

Reasons for Decision:

Order # AP1819-0028

On <date removed>, <name removed> filed an appeal of the Director's decision to assess an overpayment of <amount removed>. The decision letter was dated <date removed>.

The decision letter stated the basis of the overpayment was that <name removed> was in an unreported common-law relationship from <dates removed>.

At the hearing, <name removed> denied being in a common-law relationship with <name removed>. The appellant described <name removed> as a long-term friend, who provided them with a place to stay when they needed to leave an abusive marriage.

<name removed> stated they and <name removed> did not live alone in the house. Two bedrooms in the house were continuously occupied by a series of male renters. The utility costs are shared equally by everyone in the house.

<name removed> installed a wheelchair lift in the house. <name removed> requires a wheelchair because they have a <health condition removed> that is worsened by stress.

<name removed> stated they slept on the couch, and stored their clothing and other personal effects in a room adjacent to <name removed>'s bedroom. <name removed> stated they had the same sleeping arrangement when they lived with their children in a Manitoba Housing apartment. The appellant told the Board they have always stored their clothes in a room separate from their sleeping area.

<name removed> stated they typically leave the house at 7 a.m. to care for their grandchildren. On <date removed>, the children did not require their care and they stayed home. On that day, the Department investigators made an unannounced visit. At the time the investigators arrived, <name removed> was upstairs in <name removed>'s room working on their shared business.

<name removed> asserted they have always complied with Department rules and expectations, and stated they cooperated fully with the investigators because they were not concerned about their living arrangements.

<name removed> asserted the Department gave them an ultimatum to reapply as a common-law couple or move out of <name removed>'s house. The appellant stated they and <name removed> resisted applying as a common-law couple, but they could not afford to move out in their own. <name removed> stated <name removed> and

many of their acquaintances advised them to apply as a common-law couple so that they could retain their health coverage.

After they applied for common-law coverage, the Department raised concerns about the business they and <name removed> owned jointly. <name removed> told the Board they performs advertising and print work for the company in return for an equity share. The appellant does not derive income from their work.

<name removed> asserted the Department told <name removed> to sell the business and live off the proceeds. The Department told <name removed> they could apply for assistance once the sale proceeds had been used.

The Department told the Board it determined <name removed> and <name removed> were in a common-law relationship based on their shared residency and their financial interdependence. Financial interdependence was established by the fact they owned a business together.

The Department stated <name removed>' living space arrangement was not as important to the determination of common-law status.

The Department clarified its position on the status of the business. The Department asserted it told <name removed> and <name removed> that if the business was viable, they could keep the business and become self-supporting. However, if the business was not providing a sufficient income to live on, they should sell off part of the business' large inventory to support themselves.

The Department stated it was concerned that the business' cash flow was weak, but <name removed> kept buying inventory. The Department was unable to determine the business' income, so it used the inventory value to determine financial eligibility.

<name removed> stated they and <name removed> provided three months of sales and expense data to the Department. The appellant stated sales had grown from a few hundred dollars per month to more than <amount removed> in some months. The appellant stated the inventory was valued between <amounts removed>.

<name removed> stated they and <name removed> are currently living off their pension and sales from the business. The Department responded that, based on the size of the inventory, <name removed> and <name removed> should have been able to support themselves without assistance.

In response to a question from the Board, the Department stated it did not interview the other two occupants of the house to determine if they perceived <name removed> and <name removed> to be in an intimate partner relationship. The Department asserted an intimate partner relationship did not have to exist to establish common-law status.

<name removed> disputed the Department's assertion they were sleeping in <name removed>'s bedroom when the investigators arrived. The appellant stated they were posting business ads online. The appellant asserted they showed the investigators where they were sitting, not sleeping.

In response to a question from the Board, <name removed> stated they did not share personal social media accounts, and there is no evidence online that they are in a relationship.

<name removed> stated the business was not making a profit. <name removed> asserted a business cannot be considered profitable until the original investment is entirely paid back. <name removed> stated they were selling inventory to live on, but that is not their intended business plan.

<name removed> agreed that they did not provide full disclosure of their total financial resources. <name removed> stated they did not know at the time the Department asked them about their finances that it considered <name removed> and <name removed> to be in a common-law relationship.

<name removed> told the Board they and <name removed> were filing their income taxes as a common-law couple. The appellant stated they had to because they were recorded in a provincial database as common-law.

In response to a question from the Board, the Department stated it established <date removed> as the start of the common-law relationship, because that was the date the business was incorporated.

In summary, the Department stated running a business while on assistance is complicated, and <name removed> and <name removed> should have discussed the rules with the Department. <name removed>' file was closed because of the existence of a common-law relationship and the value of the business' assets. Their living space was not an important consideration.

In closing, <name removed> asserted that the Department failed to follow its own policies on common-law relationships and self-employment when reviewing their file.

<name removed> advanced a complicated theory of why the Department initiated its investigation, and submitted considerable documentary evidence to support their theory. The Board notes the reason the Department undertakes an investigation is not a legitimate basis for appeal. Only the decision arising from an investigation can be appealed. The Board gave no consideration to <name removed>' theory and attached no weight to the evidence they submitted in support of that theory.

The Department's authority for deeming a common-law relationship exists is contained in Section 18(3) of *The Manitoba Assistance Act*.

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, general assistance or shelter assistance shall be dealt with in every respect in that manner.

In recent decisions, the Board has stated its concern that the Department's common-law policy does not always anticipate the many forms a relationship can take. While the Board has used the Department's policy as a guide, its decision-making powers are not fettered by the policy. The Board's focus is primarily on determining if, on balance of probabilities, the two parties are cohabiting in a conjugal relationship.

Black's Law Dictionary defines conjugal as "of or belonging to the married state; suitable or appropriate to the married state or married persons; matrimonial; connubial". While a married state can have varying levels of physical intimacy, a functioning married state requires some level of emotional intimacy.

The Department's assertion that an intimate partner relationship is not necessary to establish common-law status is a significant deviation from the commonly understood nature of conjugal relationships. The Department's position that two business partners sharing a residence are in a common-law relationship is overly broad, relative to Section 18(3) of the Act. The Department submitted no evidence <name removed> and <name removed> had a relationship that extended beyond that of friendly business partners.

<name removed> stated they felt coerced into declaring they were common-law to protect their health coverage, and the Department then improperly used <name removed>'s assets and income to deny financial eligibility.

After careful consideration of the written and verbal evidence submitted to it, the Board determines that <name removed> and <name removed> were not cohabiting in a conjugal relationship within the meaning of *The Manitoba Assistance Act* from <dates removed>. The Board rescinds the Director's decision to add <name removed> to the appellant's file, and orders the Department to set aside the overpayment assessed against them.

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