

Reasons for Decision:

Order # AP1516-0404

The appellant appealed that the appellant's income assistance file was closed as the Department alleged that the appellant had been living in a common-law relationship and assessed an overpayment in the amount of <amount removed>.

The Department reported at the hearing that the appellant and <reference removed> were living together, as a common-law couple, during the period of <dates removed>. During the time frame of <dates removed> they lived at the appellant's parent, <name removed>, residence. On <date removed> the Department's Investigator confirmed by phone with <name removed> that the appellant and <reference removed> lived with <name removed> as a common law couple during <dates removed> and that <reference removed> was employed full time. Effective <date removed> the appellant and <reference removed> moved in together in another residence, in <place removed>. While on assistance in <place removed>, the Department had noted that the appellant had stated the appellant was going to move to <place removed> to be with the appellant's <reference removed>. The worker and the Investigator met with the appellant on <date removed> and advised the appellant that based on the information from <name removed>, it was determined that the appellant and <name removed> are in a common-law relationship and had been prior to moving to <place removed>. The appellant was requested to provide verification of <name removed> employment earnings in order to determine eligibility as a couple. The appellant has not provided the Department with the requested information. As the appellant did not provide the requested pay stubs an overpayment for all income assistance benefits received from case effective date of <date removed> to <date removed> was calculated for the amount of <amount removed>. The appellant's file was closed effective <date removed>.

The appellant attended the hearing with <name removed>. The appellant stated the appellant moved to <location removed> to get away from an abusive situation in <place removed>. The appellant had no other place to go and <name removed> was helping the appellant. The appellant stated that the appellant declared the appellant's living situation accurately to the Department when the appellant applied for assistance and completed the Department's relationship assessment form that the appellant is in a rent share situation, not common-law. The appellant stated when the appellant was living with <name removed>, <name removed> was residing there as well, but as a roommate only. The appellant advised that when they lived at <name removed>, they both had their own rooms and were sharing expenses, which <name removed> confirmed at the hearing. The appellant and <name removed>'s current residence is also a rent shared situation. The appellant gives <name removed> the <amount removed> rent money the Department gives the appellant and <name removed> pays

the landlord as the landlord only wants one cheque. The appellant explained the importance of this living situation to the Board in relation to a <reference removed> situation the appellant is involved with. The appellant explained that the appellant shares expenses with <name removed>. The hydro is in <name removed> 's name only and the water is in the appellant's name and the Department covers half of the utilities cost. The appellant stated that <name removed> is a friend who is helping the appellant during a very emotional and difficult time. The appellant did not provide <name removed>'s pay stubs to the Department as the appellant has no access to them as <name removed> is just a roommate and would not add <reference removed> to the appellant's file as common-law.

According to The Manitoba Assistance Act Section 18 (3):

Where two persons who are not legally married to each other are living together under circumstances that indicate to the director that they are cohabiting in a conjugal relationship, they shall, for the purposes of this Act and the regulations, be treated in the same manner as two persons who are legally married, and any application by either or both of them for income assistance or general assistance shall be dealt with in every respect in that manner.

In order to provide direction to staff in determining whether or not a common-law relationship exists, the program has developed policies to clarify which "circumstances" are to be considered. In Section 8.1.4 of The Employment and Income Assistance Manual the existence of a common-law relationship is based on:

- a. Shared residency and family composition. All married couples, self-declared common-law partners and adults that are the parents of a child together or have maintenance obligations in place for each other or the children in the household are considered spouses or common-law partners. For all other non-familial, cohabiting relationships the program will apply the other factors of common-law status once a cumulative three months of shared residency in a six-month timeframe have passed. plus one of the following two factors:
- b. Family/social interdependence – the degree to which the two adults who are living together interrelate with family, friends and community as a couple rather than as two people sharing a residence.
- c. Financial interdependence – the degree to which the two adults who are living together support each other financially.

After carefully considering the written and verbal information the Board has not been persuaded that there is sufficient evidence to support the Department's determinations that the appellant was, and is currently, living in a common-law relationship with <name removed>. The Board understands that the joint living arrangements would raise questions about the nature of the relationship and of financial interdependence. However, the Board has determined that the policy requires the Department to look at

the totality of the relationship and how the two persons' lives are lived on a day to day basis.

An important part of the Act which does not seem to have been examined by the Department is where two persons, who are not legally married to each other, are living together under circumstances that indicate to the director that they are cohabiting in a conjugal relationship. It has not been demonstrated to the Board they are living together in a conjugal relationship. The appellant has always indicated to the Department that they are residing together as roommates, and indicated as such on the relationship assessment form. The evidence presented by the Department does not prove anything of being presented in the community as a couple. The Department's sole evidence is based only on hearsay between the Investigator and a phone call with <name removed>. <Name removed> denied saying they were common-law and the Board found <name removed>'s testimony to be credible. The Investigator did not meet with the witness nor was there any evidence in writing. Aside from this phone conversation and the hydro bill there was no evidence presented that the two of them function as a couple in the community. When the Board assesses the degree of family and social interdependence, the Board is presented with only one hearsay phone conversation. Therefore the decision of the Director has been rescinded and the Board orders the Department to reinstate the appellant's benefits as a single applicant effective <date removed> and provide retroactive benefits. The Board also orders the Department to remove the overpayment due to the alleged common-law of <amount removed>.

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