

Reasons for Decision:

Order # AP1718-0689

The appellant appealed that they were assessed an overpayment, by the Employment and Income Assistance program, of <amount removed> for an alleged undeclared common-law relationship.

The Department stated that the appellant's alleged common-law partner, <name removed> has a child who applied for Employment and Income assistance. At the child's intake appointment, the Department stated that they informed the intake worker that their parent was dating the appellant. The Department's relationship assessment form for <name removed>'s child stated that their parent and the appellant are living together and referred to the appellant as her parent's companion and as their step-parent.

This information was forwarded to the investigator on <date removed>. The Department's investigation includes an online picture of the appellant and <name removed> together and <name removed> driver's license listing the same address as the appellant's as of <date removed>. The investigator conducted an unannounced visit to the appellant's home on <date removed>. The appellant was not present, however <name removed> was. The investigator asked <name removed> if they were living common-law with the appellant, and <name removed> nodded and said "yeah".

The Department also presented information from the Department of Motor Vehicles listing <name removed>'s address as the same as the appellant's. Bank records and pharmacy information also list the appellant's address.

At the hearing, the investigator stated that the day following the home visit, the appellant called to deny the relationship and stated they and <name removed> are just best friends. The investigator requested a meeting with the appellant, which they could not attend, which was then rescheduled. The appellant did not attend the rescheduled meeting or call to cancel. It was at that point the Department stated it assessed the overpayment. It is the Department's position that the appellant's friend self-declared that they are in a common-law relationship together, as well as <name removed>'s child stating they live with the parent and the parent's companion and refers to the appellant as "step-parent".

A letter was sent to the appellant on <date removed> advising that an overpayment of <amount removed> was assessed to recover all assistance provided to them while in an undeclared common-law relationship from <date removed> to <date removed>.

The appellant attended the hearing with their advocate. The advocate advised that the appellant resides with their family member who has serious special needs and is not in any type of common-law relationship with <name removed>. <name removed> used the appellant's address in <year removed> as a mailing address only. They are longtime friends and <name removed> would stay with the appellant from time to time during this time period, as well as couch surfing with other friends.

The Department's evidence of the social media picture of the appellant and <name removed> at a sporting event is from <year removed>, and in no way confirms a relationship. The advocate presented several written statements from various people as to the nature of the appellant's and <name removed>'s relationship.

One letter is from an MLA who states that they have known the appellant for the past two years through involvement in a medical advocacy group. The appellant often sees <name removed> attend events with the appellant and how they support each other as single parents. The appellant has never seen any evidence that they are involved in a romantic relationship. A letter from the appellant's cousin states they are not in any sort of relationship. A former neighbor wrote they have been in the appellant's home several times and confirms <name removed> stayed as a guest on a couple of occasions only. Other written statements from people were presented stating <name removed> has been staying with them from time to time, and the appellant's children wrote that <name removed> and their parent are longtime friends and <name removed> is considered family. The appellant's parent wrote they have never observed anything more than friendship between their child and <name removed>. The appellant stated that <name removed> has stayed at their place before when they were couch surfing and that <name removed> lived in another province and was back and forth between provinces.

At the hearing, the appellant stated that <name removed> is their best friend and will always help them. When <name removed> was moving to another province and needed a current driver's license, which requires an address, they let them use their address. The appellant advised <name removed> stayed with them from time to time but that <name removed> has never lived there and they have never shared any financial resources.

The Board allowed the advocate to read a letter from <name removed>'s child, as they were unable to attend the hearing as a witness. The letter mentions the companion's child involvement with Child and Family Services and their mental health issues. When they applied for income assistance in <date removed>, they asked the appellant if they could use their address. The appellant said the worker kept intimidating them and their anxiety got high and they just agreed with the worker when asked if their parent and the appellant were common-law, as they felt railroaded. The appellant said they are friends, and the worker took it the wrong way. The appellant left the intake appointment without getting their food voucher or the information to get their

medications due to extreme anxiety.

<name removed> was sworn in as a witness. The appellant advised that when the investigator went to the appellant's house, they advised them spent the night there as they were volunteering together that day and they were taking the appellant's family member to camp the next day. They were asleep on the couch when the Investigator came and was nodding to their questions without clearly understanding. They used the appellant's address as many government forms require a residence, and they did not have a fixed address at that time. The appellant advised they have stayed at three different addresses and their health card address is another friend's address as they were couch surfing there at the time of getting their health card.

The Department had no questions of the witness.

The advocate stated that the appellant and <name removed> are very close friends. The appellant has never denied that <name removed> stays at their home from time to time, but there is no evidence of any marriage-like relationship.

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.

- a. 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 not been persuaded that there is sufficient evidence to support the Department's determination that the appellant was living in a common-law relationship with <name removed>. The Board understands that <name removed>'s comment and their child would raise questions about the nature of the relationship; however, the Board has determined that the policy requires the Department to look at the totality of the relationship and how the two persons' lives are lived on a day-to-day basis.

An important part of the Act, which does not appear to have been examined by the Department, is where two persons, who are not legally married to each other, are living together under circumstances that indicate to the director that they are cohabitating in a conjugal relationship. It has not been demonstrated to the Board that the appellant and <name removed> were living together in a conjugal relationship.

The Board finds the Department did not conduct a particularly thorough investigation. The investigation did not include any statements from a landlord or independent persons to substantiate their assessment of a common-law relationship. On the contrary, the advocate presented several written statements confirming they are not. There was no request to look through the home, or interview the landlord or neighbours. The Board finds that the Department did not prove common-law by any of its tests of evidence according to Section 8.1.4 and made a decision to assess the overpayment without sufficient facts but rather an assumption or suspicion. When balancing probabilities, suspicion alone is insufficient. The weight of the evidence must be clear. In this matter, clarity is missing. Therefore, the decision of the Director has been rescinded, and the Board orders the Department to remove the entire overpayment of <amount removed>.

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