

Reasons for Decision:

Order # AP1920-0014

On <date removed>, the appellant filed an appeal of the Director's denial of his application for Rent Assist. The decision letter was dated <date removed>.

At the hearing, the Department told the Board that the appellant's application was denied because they are not listed on a lease as a primary lease holder.

The appellant asserted that there is no provision in *The Manitoba Assistance Act Regulation* requiring an applicant to be listed on a lease to be eligible. They cited Section 11.3(1) of the *Regulation*, which states:

- 11.3(1) To be eligible to receive shelter assistance under this Part, a person must
- a) have eligible rental accommodations as his or her primary residence; and
 - b) have an annual net income for his or her household that is less than
 - (ii) \$24,120 in the case of a single-person household where the person is 55 years of age or older or received the Government of Canada Disability Tax Credit or the Canada Pension Plan Disability Benefit in the tax year used to calculate the person's net income,

The appellant asserted that none of the exceptions to Section 11.3(1) listed in Section 11.3(2) apply to them. The appellant noted that "eligible rental accommodations" was defined in the *Regulation* as "living accommodations for which rent is payable, including accommodations that provide room and board".

The appellant stated they pay rent for a one-bedroom unit in a for-profit apartment building, and the unit is his primary residence. In response to a question from the Board, they stated they had no other residences.

The appellant told the Board that a family member has been handling the paperwork since <date removed>, because the appellant has been struggling with a number of health issues.

The appellant stated the lease is in the family member's name, although the family member lives in a separate residence.

In response to a question from the Board, the family members stated they advised the landlord of the appellant's occupancy, but was not sure if the landlord regarded the appellant as the primary tenant or simply tolerated their presence.

The Department told the Board its policy is that an eligible person cannot be paying rent to another tenant. As the family member was the primary lease holder, the Department considered them to be a tenant. The Department also requires applicants to claim their rent on their income tax returns.

The appellant told the Board they pay the full rent each month to the family member, who transmits the rent to the landlord. The family member confirmed that they provide rent receipts to the appellant, and the appellant confirmed they claim the rent payments on their income tax return. The Department responded that it has not confirmed that the appellant claims the rent payments, since it did not review his Option C form after it denied eligibility.

The Department explained that the appellant was previously eligible for Rent Assist, based on a rent form submitted by the family member. The Department's view was that the family member was representing themselves to be the owner of the apartment. The Department suggested it could have investigated the appellant for submitting a false document, but was satisfied with denying eligibility for their reapplication.

In response to a question from the Board, the family member acknowledged they were the primary lease holder in law, but asserted their only involvement was to manage the appellant's payment of the rent. They agreed that the appellant lives alone, noting they visit the appellant regularly and sees no evidence in the unit of another person.

The family member told the Board they initially thought the arrangement would be temporary, but now believes it will remain in place for some time.

The appellant stated they were not received Rent Assist benefits since 'date removed. They have not applied for benefits this year, because of health issues and pending the outcome of this appeal.

In closing, the appellant reiterated that the Department's requirement that their name be on a lease is a policy not required by the *Regulation*. They acknowledged the need for policies for efficient program administration, but asserted that the Department needed to accommodate exceptional cases.

The Board agrees with the appellant's interpretation of the *Regulation*. The *Regulation* requires an applicant to demonstrate that they have an eligible rental accommodation as their primary residence. The appellant demonstrated that their residence is an eligible rental accommodation, that it is their primary residence and that they live there alone.

The Department's requirement that a person submit a lease showing the applicant is the

primary lease holder is a valid administrative tool, but the Board determines that the Department makes no exceptions for applicants who meet the requirements of the *Regulation* but not the policy. A policy cannot unduly restrict a regulatory requirement.

The Board is satisfied that the appellant has a valid reason for not wanting to have their name on a lease agreement. The Board understands the arrangement they made with the family member on this application and on previous applications. While the Board understands how the appellant might have linked this appeal with the Department's statement it might investigate previous applications, the Board is confident that the Department did not intend to suggest it would investigate them as the result of this appeal.

After careful consideration of the written and verbal evidence submitted to it, the Board determines that the appellant's primary residence is an eligible rental accommodation. As the Department did not complete the application process once it determined that the appellant's name was not on a lease, the Board rescinds the Director's decision and orders the Department to reassess the appellant's <date removed> reapplication using their current address as an eligible rental accommodation and their income for the relevant tax year.

DISCLAIMER

These are electronic copies of the Reasons for Decision issued by the Social Services Appeal Board. These written reasons have been edited to protect the personal information of individuals by removing personal identifiers.