

Reasons for Decision:

Order #AP1920-0662

On <date removed>, <name removed> filed an appeal of the Director's decision to suspend their employment and income assistance file. No decision letters were provided as evidence.

The Department presented a written statement from <name removed>'s neighbour. <name removed> stated they did not agree with what was contained in the statement, but agreed to enter it as evidence.

At the hearing, <name removed> told the Board that their relationship with <name removed> started approximately three years ago. The appellant characterised their relationship as "on and off" as <name removed> breaks up with them every three months and goes back to their spouse. When the appellant learned they were expecting in <date removed>, the appellant and <name removed> got back together. <name removed> had indicated to them that they wished to live together as they were having a child. Currently the appellant and <name removed> have been in a consistent relationship for approximately six to seven months.

The appellant and <name removed> met with the Department after they gave birth in <date removed>, at which time they stated they wanted to remain together with <name removed>. The appellant did not advise the Department that they and <name removed> were living together. Rather, during the meeting the appellant told the Department that they and <name removed> were working on their relationship before they moved in. The Department informed them that if they and <name removed> were residing together, they would not qualify for assistance due to their level of income.

The appellant stated that they and <name removed> are still having issues, which they want sorted out before they live together. <name removed> also indicated that as <name removed> is still married, they needs to divorce their current spouse before they are added to the appellant's lease.

As the appellant does not feel safe at their residence, they make it appear to others that <name removed> is living with them. The appellant also ensures <name removed> is always present when Manitoba Housing staff enter their suite.

<name removed> stated they did not tell the Department that <name removed> gives them money for their child. Rather, they purchase items for their child and delivers them to them.

In response to the written statement from their neighbour, <name removed> stated their relationship with the neighbour had deteriorated in the recent past. The appellant stated that they were one of the individuals who made them feel unsafe.

The Department indicated that on <date removed> <name removed> advised it that they had a baby with <name removed>. The appellant also indicated that they and <name removed> were living together since <date removed> and were working on their relationship. Both <name removed> and <name removed> attended the Department's office and signed documents, which confirmed they were in a common law relationship and residing together.

The appellant and <name removed>'s eligibility for assistance could not be determined as they did not provide the Department with their pay stubs. However, based on the presumed income reflected on <name removed>'s bank statements, <name removed> and <name removed> were advised they may not qualify for assistance. Two days after being advised of this, <name removed> told the Department that <name removed> moved back to their parent's residence, so they could continue to receive assistance. In response to a question from the Board, <name removed> acknowledged that they understood <name removed>'s income would make them ineligible for assistance.

When the Department's investigators attended to <name removed>'s residence they were informed by the appellant that <name removed> did not live there. When attending to <name removed>'s parent's residence, the investigators were told that <name removed> had not lived there for several years. During a follow up meeting with <name removed>, they informed the Department that <name removed> stayed overnight at their residence two to three times each week. The appellant maintained that <name removed> did not live with them, and that their brother had lied to the investigators. The Department felt there was insufficient evidence to conclude <name removed> and <name removed> were not living together. The appellant's assistance was suspended, pending evidence that they were not living together or financial documentation to assess their eligibility as a common law couple.

<name removed>'s family provided the Department with statements, which indicated they lived at their address. The investigator's were told that <name removed> slept on the couch and were shown men's clothing; however it could not be proven that they belonged to <name removed>. The caretaker at <name removed>'s parent's building stated <name removed> had never been seen in the building. Manitoba Housing staff at <name removed>'s residence indicated <name removed> was always there, and they felt they lived there. Investigators performed two additional home visits to <name removed>'s address. During the first, a person who was later identified as <name removed>, answered the door and said that <name removed> was not there. During the second visit it was apparent there were people in the residence, but they did not answer the door.

The Department indicated that all of the evidence obtained during the investigation shows that <name removed> is living with <name removed> and not with their parents.

In response to questions from the Board, <name removed> indicated that <name removed> is over at their residence everyday. They spends the night at their residence three to four days each week. <name removed> helps them with daily living tasks any time they are at their residence, as their <health condition removed> came back after the birth of their child. <name removed> has a drawer of belongings at the appellant's residence, and they do their laundry there as they have to pay to do so at their parent's building.

In response to a question from the Board, <name removed> indicated the appellant signed the form stating they and <name removed> were a common law couple, as they have a child together and they want to live together. The appellant indicated they signed the document even though it was not true that <name removed> was living with them at the time, as they were not in a proper state of mind after giving birth.

The Board notes that the Department's common-law policy, which requires shared residency and one of financial or family interdependence, arises from Section 18(3) of *The Manitoba Assistance Act*, which states

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 a 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.

While every relationship must be evaluated on its own merits, the test for a conjugal relationship is well-established in Canadian jurisprudence. The Supreme Court of Canada addressed the issue directly in *M. v. H.* [1999] 2 S.C.R. 3. Subsequent jurisprudence has interpreted the *M. v. H.* test as requiring a relationship of some permanence, where the individuals are interdependent (financially, socially, emotionally and physically), where they share household and related responsibilities, and where they have made a serious commitment to each other.

In the appellant's case, while they suggest that they and <name removed>'s relationship has been unstable for approximately three years, they acknowledge that they have been in a conjugal relationship since at least <date removed>. The appellant further acknowledged the emotional and social interdependence between them and <name removed>; providing examples of their interdependence that include their feeling safe at their residence when <name removed> is present, they are assisting them with household duties, their attempting to raise their child together, and they purchase items for their child's needs.

The appellant argued that while they and <name removed> are currently in a conjugal relationship, they have not consistently been a couple throughout the three year period of their relationship, and they are therefore not common law. The appellant did not dispute that in <date removed> they and <name removed> provided signed documents to the Department which indicated they were living together in a common law relationship. Rather, <name removed> asserts that they did not fully comprehend at the time what they were signing, due to them having recently given birth. The Board does not find <name removed>'s explanation credible, noting that <name removed> also signed the documents and does not appear that they had made any suggestion at the time that they were not in a common law relationship.

The Department submitted considerable verbal evidence that spoke to how it determined that <name removed> and <name removed> were cohabitating. The Department also submitted a statement from <name removed>'s neighbour, which indicated that <name removed> has lived at their residence for two years. <name removed> provided explanations for most of the key pieces of evidence, and the appellant asserts those explanations refute the Department's evidence. The appellant argued that the Department believed <name removed> lived with them as they purposely made it appear that they lived there for their safety. The appellant also asserted that they spent considerable time there, which included frequent overnight stays. The appellant also argued that <name removed>'s brother had lied to the Department when they stated <name removed> did not live at their parent's residence, and their parents had verified that they lived with them at <address removed>. The appellant however did not provide any evidence to verify their version of events. Similarly, while <name removed> suggested hostilities between themselves and the neighbour who provided the statement, they did not introduce any evidence to verify the assertion that they had a grudge against them.

The Board notes that much of the testimony given at the hearing was unsupported by documentary evidence, and the Board must make its decision based partly on the credibility of the parties. The Board notes it had concerns about <name removed>'s credibility, given the unusual nature of some of their explanations.

Based on the evidence presented to it, the Board is satisfied, on the balance, that the appellant and <name removed> are cohabitating. Furthermore based on the verbal evidence of the appellant, the Board is convinced that they and <name removed> are interdependent, share household responsibilities and that there is some level of

permanence to their relationship. The Board is also convinced that <name removed> and <name removed> have made a commitment to each other in this regard.

After careful consideration of the written and verbal evidence submitted to it, the Board determines that <name removed> and <name removed> are cohabitating in a conjugal relationship within the meaning of *The Manitoba Assistance Act*, and have been residing together in that relationship since at least August 2019. The Board confirms the decision of the Director to treat the appellant and <name removed> as a common-law couple, and to suspend the appellant's assistance file.

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