

**Reasons for Decision:**

**Order # AP2021-0071**

On <date removed>, <name removed> filed an appeal of the Director's decision to close their income assistance file and assess an overpayment of <amount removed>. The date of the decision was <date removed>.

The decision letter sent to <name removed> stated the reason for their file being closed was that they were not eligible for assistance, as they had moved out of the province, and was over paid for the same time period.

The Department told the Board that it contacted <name removed>'s residence, and was told by their parent that they have moved to Saskatchewan for surgery. <name removed>'s file was closed in accordance with Departmental policy as they were outside of Manitoba for more than 30 days. As <name removed> was not eligible for assistance while they were residing in Saskatchewan, an overpayment was assessed for assistance that had been provided.

The Department indicated <name removed> contacted it subsequent to their file being closed, at which time they advised it that they were in Saskatchewan for multiple surgeries, and was staying with their sibling. The Department informed <name removed> that they were not eligible for assistance while outside of the province, and explained to them the policy basis for the decision.

<name removed> stated they did not move to Saskatchewan, they were only there for surgery. The appellant's plan was to remain in Saskatchewan for 14 days to recover after their surgery was completed. On the day they were to return to Manitoba, the Federal Government put travel restrictions in place and ordered self isolation for the outbreak of Covid19.

<name removed> stated they did not want to take the chance of spreading Covid19 to their elderly parents, so they remained in Saskatchewan and isolated at their sibling's residence. As a result, they were out of Manitoba for more than 30 days.

In response to questions from the Board, <name removed> indicated they did not originally advise the Department they were going to Saskatchewan as they were not going to be away for the 30 days specified in the policy. The appellant based their

decision to stay in Saskatchewan to self isolate on the information they learned from television and radio about the public health orders.

In response to questions from the Board, the Department indicated that prior to their departure, <name removed> did not advise it that they were going to Saskatchewan for surgery. As a result, the Department was unable to consider extending their eligibility while they were out of province past 30 days. Additionally, <name removed> was scheduled for the surgery in Manitoba, but chose to have it performed in Saskatchewan at an earlier date. The Department indicated that <name removed> had the option of returning to Manitoba and self isolate, but he opted to stay in Saskatchewan. The Department also provided <name removed> the option to apply for assistance in Saskatchewan, but they declined.

In response to a question from the Board, <name removed> indicated they live with their parents, who are in their eighties. As a result of their age, it would be difficult for them if they were infected with the Covid19 virus. <name removed> stated if it was not for the Covid19 virus, they would have returned to Manitoba after 14 days.

The Board asked the Department if it had started to collect the overpayment from <name removed>. The Department responded in the affirmative.

*The Manitoba Assistance Act states that in order to receive assistance a recipient must be a resident of Manitoba. The Act and the Regulation however do not define the term resident, or stipulate the length of time an individual may be absent from the province before becoming ineligible to receive assistance. Departmental policy 6.7.11 sets out the criteria to assist in determining if a recipient has been out of province for a sufficient time period to no longer qualify for assistance. The Board understands the Department's reasons for developing policy 6.7.11, but notes that it is not bound by this policy in making a determination on the facts before it.*

The Board notes that across other legislated programs, the term resident consistently requires that an individual's home be in Manitoba, and ones presence in the province have some level of permanence.

Based on <name removed>'s presentation during the hearing, the Board is satisfied that their intentions were not to remain in Saskatchewan for longer than the 14 days they required to recover from surgery, and their extended absence was based on exceptional circumstances that were beyond their control. The Board is also satisfied that <name removed>'s extended absence from Manitoba was not of a sufficient duration to consider them as residing outside of Manitoba.

Based on the information presented to it, the Board is convinced, on the balance, that <name removed> remained a resident of Manitoba during their absence, and otherwise met the eligibility criteria to receive assistance. The Board rescinds the Director's decision to close <name removed>'s assistance file and assess an overpayment for the months of <dates removed>. The Board orders the Department to enrol the appellant as a general assistance recipient under *The Manitoba Assistance Act* for the months of <date removed>, to cancel the overpayment assessed against their file for assistance received during these months, and to reimburse <name removed> for the total amount of assistance which has been recovered as a result of this overpayment.

## **DISCLAIMER**

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