

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision, dated March 15, 2024 (the “Reconsideration Decision”) of the Ministry of Social Development and Poverty Reduction (the “Ministry”). The Ministry determined that the Appellant was not eligible for income assistance as a single person as the Appellant was in a spousal relationship, as defined by section 1.1 of the *Employment and Assistance Act* (the “Act”).

Part D – Relevant Legislation

Employment and Assistance Act- sections 1, 1.1, and 2
Employment and Assistance Regulation (the “Regulation”)- section 1

Part E – Summary of Facts

The Appellant is an applicant for income assistance who lives with his wife but states that they are separated. The Appellant had previously applied for income assistance with his wife and child.

Information Before the Ministry at Reconsideration

The information before the Ministry at the time of the Reconsideration Decision included the following:

- an updated customer snapshot of the Appellant's accounts from his bank;
- January 2024 and December 2023 statements from the Appellant's bank showing minimal balances in two chequing accounts;
- a mortgage statement, setting out the details of the mortgage against the house that the Appellant shares with his wife;
- the Appellant's application for assistance, dated January 31, 2024;
- the Appellant's Request for Reconsideration, dated March 1, 2024, in which the Appellant wrote that:
 - he had been trying to apply for income assistance since August 2023;
 - two of his applications were sent back to him;
 - his wife wants to file for a temporary separation;
 - he and his wife sleep in separate bedrooms;
 - the Appellant's wife wants to split costs as if she and the Appellant were roommates;
 - the Appellant's wife works only two days per week;
 - the Appellant will be applying for the persons with disabilities designation;
 - the Appellant feels his options are limited as the mortgage is due.

The Appellant filed his Notice of Appeal on March 20, 2024. In the Notice of Appeal, the Appellant wrote that he did not understand why he was being denied and that he needed the assistance as he was financially alone and had nothing left.

Evidence After the Reconsideration Decision

Neither the Appellant nor the Ministry submitted any further evidence to the tribunal after the Reconsideration Decision and before the hearing of the appeal.

The Hearing

The Appellant did not attend the hearing of the appeal, which was attended by a representative of the Ministry.

The Ministry

The Ministry noted that the Appellant had applied for income assistance as a single parent person with a dependant child but determined that the Appellant's wife and the Appellant were spouses, as defined by the Act as there was significant evidence of financial, social, and familial interdependence that is consistent with a marriage-like relationship.

The Ministry noted that the bank statements provided to it did not indicate from which account mortgage payments were being made and therefore a the Appellant's evidence about splitting expenses between himself and his wife was not consistent with the documentary evidence.

The Appellant also advised the Ministry that he and his wife reside at the same address, , have not advised their child that they had plans to separate, and that the Appellant's wife was continuing to receive the Canada Child Benefit.

When asked, the Ministry advised that there are circumstances where a person can be determined to have separated from his or her spouse, despite continuing to reside in the same residence. In such instances, the Ministry indicated that it would typically expect to have more evidence than it had in this instance, including, for example, a sworn statement from the spouse, a separation agreement, the evidence of a third party confirming the parties' separation, or copies of bills showing that the parties were paying separate bills.

The Ministry noted that, in this case, it had none of those forms of evidence and, in particular, there was a lack of evidence from the Appellant that he and his wife had separated their finances.

Part F – Reasons for Panel Decision***Issue Under Appeal***

The issue in this appeal is whether Ministry was reasonable in its determination that the Appellant was not eligible for income assistance as a single person as the Appellant was in a spousal relationship, as defined by section 1.1 of the Act.

Positions of the Parties***Appellant***

The Appellant's position, as set out in the Request for Reconsideration is that he and his wife are separated and have decided to share expenses separately and that he needs income assistance to cover his portion of household expenses.

Ministry

The Ministry's position is that the relationship between the Appellant and his wife is consistent with a marriage-like relationship and meets the definition of "spouse" as defined in section 1.1 of the Act.

Panel Decision

Section 2 of the Act requires that for a family unit to be eligible for assistance, "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."

As such, to be eligible for assistance as a couple, both of the Appellant and his wife would need to satisfy the initial and continuing conditions of eligibility.

To be eligible for assistance as a single person, the Appellant would need to satisfy the initial and ongoing conditions of eligibility and would also need to establish to the Ministry that he did not have a spouse, as defined in section 1.1 of the Act.

Spouse has a broad definition under the Act and two people are considered spouses if any of the following criteria are met:

- (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.

While the Appellant and his wife are married to each other, section 1(5) of the Regulation provides that:

two persons who are married to each other are not spouses if the minister is satisfied that the relationship does not demonstrate:

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

There was considerable evidence before the Ministry at the time of the Reconsideration Decision that the Appellant and his wife were still living in a spousal relationship, which included examples of financial, social, and familial interdependence, including:

- they had not told their child about having separated;
- they continued to share a number of duties related to the household; and
- there was little evidence that the Appellant and his wife were splitting expenses, in particular the mortgage costs.

Likewise, there was a lack of any evidence that the Appellant and his wife were no longer spouses, including:

- no separation agreement;
- no statement from the spouse that she and the Appellant had separated;
- no evidence from third parties about their observations of the relationship; and
- no divorce application or order.

In view of the above, the panel finds that there was a reasonable basis for the Ministry to have made its determination that the Appellant and his wife were spouses, as defined by section 1.1 of the Act and the panel confirms the Reconsideration Decision.

The Appellant is not successful in the appeal.

Relevant Legislation*Employment and Assistance Act***Interpretation****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, 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, or
- (b) is a dependent child of the person;
- (c) [Repealed 2019-36-87.]

"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) but excludes a child in circumstances prescribed under subsection (2.1);

"dependent youth" means a dependent child who has reached 16 years of age;

...

"family unit" means an applicant or a recipient and the applicant's or the recipient's dependants;

...

"income assistance" means an amount for shelter and support provided under section 4 [*income assistance and supplements*];

...

"recipient" means the person in a family unit to or for whom income assistance, hardship assistance or a supplement is provided 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, and
- (b) the person's adult dependants;

"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.

(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.

Employment and Assistance Regulation

Definitions

1 (1) In this regulation:

"Act" means the *Employment and Assistance Act*;

...

"assistance" means income assistance, hardship assistance or a supplement;

...

"parent", in relation to a dependent child, includes the following other than for the purposes of sections 20 [*assignment of maintenance rights*] and 65 [*burial or cremation supplements*] 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);
- (c) if the child is a dependent child of a parenting dependent child, a person who is the parent of the parenting dependent child;

"parenting dependent child" means a dependent child who is the parent of a dependent child;

...

(2) Subsection (2.1) applies to a child if

- (a) the child relies on both parents for the necessities of life, and
- (b) the child resides
 - (i) with each parent for 50% of each month in circumstances where the parents live in different residences, or
 - (ii) with both parents in circumstances where the parents live in the same residence but are not spouses.

(2.1) For the purposes of the Act and this regulation, a child described in subsection (2)

- (a) is a dependent child of the parent who is an applicant or recipient, provided only one of the parents is an applicant or recipient, or
- (b) if both parents are applicants or recipients, is a dependent child only of the parent who is designated in writing by both parents.

(3) For the purposes of the definition of "special care facility", the minister may approve as a specialized adult residential care setting a place that provides accommodation and care for adults and for which a licence under the *Community Care and Assisted Living Act* is not required.

(4) The definition of "parent" in subsection (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

(5) For the purposes of the Act and this regulation, two persons who are married to each other are not spouses if the minister is satisfied that the relationship does not demonstrate

(a) financial dependence or interdependence, and

(b) social and familial interdependence

consistent with a marriage-like relationship.

2024-0102

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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2024/April/17

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2024/04/17

Print Name

Vivienne Chin

Signature of Member

Date (Year/Month/Day)

2024/04/17