

**Reasons for Decision:**

**Order # AP1516-0430**

The appellant applied for income assistance as a single person with a disability.

After completing the application on <date removed> the Department denied income assistance as they believed the appellant was in a common-law relationship with <reference removed>. The Department indicated in its report that the decision was based on the fact that the appellant was residing in <reference removed> home, and <reference removed> had been providing the appellant with financial assistance both prior to and since the appellant moved into the home. It was the Department's evidence that <reference removed> had advised that after the appellant lost the appellant's employment, <reference removed> paid for the appellant's until the time that the appellant moved into <reference removed> home.

The Department also stated that the appellant advised that <reference removed> had purchased a <reference removed> in the appellant's name, and periodically provided the appellant with funds to support the appellant. The banking statement for the period of <date removed> showed a total of <amount removed> deposited into the appellant's account from <reference removed>. The Department did not ask the appellant to complete a relationship assessment form. The Department determined that there was sufficient information as there was shared residency and financial interdependency which met the test for a common-law relationship.

In the appellant's Notice of Appeal the appellant states that <reference removed> let the appellant stay at <reference removed> place, otherwise the appellant would have no place to live and end up on the street. The appellant stated in <reference removed> Notice of appeal that it is ridiculous that they are considered a common-law couple as <reference removed> is <reference removed> and <reference removed> is <reference removed>.

The appellant stated at the hearing that the appellant is a family friend who has known the appellant since the appellant was <reference removed> years old. <Reference removed> helped the appellant out as a family friend. The vehicle was purchased at a time when the appellant was working and could afford to make monthly payments to pay <reference removed> back. This was done as it was cheaper than arranging a car loan, and saved on interest.

<Reference removed> stated that <reference removed> saw a person in need and helped <reference removed> out until the appellant could get back on <reference removed> feet. As the appellant's medical condition has rendered the appellant unable to work, the appellant has sought out the help of income assistance benefits with the intent of applying for disability benefits. Both the appellant and <reference removed>

removed> stated that none of their friends and family considers them as a couple and they view themselves as having a <reference removed> type relationship. They state they do not attend social events together.

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.
- c. Financial interdependence – the degree to which the two adults who are living together support each other financially.

After carefully reviewing the written and verbal information the Board has determined that the Employment and Income Assistance Program has not fairly assessed the nature of the relationship between <reference removed> and <reference removed>. The legal meaning of a “conjugal relationship” means that they are living as a married couple. This implies a degree of fidelity, commitment, and an attitude and conduct as a couple. In the appellant’s situation there is no mutual commitment to a shared life. The worker indicated at the hearing that intimacy is not a consideration in determining common-law relationship.

It is the Board members’ opinion that a check-list of policy criteria cannot override the intention of the legislation. In this situation <reference removed> has presented <reference removed> as a family friend with stable and solid finances who saw a

person in need and decided to help the appellant out financially. The two persons do not see themselves as a couple; they described their relationship as <reference removed>.

As an adult person, the appellant needed some short term assistance, which <reference removed> provided. When it became clear that this was going to be a longer term need, the appellant applied for income assistance. If the financial assistance was provided by an actual relative of the appellant's the application would not have been questioned. However, as this is a <reference removed> friend, the Department has determined that they support each other financially. It is the testimony of the appellant and <reference removed> that their finances are not intermingled; only that <reference removed> has given the appellant funds when the appellant required it, on a compassionate benevolent basis.

The Board has therefore determined that the appellant is not in a conjugal relationship with <reference removed>. They are not living as a married couple. Certainly if the appellant is in receipt of income assistance, any financial assistance provided by <reference removed> would need to be declared and would affect eligibility, but the provision of financial support in and of itself does not meet the definition of a conjugal relationship, without an assessment of the nature of the relationship itself. Therefore the decision of the director is rescinded, and the Board orders that the appellant be enrolled on income assistance effective <date removed> as a single general assistance applicant.

## **DISCLAIMER**

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