortfall of approximately \$315 per month. The appellant explains any variation by noting that X also gives her cash toward his share of the expenses. The ministry acknowledges in the reconsideration decision that the appellant also receives cash from X.
- The appellant's hand-written accounting statement submitted on appeal indicates each tenant's share of the "rent, cable/internet and hydro" for a different 3 month period: \$1,648 for June - August 2019. (The panel notes that this calculation does not take into account the fact that hydro is billed bi-monthly, and as a result it understates the total 3 month shared living costs by approximately \$65, such that the actual 3 month cost over that period is \$1,713.). The appellant's accounting statement is divided into two columns, showing her share of shared expenses (as well as her car insurance) on one side, and her own expenses in the other column ("my phone", "my life insurance", and credit card).

Based on this analysis the panel finds that the ministry unreasonably concluded that the e-transfers from X, together with what might reasonably be represented by the periodic unaccounted cash contributions from X, are not consistent with a 50/50 sharing of shelter costs. The panel finds that the transfers, vis-à-vis the bill payments shown on the bank statements (with the addition of rent), supports the likelihood that there is a 50/50 sharing of the shelter costs.

The ministry speculates that the e-transfers and cash transfers from X are additional income for the appellant but the ministry's record does not include a tally or detailed analysis of the e-transfers and bill payments made in the same period. The ministry acknowledges that the appellant and X have separate bank accounts and separate

financial instruments but argues that the "unclear bank statements" indicate an inter-mingling of money consistent with a marriage-like relationship.

The appellant provides additional evidence regarding separate finances (her own cell phone account, life insurance, credit card, bank account, etc.) and the ministry had no objections to the additional submissions. The panel finds that the ministry has not reasonably and thoroughly considered the appellant's financial information in its entirety or given sufficient weight to the evidence of separate financial instruments. In particular, the panel notes that X must have his own bank account or other facility through which he cashes his bi-weekly pay cheques. The evidence shows that over the 6 month period for which the appellant's bank statements were provided none of X's pay cheques are deposited to the appellant's bank account.

The ministry expects roommates to have clear financial records that show separate contributions for rent and utilities but the panel notes that it is not unusual for roommates who are not financially interdependent to have an informal financial arrangement under which detailed records are not kept or maintained. An informal arrangement without ledgers and receipts does not confirm that two people reside together in a marriage-like relationship. Financial arrangements come in many different shapes and forms for roommates (as well as for spouses for that matter) and the absence of rent receipts is not necessarily indicative of a marriage-like relationship, nor is lending money to each other and receiving reimbursement later "to help each other out."

The appellant consistently explains throughout all of her submissions that she and X share shelter costs more or less equally. The ministry identifies a 50/50 sharing of expenses as a hallmark of a roommate relationship. The evidence in its entirety demonstrates a strong likelihood that there is a more or less equal division of shelter costs between the two roommates.

Appellant's vehicle

The panel finds that the ministry unreasonably concluded that the appellant and X are in a marriage-like relationship because the appellant insures a car that she unable to drive and X drives the car on occasion. Regarding the vehicle insurance, the panel finds that the appellant's explanations are reasonable. The evidence indicates the appellant got the car from a family member and initially had storage insurance until the landlord said that storage was not allowed.

Based on the evidence, the panel accepts the appellant's argument that the only way she could keep the car was to take out full road insurance. The appellant benefits from having the car insured when X can drive her to appointments or to transport groceries or other heavy goods. The appellant testified that she has mobility restrictions, that X cannot afford to have a vehicle, and that X only drives the car occasionally and for the appellant's benefit.

The appellant testified that she was unclear about her options for insurance and was initially told that she could not insure the car without a driver's license. The insurer then set her up with full road insurance and the insurance document in the record indicates a driver's license number for the appellant. The appellant testified she had her learner's license but not a full operator's license.

The evidence indicates the appellant inquired about basic insurance but was told it would cost \$75 per month more than what she was paying. The appellant was finally able to reduce the costs of the insurance by listing her roommate (X) as the principal operator. In any event, the vehicle registration and insurance remain in the appellant's name and the bank records and submissions do not establish that X pays anything toward the insurance premiums or vehicle registration.

Childcare services

On reviewing all of the evidence the panel finds that the ministry unreasonably determined the appellant's provision of childcare for Y shows financial interdependence consistent with a marriage-like relationship. While it was reasonable for the ministry to ask why the appellant would continue to provide childcare "for free" if the appellant and X were not financially interdependent, the panel finds that the appellant's statement that she was confused about where she stood with Y and she fully expected M to assume more involvement in Y's care provides a reasonable explanation for this.

X's evidence is that he offered the appellant money for childcare "a couple of years ago" but she would not accept it as Y was living at her residence and she was happy to help out. In any event, the parties now have a formal childcare arrangement (provided with submissions for the reconsideration). If there was any financial interdependency consistent with a marriage-like relationship through the appellant's provision of free childcare, the evidence indicates that the situation has now changed.

Summary

Based on the financial evidence in its entirety, the panel finds that the ministry has unreasonably determined that the appellant's financial arrangements with X demonstrate dependency or interdependency consistent with a marriage-like relationship. The panel finds that the ministry's determination that X is the appellant's dependent spouse under sections 1(1) and 1.1(2)(b) of the EAPWDA is not reasonably supported the evidence.

Arguments - social and familial interdependence

The ministry's position is that the evidence demonstrates both social and familial interdependence consistent with a marriage-like relationship. The appellant's position is that she is in a roommate situation with X and his child and they do not have social and familial interdependence.

*Social interdependence**Ministry*

The ministry argues that social interdependence is established because Y's school considers the appellant to be Y's guardian. At the hearing, the ministry explained that it looks for evidence of how friends or others perceive the relationship. The ministry acknowledges that the appellant's friends indicate that they know the appellant and X only as roommates but argues that more weight should be given to the school's perception of the relationship because of the "parental role you have had with the child for so many years."

Appellant

The appellant argues that she is known by Y's school as the *guardian* "for emergency cases when the school cannot get hold of X." and because she lives at Y's residence and knows Y. The appellant argues that that she is in a roommate situation with Y and they do not have social interdependence.

Panel's decision - social interdependence

Having considered all of the evidence, the panel finds that the ministry unreasonably concluded that the appellant's relationship with X demonstrates social interdependence consistent with a marriage-like relationship. The ministry states that the school considers the appellant to be Y's guardian because she filled out the forms that indicate she is the guardian. The ministry argues that in the school's eyes, the appellant is more than just an emergency contact as she has assumed a "parental role" for Y for many years.

The appellant provides an in depth explanation as to how she came to be named as guardian on the school forms. M was unavailable to complete the forms either as a parent or a guardian and X was away. The school asked the appellant to fill out the forms and suggested she indicate "guardian" since Y resides at the same address. There is no indication that the school has any knowledge of any social or parental aspects of the appellant's relationship

with X and Y. The school forms that the appellant filled out are primarily for the purpose of providing emergency contact information for the child, and social interdependency is not typically reflected in an emergency situation.

The panel gives more weight to the evidence of Friend A and Friend B who have had a social relationship with the appellant and X for 2 or 3 years as neighbours/friends, with children in the same school as Y. Both Friend A and Friend B indicate they have not seen any indication that the appellant and X are anything more than roommates. Friend B who has known the appellant for 3 years states that she only got to know X "a little bit as he was (appellant's) roommate but was always gone."

Summary

Based on the evidence of how friends perceive the relationship and considering the submissions in their entirety, the panel finds the ministry has unreasonably determined that the appellant's relationship with X and Y demonstrates social interdependency consistent with a marriage-like relationship. The panel finds that the ministry's determination that X is the appellant's dependent spouse under sections 1(1) and 1.1(2)(b) of the EAPWDA is not reasonably supported by the evidence.

Familial interdependence

Ministry

The ministry argues the appellant has familial interdependence with X and Y because she has taken on a "parental role" for Y including filling out the school forms as Y's "guardian" and caring for Y when X is away working. By not completing the school forms himself, the ministry argues that X supports the appellant acting "as a parent/guardian rather than just an alternate for any decisions that may need to be made for the child." The ministry acknowledges that the appellant is not Y's legal guardian and that Y is X's dependent child, but without knowing how often X works, what his work hours generally are, or who cares for the child over the summer, the ministry has concluded that Y will continue to rely on the appellant for the necessities of life given that M has not made herself available.

The ministry argues that the photos the appellant provided of her residence are insufficient to establish that the appellant and X are roommates. The ministry submits that where a person sleeps and stores their personal items in the residence "has very little impact when determining if a person is residing in a marriage-like relationship given that the test also includes financial interdependence and the social/familial role."

Appellant

The appellant argues that she and X are roommates who only share communal areas such as the kitchen: each tenant has their own room, buys their own food and prepares their own meals. The appellant argues that they only share housecleaning for common areas and each tenant is responsible for their own space. Y sleeps in X's room with X or X sleeps on the sofa.

The appellant argues that X carries sole responsibility for Y while she is listed on the school documents as guardian "for emergency cases" when the school cannot get hold of X. The appellant notes that she initially refused to be an emergency contact for the school and M was listed as the emergency contact until the school could no longer reach M. The appellant argues that she "covers only minimal costs for Y" which she is then reimbursed for.

The appellant argues that she and X are not interdependent for the care of Y and the appellant has not taken on a parental role. It was anticipated that Y would live with M as the primary residence once M got her own apartment. The appellant argues that even though the arrangement with M did not transpire as set out in the court documents, Y's living situation "remains in flux as he could move in with M at any time."

The appellant argues that she and X had not come to a formal arrangement for childcare due to the instability of the situation, and that legal guardianship of Y "is merely something she has thought about"; she has no set plans to pursue guardianship. The appellant expresses that she feels "put into the current situation without prior information or consent" as Y was only supposed to live at the appellant's place temporarily and then transition into M's care.

The appellant expresses that she "often feels forced into taking care of Y" because M remains unreliable and the appellant is concerned that Y will otherwise be returned to MCFD care.

At the hearing, the appellant added that it is unclear where she stands with Y because she "does not get proper communication" and the social worker is no longer involved. The appellant acknowledges that it was her choice to take on responsibilities for Y but she is available to assist with Y's care because she is not working and she has always tried to get both of the parents to take responsibility. The appellant feels she "is being slapped in the face for the situation for trying to help X out, supporting Y, keeping Y out of foster care." The appellant submits she "is not trying to be deceitful at any point"; she just wishes the social worker "had made me as foster care just in case of this situation happening."

At the hearing, the appellant clarified what she meant when she said she feels forced into the situation with Y. The appellant explained that it is because Y resides in her home and she felt obligated because "he is already living there and who else is going to do it?"

Panel's decision - familial interdependence

Having considered all of the evidence, the panel finds that the ministry unreasonably determined the appellant has familial interdependence with X and Y consistent with a marriage-like relationship. The ministry found that the appellant is not eligible for DA as a sole recipient under section 3 of the EAPWDA because her "family unit" includes a spouse (X) as defined in section 1(1) of the Act as well as X's dependent child whom the ministry considers to be the appellant's "dependant" as defined in section 1(1).

Relationship with X

As discussed earlier, familial interdependence on its own is not sufficient to establish that the appellant and X are spouses under section 1(1) of the EAPWDA. Any interdependence must also be consistent with a marriage-like relationship. The appellant has given detailed and consistent evidence across all of her submissions about the nature of her relationship with X.

The appellant testified that she and X have separate rooms. The appellant provided carefully labelled photos to indicate private and shared spaces in the apartment. The appellant testified that each tenant is responsible for cleaning his/her own space and the only shared housecleaning is for common areas. In addition, each tenant buys their own food and prepares their own meals. The ministry does not dispute the appellant's evidence but argues it is insufficient to demonstrate there is no familial interdependence given the extent of the appellant's involvement in the care of Y and the extent of her willingness to "help out."

The evidence indicates the appellant's involvement with X's child may have some familial features particularly in the provision of "free childcare" (which is no longer occurring) and through her greater involvement in Y's care over time given M's inconsistent parenting. However, the record as a whole, including the appellant's explanations for the situation and the statements from X and others indicating that X and the appellant are roommates, does not indicate familial interdependence consistent with a marriage-like relationship.

The appellant has detailed her confusion and frustration over the arrangement with Y due to the unexpected lack of expected involvement by M. The appellant also describes the continuing instability of the situation. The evidence indicates that M has not consistently acted upon her intentions to parent Y on a 50/50 basis as set out in the court documents, and X works out of town or is unavailable. Y continues to reside in the appellant's home, and the school can trust the appellant to be available in case of emergencies. Rather than a spousal relationship with X, the appellant's relationship with both X and Y supports her intentions of wanting to help "a friend", keep the child out of foster care, and determine where she stands in relation to Y's parents situation which could still change based on what has transpired in the past.

Summary

Based on the totality of the evidence, the panel finds the ministry has unreasonably determined that the appellant's relationship with X and Y demonstrates familial interdependency consistent with a marriage-like relationship. The panel finds that the ministry's determination that X is the appellant's dependent spouse under sections 1(1) and 1.1(2)(b) of the EAPWDA is not reasonably supported by the evidence.

Relationship with Y

Under the definition of "dependant" in section 1(1), the person's (applicant's) dependents include the applicant's spouse, the applicant's dependent children, and any other person at the residence who "indicates a parental role" for the applicant's dependent child. The panel notes that the appellant, and not X, is the applicant under the legislation because the appellant is the person who applied for DA. As the appellant does not have any dependent children of her own, Y cannot be her "dependant" under section 1(1) because Y is not her child.

Further, there can be no other person living at the residence who indicates a parental role for the applicant's child because the applicant (appellant in this case) does not have any children. It is therefore unclear how the ministry determined that the appellant's family unit consists of 3 people when the applicant's "parental role" in relation to someone else's child is not part of the definition of "dependant" under the legislation. Regardless of the extent of the appellant's involvement in Y's care, the panel finds that the ministry unreasonably applied the legislation in finding that the appellant's family unit size is 3 with X and Y included as her dependents.

The ministry acknowledges that Y is X's "dependent child" for the purpose of the Act and argues that the appellant plays a "parental role" in Y's care. The ministry cites the definition of "parent" in section 1(1) of the EAPWDR but nowhere in the reconsideration decision does the ministry find that the appellant is Y's "parent" under that definition. To the contrary, the ministry accepts that the appellant is not Y's parent or legal guardian.

Conclusion

Based on the information in its entirety, the panel finds that the ministry's reconsideration decision which determined that the appellant is not eligible for DA as a sole recipient is not reasonably supported by the evidence. The panel further finds that the ministry's determination that the appellant's family unit size is three is not a reasonable application of the legislation in the circumstances of the appellant. The panel rescinds the reconsideration decision. The appellant is successful in her 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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-08-16

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-08-16

PRINT NAME

Simon Clews

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-08-16