

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated July 27, 2023, which determined the appellant had a spouse and was therefore not eligible for disability assistance as a sole recipient with one dependent child.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (Act), sections 1, and 1.1

Employment and Assistance for Persons with Disabilities Regulation (Regulation), section 5

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts**Relevant Evidence Before the Minister at Reconsideration****Ministry Records show:**

- The appellant's disability assistance file opened on July 5, 2022.
- On December 22, 2022 the appellant applied for Persons with Disabilities (PWD) designation, where in multiple instances she mentions having a boyfriend (T) who she relies on for daily living activities (DLAs), including housecleaning.
- On February 8, 2023 the appellant explained to the ministry that T is the father of her youngest child, who is on T's PWD file.
- On March 14, 2023 the ministry received information from the landlord at address B that T and his wife are living in the unit.
- On March 16, 2023 the ministry received the following information from T:
 - The appellant and T share a residence.
 - They have been a couple on and off for about five or six years.
 - They share one child together. Presently there are two children in the home.
 - They share all expenses, take turns with chores and eat together as a family.
 - The appellant and T do not share bank accounts. T has his own bank account and the appellant does not have one. The appellant and T do not have any joint assets.
 - The appellant and T do not visit each other's families or friends, or go out in the community together.
- On March 22, 2023 the ministry was advised by a social worker from another ministry that the appellant and T presented at their local office as a common-law couple.
- On April 4, 2023 the ministry requested documents to assess if the appellant was residing in a dependency relationship.
- On April 18, 2023 the appellant submitted two Residential Tenancy Agreements (RTA)s, a BC Hydro disconnection notice and a 2022 tax return summary. She advised as she does not have a bank account or current employment, she could not submit bank documents or proof of income as requested.
- On May 26, 2023 the ministry determined that the appellant and T were in a marriage-like relationship. The ministry switched off cheque production on the appellant's file and asked the appellant to complete a streamlined application for assistance as a couple.
- On June 16, 2023 T advised the ministry that he and the appellant are roommates only, and so would not be proceeding with a streamlined application for assistance

as a couple. The ministry advised T that their files would be closed if they did not proceed with the streamlined application but decided that cheque production would remain off for the appellant's file and on for T's file to avoid undue hardship.

- On June 27, 2023 the appellant called the ministry regarding her disability assistance cheque and advised that she and T were a couple at one time, but are no longer in a relationship. She expressed that she cannot look after herself and her child, and so T lets them stay with him and helps when needed. The appellant advised that she would be returning to rehab and would not have anyone to look after her child if she were forced to move from the home she shares with T.
- On June 27, 2023 the appellant submitted a Consent to Disclosure of Information form allowing the ministry to discuss her file with someone from a social services centre.
- On June 30, 2023 the ministry acknowledged that the appellant did not want her file closed or combined with T's file as a couple. However, as the ministry had previously determined that the appellant and T were required to be on one shared file, to meet eligibility criteria, the ministry also determined that the appellant was ineligible for disability assistance as a sole recipient with one dependent child.
- On July 4, 2023 the ministry was advised by the social services centre that the appellant and T are not a couple; they only reside together to co-parent their child, and the appellant is seeking her own rental accommodation.
- On July 17, 2023 the appellant contacted the ministry to advise that she and T are no longer trying to make it work, and that she is now dating someone else.

Note from the Appellant (February 8, 2023)

The appellant states she is separated from her husband and files her taxes separately from T. She also states she manages her own day-to-day costs for herself and her oldest son, but gives T the child tax credit.

T is her boyfriend. She cannot live alone even if she wanted to. T and the appellant have lived separately while she was in treatment and together for the past 12 months. They currently share some costs. Her oldest child has just returned from respite care and she asked T for help for food and clothes, but he doesn't have any to spare as he has to take care of their son and himself.

She also states she's been living at a treatment facility and is waiting to go back.

Letter to the Appellant from the Ministry (no date)

- Requesting information to assess eligibility for assistance

Information is required by April 20, 2023.

e.g. confirmation of current address, rental amount, utility costs, proof of income etc..

- **Letter to the Appellant from BC hydro – for service at address B (February 13, 2023)**

The letter is addressed only to the appellant and states it is a final disconnection notice for the total amount owing.

- **Residential tenancy agreement - address B (signed by the appellant and T, February 20, 2023)**

The agreement states this new tenancy agreement began on November 1, 2022 and continues on a month-to-month basis.

- **Residential tenancy agreement - address B (lists the appellant and T as tenants)**

This tenancy agreement covers the period from October 15, 2021 – October 31, 2022.

- **Tax Return Summary for Taxation year 2022**

Tax return is in appellant's name.

Marital status is shown as "separated".

Letter to the Appellant and T (May 26, 2023)

The ministry states it has been conducting a family composition review on the meaning of spouse. The letter lists the criteria used to determine if the appellant is in a marriage-like relationship, and the ministry determinations.

Criteria #1- The persons have resided together for at least the previous twelve consecutive months:

Yes - RTA (November 1, 2016) for address A shows the appellant and T have moved and had the same address since 2016. Information from the appellant acknowledges they live together but are not a couple.

Criteria #2 - the relationship demonstrates financial dependence or interdependence consistent with the marriage-like relationship

Yes - PWD application list T as partner/boyfriend who assists with DLA's. The couple are on the RTA together and the landlord identifies the couple as T and his wife who live in the unit with two children. Information from the appellant is that T has a bank account, but the appellant does not. They share expenses and have no joint assets. The couple reports that they do not rely on each other financially.

Criteria #3 - the relationship demonstrates social and familial interdependence consistent with a marriage like relationship

Yes - PWD application lists T as a partner/boyfriend who assists with DLA's. The couple share a child. The appellant's oldest child was returned to the family home by the ministry. Information from the appellant maintains they are roommates and live together to parent the children.

As a result of the assessment and information provided by the appellant and T, the ministry has assessed that the appellant does meet the criteria of currently being in a dependency relationship with T because the couple do meet criteria (1, 2, 3) of the Family Composition Policy.

Therefore, the ministry requires that an Employment and Assistance Review application be completed by the appellant and T. At that time, one income assistance file will be closed and the appellant's family unit will be together on one income assistance file.

Consent to Disclosure of Information (June 27, 2023)

The appellant states she has lost her disability allowance due to her dependency on a long-term roommate for basic everyday needs. She states she has "severe functioning abilities" and PTSD from domestic assault. She is afraid to live alone but has been functioning positively now and although she has been sober for eight months, she still suffers tremendously in order for her children to have a somewhat normal and functioning life.

She adds that the ministry decided that she and T need to be on the same file even though her child from a previous marriage is not his responsibility. She is now in a situation where she is feeling forced to put her oldest child into foster care because she cannot take care of them on her own. This has forced her into a shared living environment while she is wait-listed for a treatment center.

She states she is appealing this decision as the ministry refused to acknowledge her dependency needs due to financial hardship and mental illness, not common-law living. She adds that if she could live alone with just her children, she would but, she cannot afford to live by herself and can't function alone.

Letter to the Appellant from the Ministry (June 30, 2023)

- *Denial letter*

The ministry writes that on June 27, 2023 the ministry determined the appellant was no longer eligible for disability assistance.

Request for Reconsideration - summary (July 7, 2023)

The appellant stated she was not made aware that there was a family composition review until she didn't receive her disability allowance for July 2023, as only one copy of the ministry letter was sent to her address. She states when she contacted the ministry she was informed that unless she agrees to combining her disability file with T's, the ministry would be closing both files.

She also stated consent for disclosure of information is required by the ministry to communicate with third parties and her rights have been broken, which is a direct threat towards herself and her oldest child. She states this does not help her battle with her health and future employment, considering she and her son have been left with no funds for shelter or support for July 2023.

The appellant provided the following responses to the ministry letter dated May 26, 2023. Criteria #1: The persons have resided together for at least 12 of the past consecutive months.

The appellant writes she has lived on and off with T since 2016, since they co-parent their child. She is required to be on the rental agreement as she stays there more than 14 days in a month. Her oldest child also resides with her at this location, when they are not residing elsewhere. She states it is up to her to inform the ministry where she resides the majority of the time, and she has done as such.

Her oldest child's father pays \$280/month in child support, and \$400 in spousal support. Additionally, she states she has not been in receipt of regular disability assistance payments since November 1, 2016. She has worked irregularly and regularly since her youngest child was born.

The appellant states that T and she have not moved. They lived at address A; However, the ministry's letter shows an incorrect address (same house and avenue number but extra unit #). She states the statement that the appellant and T had moved and had the same address since November 2016 is based on uncredited assumptions.

Criteria #2: The relationship demonstrates financial dependence or interdependence consistent with a marriage-like relationship.

The appellant states that at the time of signing the lease, she and T were trying to make familial interdependence a reality, but as she had experienced sexual and physical abuse, it was difficult.

She adds that she and her oldest child live independently from her youngest child and T. However, she finds it healthier for both children to be living full-time in the same household. She has 50/50 custody of her youngest child. The appellant suggests she should be in receipt of additional shelter and support funding for her youngest child as the Act refers to a child who resides in the parent's residence for more than 50% of each month and relies on that parent for the necessities of life.

Criteria #3: The relationship demonstrates social and familial interdependence consistent with a marriage-like relationship.

The appellant states that at the time of the application, T was assisting her with some DLAs and they attempted to live interdependently in the past. She states she tried to medically detox from alcohol addiction, which was causing the beginning of liver failure. T had become increasingly impatient with her behaviour and assisting with DLAs. She was admitted into the psychiatric ward at a hospital in November 2022 due to risk of attempted suicide.

She states she was moved into a recovery centre several weeks later and was supposed to be in this program until February 2023, with the option of moving into a long-term assisted living program for her and her children. Unfortunately, this did not work out and she ended up departing the recovery program in December 2022, due to significant weather events, and the inability to return to the facility on time. She has put herself back on a waitlist. Therefore, she is still residing with T, awaiting a call from the recovery centre, so she can move on with her life in a healthy and positive way for herself and her children.

The appellant adds she should receive a July 2023 payment for support and shelter, which she and her child qualify for. They rely on this payment for protection from immediate harm. Although her youngest child and T received support and shelter payments for July 2023, she and her oldest child did not. This had led to all of her child tax benefit and child and spousal support payments going towards her shelter and bills.

She adds she cannot pay for required medications or for her emotional support animal.

Additional Information

Appellant

Notice of Appeal (August 10, 2023)

The appellant did not provide any information under “Reasons for Appeal” on the Notice of Appeal.

At the hearing, the appellant stated that after being hit by a car, she suffers from severe PTSD and agoraphobia, doesn't trust many people and has no access to any finances. She gave T her money to look after her. The appellant also stated it's a struggle for her mental health and safety to have everything controlled by T but she is forced to live in this relationship. The appellant added that she now defines as a lesbian and since the beginning of the year, she and T have had separate sleeping arrangements.

She also stated that she has been looking for other accommodation; however, everything is outside of her price range and she doesn't know anyone else she can trust. The appellant also stated that, when she was in rehab, she looked for alternative housing but it was too far away.

When asked if the appellant has lived anywhere else in the past 12 months besides her present residence, she said she had not.

Ministry

At the hearing, the ministry relied on its record and added that when applying the legislation, the ministry does not consider whether spouses are romantically or sexually linked.

Admissibility

The panel determined the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine the appellant was not eligible for disability assistance as a sole recipient with one dependent child?

Appellant Position

The appellant states she has lived on and off with T since 2016, as they co-parent their child. She argues she is required to be on the rental agreement as she stays there more than 14 days in a month. Her oldest child also resides with her at this location, when they are not residing elsewhere.

The appellant also argues she files her taxes separately from T and manages her own day-to-day costs for herself and her oldest son. She gives T the child tax credit and they currently share some costs.

She also states she's been living at a treatment facility and is waiting to go back. T is her boyfriend and she argues she cannot live alone, even if she wanted to. T and the appellant lived separately while she was in treatment and together for the past 12 months.

Ministry Position

The ministry states there is no evidence that the appellant and T are married and they have not advised the ministry they are in a marriage-like relationship. Therefore, the ministry is satisfied that the appellant's relationship with T doesn't meet the definition of a "spouse" under section 1.1(1)(a) or 1.1(1)(b) of the Act.

However, the ministry argues the appellant's relationship with T meets the definition of "spouses" as per section 1.1(1)(c) of the Act, based on the following information:

Criteria #1: The persons have resided together for at least 12 of the past consecutive months:

- A review of the appellant's file shows that address B has been the primary residence for which the appellant receives a shelter allowance to pay rent, since July 2022, when the appellant's file was reopened.
- The RTA for address B (October 15, 2021 – October 31, 2022) the appellant submitted names herself and T as the tenants at this address.

- The updated agreement (November 1, 2022 – present), the appellant submitted on April 18, 2023 also names herself and T as the tenants at address B.

The ministry argues that although the appellant disputes she resided at the same address as T for more than the past 12 consecutive months (as she was residing in a treatment facility from November to December 2022), the ministry determined that the appellant requested and was provided shelter funds to maintain address B as her place of residence during this period.

The ministry states the appellant advised that her name is on the RTA for address B because she resides there more than 14 days out of the calendar month, and that she sometimes resides elsewhere. However, the appellant has not provided any information or evidence to explain where else she resides for the remainder of the calendar month. As such, the ministry argues it is satisfied that the appellant and T have resided together at address B for more than 12 consecutive months (from October 15, 2021 to present).

Criteria #2: The relationship demonstrates financial dependence or interdependence consistent with a marriage-like relationship:

The ministry acknowledges that the appellant files her taxes separately from T. Furthermore, the ministry finds no evidence to suggest that the appellant has joint bank accounts or significant assets co-owned with T.

However, the ministry states that the appellant and T have both received shelter allowances to pay rent at address B at the same time, indicating that she shares this expense as a signed tenant at this address. Furthermore, on February 8, 2023 the appellant acknowledged that she and T share some costs, and that she gives him her child tax benefit. On March 16, 2023, T declared that the appellant and he share all expenses. On June 27, 2023 the appellant indicated that she is dependent upon T due to financial hardship and cannot afford to live by herself.

For these reasons, the ministry argues that the appellant's relationship demonstrates a financial dependence or interdependence.

Criteria #3: The relationship demonstrates social and familial interdependence consistent with a marriage-like relationship:

The ministry states the appellant advised that, while she and T were a couple in the past, they are no longer together and she is dating someone else now. However, the ministry argues that the appellant referred to T as her boyfriend throughout her interactions with

the ministry until she was denied assistance. The appellant advised on multiple occasions that they co-parent their son, while living together. The appellant has expressed that she cannot look after herself and her son, so T helps her with this. T advised the ministry on March 16, 2023 that the appellant and T share all expenses, take turns with chores, and cook and eat together as a family. Furthermore, the ministry has received information advising that the appellant and T have presented at a local ministry office as a common-law couple, and the appellant's landlord has stated, "T and his wife" reside at address B.

Therefore, the ministry argues the appellant's relationship demonstrates a social and familial interdependence consistent with a marriage-like relationship.

Accordingly, the ministry finds the appellant is not eligible for disability assistance as a sole recipient with one dependent child because her relationship with T meets the definition of "dependent" and "spouse" under Section 1 of the Act.

The ministry states that, although the appellant clearly stated she does not want her file to be closed and combined with the file of T, because the ministry requires a family unit be on one income assistance file, the ministry will be closing the appellant's income assistance file.

Panel Analysis

Sections 1 and 1.1, Act – definitions

Section 1(1) of the Act defines dependent as anyone who resides with the person and is the spouse. Section 1.1(c) of the Act states, two persons are spouses of each other for the purposes of this Act if,

- 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.

Resided together for at least the previous 12 consecutive months

The panel notes the two RTAs (October 15, 2021 – October 31, 2022 and November 1, 2022 on a month-to-month basis), both show the appellant and T as tenants at address B. In her Request for Reconsideration, the appellant stated she is required to be on the rental agreement as she stays there more than 14 days in a month and when she and her oldest child are not living at address B, they live elsewhere. However, at the hearing, the

appellant stated she hasn't lived anywhere else but in her present residence for the past 12 months.

The appellant argues that she and T have lived separately while she was in treatment. The panel notes that ministry records show that although the appellant was residing in a treatment facility from November to December 2022, she requested and was provided shelter funds to maintain address B as her place of residence during this period.

The panel finds that although the appellant argued she and T have not lived together for the past 12 consecutive months, the panel finds the ministry reasonably determined they resided together for at least the previous 12 consecutive months. The appellant and T are shown as tenants on two RTAs for address B covering the period from October 2021 to present and the ministry provided the appellant with shelter funds for this address during this period. As well, the appellant provided insufficient evidence to demonstrate she lived anywhere else.

**Relationship demonstrates:
financial dependence or interdependence**

Although the appellant argues she files her taxes separately from T and manages her own day-to-day costs for herself and her oldest son, she also stated that she gives T the child tax credit and they currently share some costs. As well, the appellant stated she asked T for help, for food and clothes for her oldest child, but he doesn't have any to spare. The appellant also stated that if she could live alone with just her children, she would but, she cannot afford to live by herself. On March 16, 2023 information, provided by T, was that they share all expenses.

As well, the panel notes, ministry records show that the appellant and T have both received shelter allowances to pay rent at address B at the same time, indicating they share this expense as the signed tenants at this address.

The panel finds, with the information above, the ministry reasonably determined the appellant and T have a relationship that demonstrates financial dependence or interdependence.

**Relationship demonstrates:
social and familial interdependence consistent with a marriage-like relationship**

Ministry records show that on December 22, 2022 the appellant applied for Persons With Disabilities (PWD) designation, where in multiple instances she mentions having a

boyfriend (T) who she relies on for DLAs. The appellant states she has lived on an off with T since 2016 as they co-parent their child and she cannot live alone even if she wanted to.

Ministry records also show the appellant advised that she would be returning to rehab and would not have anyone to look after her child if she were forced to move from the home she shares with T. Information, provided by T, was that they share all expenses, take turns with chores and eat together as a family.

Although, at the hearing, the appellant advised that she and T have separate sleeping arrangements, the ministry stated it does not consider whether spouses are romantically or sexually linked, when applying the legislation. As the panel acknowledges that a “marriage-like relationship” may include a variety of different living arrangements, the panel finds this to be reasonable.

As well, the panel notes on May 26, 2023 the ministry suspended the appellant’s disability assistance cheque as it determined that the appellant and T were in a marriage-like relationship, and on June 27, 2023 the appellant and T called the ministry regarding her cheque and advised that she and T were a couple at one time, but are no longer in a relationship. The ministry argues that the appellant referred to T as her boyfriend throughout her interactions with the ministry until she was denied assistance.

The panel notes on March 16, 2023, T advised the ministry they share all expenses, take turns with chores and eat together as a family and on March 22, 2023 the ministry was advised by a social worker that the appellant and T presented at a local office as a common-law couple.

As there is insufficient evidence to suggest that the appellant and T were not a couple, until after the ministry suspended the appellant’s disability assistance cheque, the panel finds the ministry was reasonable to place more weight on the prior statements by T and the social worker, over the later statements made by the appellant.

The panel finds that with the above information, as well as two RTAs showing both the appellant and T’s names as tenants (since October 2021), the ministry reasonably determined that the relationship demonstrates social and familial interdependence consistent with a marriage-like relationship.

Section 5, Regulation - applicant requirements

Section 5 of the Regulation states, for a family unit to be eligible for disability assistance, an adult in the family must apply for the assistance on behalf of the family unit. As the

panel determined the appellant and T meet the definition of spouses, as per section 1.1(c) of the Act, the panel also finds one adult must apply for assistance on behalf of the family, as per section 5 of the Regulation.

Conclusion

The panel acknowledges that the definition of spouse can include many different financial and social arrangements. However, the panel is bound by the legislation. In conclusion, the panel finds the ministry decision, which determined that the appellant is not eligible for disability assistance as a sole recipient with one dependent child was a reasonable application of the legislation in the circumstances of the appellant as per section 1 and 1.1 of the Act and section 5 of the Regulation.

The appellant is not successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons With Disabilities Act

Interpretation

1 (1) In this Act:...

"dependant", in relation to a person, means anyone who resides with the person and who

(a) is the spouse of the person, or

(b) is a dependent child of the person;...

"dependent child", with respect to a parent, means a child... 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...

"disability assistance" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*];...

"family unit" means an applicant or a recipient and his or her dependants;...

"recipient" means the person in a family unit to or for whom disability assistance, ...under this Act for the use or benefit of someone in the family unit, and includes

(a) the person's spouse, if the spouse is a dependant...

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

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....

Employment and Assistance for Persons with Disabilities Regulation

Applicant requirements

5 For a family unit to be eligible for disability assistance or a supplement, an adult in the family unit must apply for the disability assistance or supplement on behalf of the family unit...

APPEAL NUMBER 2023-0245

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)

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

Part H – Signatures

Print Name

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2023/09/11

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2023/09/11

Print Name

Wes Nelson

Signature of Member

Date (Year/Month/Day)

2023/09/11