

Reasons for Decision:

Order #AP1718-0008

The appellant appealed that the appellant's income assistance was cancelled due to an alleged common-law relationship, with <text removed> also an income assistance participant. Subsequently an overpayment of <amount removed> was assessed for all rental monies issued from <dates removed>.

The appellant is also being investigated for undeclared income due to undeclared deposit activity in bank account. It was confirmed at the hearing this investigation has not been completed, therefore it is not relevant to this appeal.

Common-law

The appellant has been receiving income assistance benefits on and off for <text removed>, currently on for <text removed>. On <date removed> the program received a third party call advising that the appellant has been residing at <location removed> which is the appellant's friend, <name removed>, address. <Name removed> also resides with <text removed>. A letter was sent to the appellant on <date removed> advising that benefits were on hold and that the appellant was required to attend an appointment on <date removed> with the case coordinator and the program investigator to review eligibility.

The investigator gathered information about the couple from many Facebook posts where both <names removed> pose and portray an affectionate relationship. The investigator and the case coordinator met on <date removed> to discuss the common-law allegations.

The appellant attended the meeting to discuss the common-law allegations. The appellant initially denied being in a relationship or staying at <address removed>, which is <text removed>. At the interview the appellant declared that the appellant was living with the appellant's adult child on <address removed> and not in any relationship at all, "just single". When advised by the investigator that the appellant was seen at <address removed> the appellant claimed to only be staying there a few times a week. The appellant then admitted that the appellant and <name removed> had been together since <date removed> but that the appellant only began living with <name removed> in <date removed>. The appellant was advised that they would need to be enrolled on the same file for <date removed> to which the appellant responded the appellant wanted the appellant's file closed and did not want to be on the program anymore. The appellant was advised this was not possible since <name removed> is on the program and they need to apply as a couple.

An additional meeting was held on <date removed> with the investigator and <name

removed> case coordinator. <Name removed> and <text removed> attended the meeting and they both confirmed that the appellant was residing common-law with<name removed> since <date removed>. <Name removed> was contacted again to review the situation. <Name removed> advised that the appellant and <text removed> continue to live with <names removed> at the <address removed>. <Name removed> stated that the appellant moved in full time in <text removed> to care for <names removed>. <Name removed> advised that the family is deeply indebted to the appellant for moving in with <name removed>. <Name removed> further stated that the appellant and <name removed> deserve to have a life without having to care for <text removed> and they would be at a loss if it wasn't for the appellant.

Overpayment is for rent paid to the appellant's residence on <address removed> from <dates removed>.

The appellant attended the hearing with an advocate. The appellant confirmed that the appellant and <name removed> are in a relationship but not living together. The advocate stated that the program has not asked the appellant to complete a relationship assessment form which is required when assessing common law allegations. The advocate distributed a blank form at the hearing and the appellant said the appellant had never completed one. The appellant stated the appellant only visits <name removed> at <name removed> residence and sleeps there three times a week. The appellant said the appellant felt obligated to file together as common law or <name removed> disability benefits would be suspended. The appellant denied saying at the meeting with the investigator and the case coordinator that the appellant was in a relationship. The appellant felt threatened and was under duress.

At the hearing, the advocate submitted two signed statements from <name removed>, with no objection from the program. <Name removed> met with the department on <date removed> signed a statement dated <date removed> disputing what the program presented. <Name removed> stated <name removed> did not say they lived together and did not respond to the question when the appellant started living with <name removed>. <Name removed> also stated that during the telephone call with the investigator the same questions were asked in varying ways. <Name removed> had to keep repeating when asked about their relationship that <name removed> cannot confirm their living arrangements. <Name removed> did say the appellant has been a huge help to <text removed> and did not say we are indebted to the appellant for moving in with <text removed>. The second letter from <text removed> stated that <name removed> had been in the house on <text removed> and could not see how the appellant could live there as the house is just too small for all of them.

The investigator advised that the information <name removed> supplied was not made up. <Name removed> gave specific dates, confirmed when they dated, when they became common-law, and finds it odd, as of yesterday, that <name removed>'s statement has completely changed.

According to The Manitoba Assistance Act Section 5(5):

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 Administrative 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.
Financial interdependence – the degree to which the two adults who are living together support each other financially.

After carefully reviewing the written and verbal information, the Board has determined that the program was correct in determining that the appellant was residing in a common-law relationship with <name removed> for the duration of time they were both receiving income assistance benefits and to assess an overpayment for rent monies the appellant received which the appellant was not entitled to. The Board has concluded that the appellant and the advocate did not provide sufficient information to the program or to the Board to substantiate that the appellant and <name removed> were not residing together from <dates removed>. The appellant initially denied the relationship when questioned, then admitted to residing with <name removed> since <date removed> once presented with information from the investigator. The Board also didn't hear a plausible explanation from the appellant as to why <name removed> would say at the <date removed> meeting that they reside together except to say that <name removed> gets confused. <Name removed> also attended that same meeting and also said they are residing in a common law relationship.

The Board did not find the appellant's testimony to be credible and the appellant's statements at the hearing were conflicting. The Board was not presented with any

signed statements from <name removed> to clarify <name removed>'s statements nor was <name removed> in attendance at the hearing. The board also considered and found credible the program investigator's notes from the meetings held in <date removed> and views the testimony to be credible in regards to reporting accurate information as it was provided at those meetings. The Board did not put any weight on the Facebook posts. The appellant has admitted to being in a relationship with <name removed> and posts of them portraying as a couple do not in and of itself confirm a common law relationship.

The Board has determined that the Employment and Income Assistance Program did have enough evidence to support the decision that a common law relationship existed and to cancel the appellant's income assistance file and assess the overpayment.

Therefore the decision of the Director has been confirmed and this appeal has been dismissed.

Work incentive

The appellant appealed that a work incentive was removed from the appellant's budget effective <date removed>.

The appellant was receiving income assistance under the General Assistance category and was receiving a work incentive of \$200 per month. It was discovered that the appellant is volunteering and receives a \$200 per month honorarium for volunteering. As volunteering is not considered employment, the honorarium is considered unearned income as a volunteer and deducted dollar for dollar. The program investigator spoke to the general manager of the organization who advised that the appellant works for an honorarium of \$200.00 a month as a <text removed>. The work incentive was removed from the appellant's budget for <date removed>. The program did not backdate and assess an overpayment for the work incentive previously provided to the appellant.

The advocate stated that the program is required to comply with their own policy as it is confirmed by the general manager of the organization that the appellant received and receives an honorarium from them, therefore considered as earned income and the appropriate work incentive benefit applied.

Section 16.1.7 of the Employment and Income assistance manual states"

INCOME FROM OTHER SOURCES (E.G., MEMBERSHIP ON A BOARD OR COMMITTEE)

Remuneration from other sources to an EIA participant such as an honorarium or stipend received from membership on a board or committee is considered as earned income and must have the appropriate work incentive benefits applied (please refer to Section 16.2 and Section 16.3 for further information on the calculation of work incentive benefits).

After carefully considering the written and verbal information the Board finds that the appellant is in a volunteer capacity at the organization and views the honorarium to be a thank you for your service versus paid employment. The appellant and the general manager of the organization confirmed that the appellant is not a member on the board or committee as per Section 16.1.7. The Board was not presented with any evidence of paid employment such as pay stubs or a T4 slip confirming honorarium is for earned income. Therefore the Board has confirmed the decision of the Director and this appeal issue is dismissed.

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