

Reasons for Decision:

Order # 1516-12-0473

The appellant appealed that an overpayment in the amount of <amount removed> was assessed due to allegations that the appellant was residing with an estranged spouse.

The appellant was enrolled under <name removed> income assistance file in <date removed>. The time periods in question for this appeal are from <dates removed>.

The program was represented at the hearing by the case coordinator and the investigator. The program reported that the overpayment was assessed due to an unreported change in circumstances surrounding the reconciliation and living arrangement with the appellant and estranged spouse. The program presented that based on numerous pieces of evidence they believed that there was a marital reconciliation between the appellant and estranged spouse previous to the appellant being enrolled on assistance in <date removed>. The program summarized its findings as follows:

- On <date removed> a third party person called and alleged that <name removed> was residing with a legal spouse, <appellant's name removed> and that the appellant was employed full time.
- On <date removed> the investigator went to the home in question. An unknown person answered and said that <name removed> lived in the back with another person. The investigator did not get an answer and returned to the home later and spoke to a neighbour who said that they know who <name removed> is and that <name removed> lives with <name removed>.
- Facebook posts in <date removed> showing people wishing them a happy anniversary.
- <Date removed> the investigator did another home visit and the person who answered said that <name removed> was sleeping and <name removed> was at work.
- <name removed> drivers license and health care card with <name removed> address
- Two police calls to the home in <date removed> indicate they presented as a married couple to the police
- Multiple bank transactions in a single day leading the program to believe that because of <name removed> mobility issues <name removed> couldn't possibly be making these transactions, so they assume it is <name removed>
- <name removed> claimed to be living with an employer. The home is a seven room house and the landlord has <text removed> children who were all minors at the time. The program questioned where <name removed> was sleeping

considering how many people lived in the home and believed <name removed> wasn't living there but living with <name removed>.

- <name removed> Equifax statements indicate that in both <date removed> and <date removed>, <name removed> was using <name removed>'s address.
- On <name removed>'s <text removed> application it is noted that <name removed> visits often, <name removed> lists <name removed> as a spouse and phone contact information was the same as <name removed>'s
- The address used for <name removed> when <name removed> with Canada Revenue Agency (CRA) was <name removed>'s employer's address but the address on <name removed>'s T4 slip was the same as <name removed>'s. There has never been any documentation to prove <name removed>'s legal address.

The program stated although they cannot say for a fact, they believe the appellants were living together, unreported to the program.

The appellants attended the hearing with their advocate who presented on their behalf.

The advocate advised that as of <date removed> the appellants are on file together and have admitted resumption of their marital relationship effective <date removed>.

Therefore the time period in question is from <dates removed>. The original overpayment of <amount removed> was for multiple years prior and has been reassessed to reflect just the time from <dates removed> due to lack of evidence. The advocate stressed that the program's report speaks of information / evidence from periods prior to <year removed> and should be considered irrelevant to a case considering overpayment in only the time frame commencing <date removed>.

The advocate presented in response to the program's allegations as follows:

- The <text removed> application for <name removed> listing <name removed> as someone who visits does not prove shared residence. The document states <name removed> lives alone and the number of people in the home is one. The application information says <name removed> visits but does not live there.
- In regards to the Equifax information printed in <date removed> the date of last activity was <year removed> which is irrelevant to the time periods in question.
- <Name removed>'s driver's license is from <year removed> and is again, irrelevant
- In <year removed> the program stated that a couple of police service calls indicate they presented as married however there is no evidence to substantiate this comment.

- The Facebook posts of their anniversary and comments from others extending their congratulations, the posts are in <year removed> when they were back together.
- Bank statements showing multiple transactions in a day does not in any way prove that they are sharing financial resources and they do not have joint accounts.
- There is also no evidence to say how the neighbour came to the conclusion that <name removed> was residing with <name removed> at the time period in question. There is no statement from the neighbour and no statements from anyone else that they appear as a couple in the community.
- <Name removed> began spending more time with <name removed> after <name removed>'s sibling moved out as <name removed> needed assistance due to mobility issues. They have always maintained a friendship. The advocate summarized that while it is true the appellants were legally married and not legally separated or divorced, they were not in a marital relationship during <years removed>.

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.*

Recognizing that the appellants are not a common-law couple, the Board considered the criteria for determining the existence of a marital relationship to be the same as noted above. After carefully considering the written and verbal information the Board has not been persuaded that there is sufficient evidence to support the program's conclusion that the appellants were living together in a marital relationship for the time

period between <dates removed> Much of the Department's evidence is based on hearsay between the Investigator and a neighbour and a police statement. When questioned by the Board about the program's evidence of the appellants presenting as a couple, the investigator said "the neighbour said". The investigator was unable to elaborate when asked to provide details of his discussion with the neighbour; the investigator replied, "it was almost two years ago". The Board finds that the program put extensive weight on the <text removed> application. The application lists that one person lives there and that <name removed> visits, no evidence to prove residing together. The conflicting information on the application form speaks to the lack of reliability one can give to the information contained within it. With regard to showing financial interdependence, the program stated at the hearing that they surmised <name removed> was making the banking transactions and stated "we have no objective evidence; we are just surmising that it was <name removed>, as <name removed> is <text removed> so it would be fair to say it's <name removed>". No reports, statements or evidence were provided to substantiate the program's claims of reports by neighbours or police. The Board did not find the program's statements, without any evidence, to be credible proof; nor did the Board place any reliance upon documents far pre-dating the period in question.

The Board finds that the program did not provide evidence to show the existence of a marital relationship between <dates removed>. Therefore the decision of the Director has been varied and the Board orders the Department to remove the overpayment from that period and also orders the Department to recalculate the overpayment from <dates removed> based upon the joint income of the couple during that period of time.