

**Reasons for Decision:**

**Order #AP1617-0667**

The appellant appealed that the appellant's income assistance benefits were cancelled as the appellant has been deemed to be living in a common-law relationship.

The program presented that the appellant's income assistance worker received a call from the property manager of the appellant's residence on <date removed>, to advise that the appellant had applied to move into a townhouse with the appellant's <text removed> children and a companion. The program had concerns of this request to move into a place costing almost the appellant's entire budget and with a companion where there is possible financial interdependence between them. The worker requested that an Investigator make preliminary checks into a potential common-law relationship.

The investigator reported to the case worker that the appellant was presenting to the community as being engaged to <name removed> and a Facebook picture showing them kissing and the appellant's Facebook relationship status was 'engaged' since <date removed>. The following week there was a post of a picture of a hand wearing a ring and described that <name re- moved> finally asked to marry the appellant and the appellant said yes. This post was followed up with several messages of congratulations and numerous other photos posted of the two presenting as a couple.

The program met with the appellant to question their findings and the appellant denied any ro- mantic involvement with <name removed>. The following week, a meeting with the Investigator occurred with the appellant, the suspected common-law partner, and the appellant's parent.

They both denied being in a relationship and by this time all the Facebook posts showing their status as engaged had been removed. The appellant stated that the post of the ring was from years ago when the appellant was engaged to someone else. The Investigator advised it clear- ly identified the engagement to be with <name removed>. The appellant then stated that it was all done as a joke and part of a popular Facebook game.

The appellant was requested to provide recent bank statements to assess further eligibility. The bank statements were received on <date removed> which showed numerous deposits into the appellant's account which were then used to make bill payments. When the appellant was questioned on this, the appellant said the appellant was unaware of any deposits then later stated they came from the appellant's roommate and that the money was for the roommate's share of the bills. The Investigator pointed out that <name removed> was paying the entire bills as the

full amount of the deposits were then paid out to total the exact amounts to various bills including a personal debt of the appellant's.

The program believes it has satisfied the criteria described in the common-law policy as financial interdependence was evident; the program was providing utility funds in the appellant's budget and the bank statements show that <name removed> is paying in full. The program has identified shared residency; confirmed living together by their responses on the relationship assessment form. The program also identified family/social interdependence as they perceived the appellant and <name removed> were presenting as a couple in the community.

The appellant was advised at this meeting to apply together as a couple as the appellant would not be eligible as a single person and the appellant's file would close. The appellant called the next day to schedule an appointment, although the appellant disagreed with the program's decision to make the appellant apply as a couple or the appellant's file will be closed. The advocate attended that appointment with the appellant and advised the appellant not to apply as a couple and they left the appointment. As the appellant refused to make application eligibility could not be determined. <Name removed> was in receipt of income assistance but closed to employment as <name removed> employment income exceeded budget amount. A letter advising file closure was sent on <date removed>.

The appellant attended the hearing with an advocate. The advocate presented that the appellant has <text removed> children residing with their other parent and that <name removed> is not the father to any of them, nor are they in a romantic relationship. There is a <text removed> difference between the appellant and <name removed> and the appellant used to babysit <name removed> The appellant openly stated that the appellant is disgusted to be accused of a romantic relationship as the appellant is like a <text removed> figure to <name removed> and they have known each other's families for many years. The appellant indicated that the appellant's living relationship with <name removed> is supportive in nature as <name removed> has difficulty managing affairs when living alone.

The advocate presented information to the Board which was omitted from the program's report to the Board. It included correspondence from the advocate to the program supervisor trying to work towards a resolution, statements from the appellant and the appellant's parent, <suspected common-law partner> and <text removed> parent, bank statements, a Facebook picture of the appellant kissing <text removed> and a statement from the appellant's previous fiancé confirming the ring in the Facebook post was from <text removed>, which was accepted without any objection by the program staff.

The advocate argued some of the program's evidence as follows:

- The appellant lives with <name removed> and cares for <name removed> as a friend as <text removed> has a disability and needs supports. They put the posts of an engaged couple on Facebook to play a particular Facebook

game and that <name removed> asked the appellant to post engaged on their pages as there was a person on Facebook that was harassing <name removed>.

- Their relationship status on the program's Relationship Assessment Form clearly indicates roommates and they don't understand why the property manager would say companions. A companion does not prove conjugal relationship and the program is basing all their decisions on the Facebook posts.
- The bank deposits did come from <name removed> who would get paid in advance of the appellant and then give the appellant the money to deposit when the appellant got paid to pay the bills through the appellant's account. This explains why it appears like it was just <name removed> money paying the entire amount of the bills.

The appellant advised that the appellant is <text removed> and currently involved in a long distance romantic relationship with <text removed>. The appellant's parent provided a written statement confirming <text removed> is <text removed> and indicated that the appellant and <name removed> are in fact just roommates. The appellant's parent further explained how the Facebook game works. The appellant wanted to keep <text removed> private but felt forced to <text removed> due to this investigation.

<name removed> was presented as a witness and sworn in. <name removed> stated <name removed> has a <text removed>, and felt that the investigator tried to force <name removed> to lie. <name removed> confirmed that the appellant used to babysit <name removed> and they are currently best friends. <Name removed> said it made <name removed> very sad that the program is trying to say they are in a romantic relationship. <Name removed> confirmed the Facebook status of engaged was to chase away a person who had been harassing <name removed> on Facebook, which <name removed> said worked.

<Name removed> advised that living with the appellant is good for <name removed> as the appellant cares for <text removed> it's good for <name removed> mental health and the appellant knows <name removed> medical history. <Name removed> stated that no one has ever challenged the nature of <name removed> relationship before. When asked how <name removed> feels that the program is saying they are determined to be in a common law conjugal relationship <name removed> said "that's gross, it would be like having relations with my parent.

The appellant's parent was the next witness sworn in. The appellant's parent confirmed that they live with each other as the appellant helps <name removed> and that they are good friends. The parent stated that <name removed> and <name removed> family are very kind and they asked the appellant's parent if <name removed> could move in with the appellant and that they both have separate rooms.

When the appellant was asked if the appellant understands the difference between a living companion and a common-law partner the appellant clarified that a companion is someone to live with for company and share expenses and a common-law relationship is two people living together in a conjugal relationship which they are not.

The advocate does not challenge the program's right to investigate, although they found that the program drew their conclusion and suspended benefits without doing a more thorough investigation. The advocate stated that they tried to provide further clarification to the program regarding their allegations, which the program would not consider. The appellant is just providing friendship and support to a <text removed> and nothing more. The advocate requests the Board to reverse the program's decision and provide the appellant benefits back to the date of the appellant's file closure of <date removed>.

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

determined that the Department had sufficient reasons to determine that the appellant may be residing in a common-law relationship with <name removed>. This included Facebook posts of the appellant stating <name removed> finally proposed as well as both their statuses indicating they are engaged. Also, the appellant's interest in moving into a place costing almost the appellant's entire budget and the deposits into the appellant's bank account, indicated possible financial interdependence to the program.

However, the presentations at the hearing lead the Board to believe that the likelihood of a conjugal relationship, as defined by the Act, is sufficiently questionable.

The Board finds the appellant's and <name removed> explanation of how their relationship formed and their view of it more as a <text removed> scenario to be plausible. Neither the appellant nor <name removed> view themselves as in a common-law or conjugal relationship. The Board also finds that perceived financial interdependence is related to how they share expenses as roommates, and they have declared to the program that they are in fact roommates. The Board also supports the program's reasons to suspect and investigate based on the Facebook information, however Facebook cannot be relied upon as factual evidence. In accordance with the legislation they are not living like a married couple, and have no sense of intimacy, commitment, or exclusivity that typically defines a common-law relationship. Therefore this decision has been varied and the Board orders the program to re-instate full benefits as a single person effective the date of the hearing.

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