

Reasons for Decision:

Order # AP1617-0289

The appellant appealed the assessment of two overpayments.

1. An overpayment in the amount of <amount removed> for the period of <text removed> due to receiving assistance for <text removed> children whom the court has determined were only in the appellant's care 50% of the time.
2. An overpayment in the amount of <text removed> due to receipt of undeclared maintenance funds.

First Overpayment

The appellant applied for assistance for the appellant and <text removed> children on <date removed>. At that time a court order was in place which gave the appellant primary care and control of the children and ordered the other parent of the children to pay <amount removed> per month in child support.

In <date removed> the other parent of the children sought a variation to the order. The judge granted joint custody with neither parent having primary care and control. The judge varied the amount of child support to <amount removed> per month effective <date removed>.

When the Department received a copy of this new court order, they determined that 50% of all income assistance that the appellant received for the children for the period of <dates removed> would be assessed as an overpayment. It is the Department's position that when members of a household are away from the home on a regular basis, the basic assistance for those members is to be prorated. The Department's position is that the court order is evidence that the appellant's <text removed> oldest children were not in the appellant's care and custody on a full time basis and therefore the appellant received income assistance to which the appellant was not entitled.

The appellant disputes that the children were not in the appellant's full time care during the period in question. The appellant stated that the appellant had sole responsibility for taking care of the kids. The appellant did not have cooperative co-parenting arrangements with the appellant's former spouse, and the other parent never came to the appellant's home to pick up the kids. The appellant stated that the appellant's former spouse did not participate in any of the children's school activities, attend parent teacher meetings, and contribute to clothing, school supplies, or other basic needs of the children. The appellant stated that the children would go over to their other parent's home on their own because they missed the other parent, it was never because the appellant's ex-spouse initiated visitation.

The Manitoba Assistance Act states that an overpayment can be assessed in the following manner:

Recovery of payments made in error or on false statements 20(1) Where the government has provided or paid assistance or any income assistance, general assistance or shelter assistance to or for a person, if the assistance or income assistance or general assistance, or any part thereof, would not have been provided or paid except for

- a. a false statement or misrepresentation made by the person; or
- b. an error;

the government may recover from the person, or his executors or administrators, or his spouse, or the executors or administrators of his spouse, and, if the person is an infant, his parent or guardian or any person legally liable to pay his expenses, the amount of that assistance or income assistance, general assistance or shelter assistance or that part thereof as a debt due and owing from the person to the Crown.

After carefully considering the written and verbal information the Board has determined that the appellant did not make a false statement or misrepresentation, and an error was not made at the time the appellant collected income assistance during the period of <dates removed>. At the hearing the program representative stated that they had done an investigation as to whether or not the appellant has full time care and control, and they found no evidence to support that the appellant did not have full time care and control. The court order that was in place at the time provided the appellant with full time care and control. The visitation time the children spent with their other parent was sporadic, inconsistent and unplanned. Therefore the Board has determined that on the first of each month, when the appellant received the funds to support the children on a full time basis, the appellant did so with the expectation that the appellant was the sole caregiver for the children. The Board does not find that a retroactive court order is sufficient evidence to prove that the appellant ever made a false statement or misrepresentation to the program. The program's own investigation could not confirm this. Therefore the Board has rescinded the Director's decision and orders the program to remove the <amount removed> overpayment.

Second overpayment

The Employment and Income Assistance program received notice from the Maintenance Enforcement Program that the appellant had received a maintenance payment of <amount removed> on <date removed>. The program considers maintenance payments a financial resource for the month in which they are received. At the time that the program received this notice, <date removed> benefits had already been processed. Therefore the program assessed an overpayment for the months of <months removed> income assistance benefits in the amount of <amount removed>. The appellant's income assistance file was closed effective <date removed> as it was determined that the appellant had sufficient income to support the appellant for that month. At the hearing the worker indicated that the appellant could reapply for assistance effective <date removed>.

The appellant stated at the hearing that this was the first ever maintenance payment

the appellant had ever received from the appellant's former spouse. The appellant states the appellant struggled for years raising the children alone with no financial assistance from their other parent. The appellant had no idea the appellant would be receiving this payment at the <date removed>, and the appellant has no idea if the appellant will be receiving anything further.

After carefully considering the written and verbal information the Board has determined that maintenance funds are a financial resource that are deducted dollar for dollar from income assistance benefits. The amount of maintenance that the appellant received was sufficient income to support the appellant and the children for approximately <length of time removed>.

The appellant did not declare these funds to the program when the appellant received them. Therefore the Board has confirmed the decision of the Director on this issue.

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