

**Reasons for Decision:**

**Order # AP1617-0254**

The appellant and the appellant's spouse, appealed that their income assistance file was cancelled.

The couple along with their child applied for income assistance on <date removed>. They were found eligible and were enrolled. At a later date the file was audited and it was discovered that the appellant was in Canada under a sponsorship agreement and that the appellant's spouse had sponsored the appellant. The sponsorship agreement was in place until <date removed>.

On <date removed> a letter was sent to the family indicating that the file was being closed. At the hearing the worker indicated that the spouse was advised that the spouse did have the option to continue to receive income assistance benefits, but that all income assistance paid to the family would have to be paid back.

The program representative stated that as there was a sponsorship breakdown, the family was not eligible for income assistance. They stated that if the sponsor is on income assistance, then all the funds would have to be paid back.

At the hearing the Board asked why they had determined that the spouse and child were not eligible to receive income assistance benefits. The Department replied that if the appellant was still overseas, then the spouse and the child could be assisted, but if the spouse and child applied now, it would be considered a separation of convenience. The program had attached Policy 13.3.2 and Directive 2005-55 to their written report.

The appellant and spouse stated at the hearing that they currently have no source of income and require income assistance to support their family. They were collecting income assistance in the province of <text removed>, and assumed when they moved to Manitoba they would also be eligible. The spouse clarified that the sponsorship has not broken down, that the appellant and spouse are still in a relationship, and the spouse will support the appellant once the spouse has the ability to do that. The spouse indicated that the spouse is currently in default of the sponsorship agreement because the spouse is unable to meet financial obligations under the sponsorship agreement.

The spouse clarified that the spouse is only a few weeks from completing the requirements to be a <text removed>, and the spouse expects to be earning a good wage in the near future.

After carefully considering the written and verbal information the Board has determined

that The Employment and Income Assistance Program has misinterpreted the policy pertaining to providing income assistance to sponsored immigrants.

The policy and the directive refer only to the steps needed to be taken by EIA when a sponsor is unable to honour the contract they have entered into with the federal government. It is the Board's interpretation that these policies have no bearing on the eligibility of the spouse and child for income assistance. The spouse and child are not under a sponsorship agreement and they therefore have every right to collect income assistance benefits. The fact that the spouse has sponsored another person, who happens to be a spouse, does not negate the fact that the spouse and child have eligibility for income assistance benefits. The spouse has declared the spouse to be married, and therefore is eligible for general assistance benefits for the spouse and the child.

Under the EIA policy, a person who has been sponsored can only collect income assistance if EIA has advised the sponsored person that they will be contacting the sponsor and verified that the sponsor is unable to support the person they have sponsored. "Once contact with the sponsor has been made, and if s/he is contending that they are unable or unwilling to honour the undertaking, enrollment can take place but requires approval by EIA supervisor/manager."

In the appellant's particular situation, the sponsor is also a spouse and a co-applicant. The fact that the EIA program found the spouse eligible for income assistance would confirm the assessment that the spouse is unable to honour the undertaking in accordance with the sponsorship agreement. Once it has been verified that the sponsor is unable to fulfill the sponsorship obligations, then the appellant is eligible to be enrolled for income assistance benefits.

The spouse does need to be aware that in order for the appellant to be eligible for benefits, the Province of Manitoba will notify the Government of Canada that the sponsor has defaulted on the sponsorship agreement. In addition, the Province of Manitoba has the right to take legal action against the sponsor to recover any assistance that is provided for the appellant. This means that in the future the Province may sue the spouse (sponsor) to pay back any income assistance benefits for the appellant's portion of income assistance only.

The Board also has determined that these funds cannot be collected through the regular overpayment process due to the fact that the sponsor is a person on income assistance, the process outlined in Directive 2005-55 must be followed.

Therefore the Board has rescinded the decision of the Director and order that the appellant, the sponsor and their child be re-enrolled on income assistance benefits and full retroactive benefits from the time their assistance was first suspended be provided. The Board would also note that the family does have the option to not receive benefits specifically for the appellant if they wish to avoid future liability for repaying the appellant's portion of the income assistance benefits.

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