

**Reasons for Decision:**

**Order # AP1819-0321**

<name removed> appealed that the Employment and Income Assistance (EIA) program denied them enrollment as a single participant as they have been deemed to be living in a married relationship, with their estranged spouse who is also an EIA participant.

The Department received a letter from an Attorney requesting EIA to please consider the appellant's request to separate their budget from their spouse. The appellant's and their spouse have been separated since <year removed>. The appellant moved into their spouse's home in <year removed> to care for them when they became ill with <health condition removed>. The appellant wants their income assistance budget to be separate from their spouse's, as they should be treated as roommates instead of a married couple. The appellant works part-time and does not want to support the spouse.

The Department determined that as they are still legally married, living in the same residence, and likely are financially dependent of each other they have to be enrolled together. The Department stated that until a separation is pursued, they would be considered a married couple in terms of their financial responsibilities to each other. The Department also advised that in <year removed> they had separate files, as they were not sharing a residence.

The appellant attended the hearing with their spouse and an Interpreter as english is not their first language.

The appellant stated that they do not agree with the Department having their files combined as one. The appellant described how they work very few hours and can barely afford to support themselves, let alone their spouse. The appellant said their spouse is not able to care for themselves and there is no one else, so the appellant moved in to help their spouse.

When questioned by the Board, the appellant advised that their spouse is sleeping in the living room and they are sleeping in a bedroom, and they do not split the bills. Their relationship is a friendship and confirmed they do not have intimate relations and are not perceived as a couple to anyone. The appellant said they do the cleaning, cooking and health care for their spouse, as their <health condition removed> is aggressive.

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:

**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.

***in addition, one of the following two factors:***

- a. **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.
- b. **Financial interdependence** - the degree to which the two adults who are living together support each other financially.

After carefully considering the written and verbal information the Board has determined that the presentations at the hearing lead the Board to believe that the likelihood of a conjugal relationship, as defined by the Act, is sufficiently questionable. Neither the appellant nor their spouse view themselves as a married couple in a conjugal relationship. The Board also finds that perceived financial interdependence is related to how they share expenses as roommates, and they have declared to the Department that they are in fact just roommates. The Board finds that the Department solely focused on the legality of their relationship. Being legally married does not in and of itself, define a relationship. In accordance with the Legislation, they are not living like a married couple, and have no sense of intimacy, commitment, or exclusivity that typically defines a relationship. Therefore, this decision has been varied and the Board orders the Department to enroll the appellant and their spouse as separate single participants effective <date removed>.

## **DISCLAIMER**

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