

APPEAL NUMBER  
2020-00146

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of March 13, 2020 in which the Ministry determined that the appellant was not eligible to apply for income assistance as a sole applicant because of the appellant's current living arrangement as a married couple, pursuant to sections 1, 1.1, 2 of the *Employment and Assistance Act*.

**PART D – RELEVANT LEGISLATION**

EAA *Employment and Assistance Act, section 1, 1.1. 2*

## PART E – SUMMARY OF FACTS

The information before the Ministry at the time of reconsideration included the following:

- 1) **January 7, 2020** – the appellant completed an online application for income assistance. The appellant applied as a sole applicant with no dependents. The appellant provided a signed letter by both the appellant and the spouse indicating that the two were separated but not formally divorced. The letter outlined that the two were living together for financial reasons, and neither partner could afford to move out.
- 2) **January 17, 2020** – A ministry worker reviewed the appellant information, which was;  
The couple was separated ten years ago, but still reside together in the home they purchased because they could not afford to move apart.  
They do not share a room  
The appellant has no income except what is earned from investments (valued at \$27,000)  
The appellant owns a vehicle  
The appellant does not have a mortgage, but uses a line of credit that is secured by the condo  
The appellant has not worked in four years due to carpal tunnel syndrome
- 3) **January 21, 2020** – the ministry reviewed the documents and noted that some of the bills were in the appellant's name and others were in the spouse's name, and that the two previous years (2017 & 2018) of taxes were filed as married. The ministry determined that the appellant and the spouse meet the definition of family and therefore must apply as a family unit. This determination was made based on; the two spouses reside together, are financially interdependent on one another, and socialize together. The appellant submitted a signed request for Reconsideration.

### Additional Information

The appellant did not attend the hearing. After waiting ten minutes and confirming the appellant had received notice of the hearing on June 5, 2020 at 1:18 pm, the panel proceeded in the absence of the appellant, pursuant to section 86 of the *Employment and Assistance Regulation*.

The appellant had submitted additional documentation on May 28, 2020 in the form of a medical certificate for employment benefits. The panel determined during deliberation that the contents of the medical certificate had no relevance to the current decision, and therefore did not admit it as evidence, pursuant to section 22 of the *Employment and Assistance Act*.

## **PART F – REASONS FOR PANEL DECISION**

The decision under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of March 13, 2020 in which the Ministry determined that the appellant was not eligible to apply for income assistance as a sole applicant because of the appellant's current living arrangement as a married couple, pursuant to sections 1, 1.1, & 2 of the Employment and Assistance Act.

### **Legislation**

Employment and Assistance Act

1 (1) In this Act: "applicant" means the person in a family unit who applies under this Act for income 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.

Meaning of "spouse"

1.1 (1) Two persons are spouses of each other for the purposes of this Act if

(a) they are married to each other,

(b) they declare to the minister that they are in a marriage-like relationship, or

(c) they have resided together for at least the previous 12 consecutive months and 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.

(2) The Lieutenant Governor in Council may prescribe circumstances in which two persons are not spouses of each other for the purposes of this Act.

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if (a) each person in the family unit on whose account the income 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 income assistance, hardship assistance or supplement under this Act.

### **Panel Decision**

The ministry position is that the appellant cannot apply as a sole applicant for income assistance because the appellant has not demonstrated that they are not in a marriage-like relationship. Upon review, the appellant had filed both 2017 and 2018 taxes as "married" and has not filed for a legal separation from the spouse he resides with. Upon further review, the appellant and spouse have both their names on the household bills, have a spousal RRSP, and admit to socializing together. The ministry's position is that the couple demonstrates a close financial interdependence.

The appellant's position is that the two spouses cannot afford to move apart and live as separated spouses within the household.

As outlined in section 1.1 of the *Employment and Assistance Act* "spouse" for the purpose of the Act is; a) the two spouses are married to each other, (b) they declare to the minister that they are in a marriage-like relationship, or (c) they have resided together for at least the previous 12 consecutive months and the minister is satisfied that the

relationship demonstrates (i) financial dependence or interdependence, and (ii) social and familial interdependence consistent with a marriage-like relationship.

The panel finds that the evidence establishes the appellant filed *both* the 2017 and 2018 tax years as *married*, the appellant has a spousal RRSP, the appellant and his spouse are legally married and have been living in the same residence for over ten years – without filing for a separation agreement or divorce. The panel finds that the ministry was reasonable when it determined the appellant had not demonstrated a financial separation between the two spouses, as well, the panel considers the undisputed evidence that the appellant and spouse socialize together and rely on one another for transportation.

Accordingly, the panel finds that the decision of the Ministry to deem the appellant ineligible for income assistance as a sole applicant a reasonable application of the legislation in this case.

Therefore, the panel confirms the Ministry's decision pursuant to section 24(1)(b) and section 24(2)(a) of the *Employment and Assistance Act*. The appellant is therefore unsuccessful in this appeal.

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**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

Jennifer Armstrong

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/June/17

PRINT NAME

Patrick Cooper

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/June/20

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/June/20