

Reasons for Decision:

Order # AP2021-0061

On <date removed>, <name removed> filed an appeal of the decision of the Director, Fort Garry River Heights to close their income assistance file. The appeal was based on a letter sent by the Department on <date removed>.

The Department letter stated the appellant's file was closed because they were married. The letter stated the appellant was required to apply jointly with their spouse, <name removed>, as there was no documentation that they were legally separated or divorced.

The Department told the Board that the appellant applied for assistance in <date removed>. At intake, they told the Department that they were married, but could not obtain financial support from their spouse because they were living in the United States and was unemployed. The appellant advised the Department that their spouse's family told them that they were addicted to fentanyl.

The Department asserted that the appellant did not mention their separation from their spouse until the spring of <year removed>, despite their insistence that the separation occurred in <date removed>. The appellant did not provide the Department with proof of a legal separation, and the Department could not find any court records indicating they have initiated a separation or divorce.

The Department noted the appellant and their spouse attended a meeting with Child and Family Services in <date removed>, four months after their alleged separation. At that meeting, the appellant and <name removed> presented as a married couple. The couple told CFS that <name removed> was employed in a well-paying position, that they contributed financially to the family, and that the appellant and the children intended to reunite with <name removed> in the United States.

During the course of its investigation, the Department contacted the children's school. School officials confirmed that <name removed> was actively involved in their children's life, and that the appellant told the school that the family was making efforts to reunite in the United States.

The Department highlighted several consistencies in the information provided by the appellant as evidence of the uncertainty surrounding their relationship with <name removed>:

- The appellant stated <name removed> was barred from entering Canada, but the Canadian Border Services Agency confirmed they visited Canada approximately 10 times per year;

- The appellant stated they have never visited the United States, but the Canada Border Services Agency confirmed they visited the United States in the summer of <year removed>, after their alleged separation; and
- The appellant and <name removed> use multiple names for unknown reasons.

In summary, the Department stated it was unable to determine the appellant's eligibility for assistance because it was unable to determine their income and marital status.

The Department cited Section 4(1) of *The Family Maintenance Act*, which states

Spouses and common-law partners have the mutual obligation to contribute reasonably to each other's support and maintenance.

The Department noted that Section 8 of *The Family Maintenance Act* requires spouses to disclose their financial information, and sets out penalties for non-compliance. In cases where an assistance recipient does not exercise his or her legal right to pursue support, the Department will deem support income to be deducted from the recipient's benefits.

The appellant was represented at the hearing by an advocate. The advocate asserted that most of the Department's evidence was not relevant to the case, and they questioned whether the Department's conclusion was justified.

The advocate stated that the *Manitoba Assistance Act* requires the Department to provide evidence supporting the reason for the denial of assistance, and they asserted that the Department failed to do so. In particular, the Department did not include the decision letter in its written report.

The advocate submitted the decision letter as evidence. The advocate noted the reason for denial given in the letter was that the appellant was married and had not provided evidence they were legally separated or going through the divorce process. The advocate stated the Section 5(1) of the *Act* states

5(1) The director shall provide income assistance, in accordance with this Act and the regulations, to or in respect of a person who, in the opinion of the director is a person
(c) who is a parent with a dependant child or children and
(i) is deserted by, or is living separate and apart from, his or her spouse

The advocate asserted that the appellant and <name removed> had lived apart since their marriage in <year removed>.

The advocate stated the *Manitoba Assistance Act Regulation* calculated need based on the members of the recipient's household, and asserted that <name removed> was not a member of the appellant's household.

The advocate stated that the sole question before the Board was whether or not the appellant and <name removed> lived together. The advocate asserted that the

Department report was full of misquotes, inaccurate information and evidence which proved the appellant's case. The advocate noted the Department did not include the appellant's lease, which showed them as the sole tenant.

The advocate reviewed the Department's report *in extenso*. The advocate made the following points:

- The court registry search did not produce any results (Attachment 5);
- The marriage certificate was irrelevant (Attachment 6);
- Attachment 7 contained only partial bank records, and the appellant was willing to submit all bank statements;
- Attachment 9 proved <name removed> lived in the United States;
- The numerous screenshots of Facebook pages did not prove that <name removed> lives in Canada with the appellant (Attachments 11 through 14);
- The pages from the Manitoba Gazette allegedly showing that the appellant changed their name were for a different person (Attachment 15); and
- The advocate objected to the Department surreptitiously monitoring the appellant's home.

The appellant acknowledged that <name removed> was present in Winnipeg at the time the Department took the pictures, but asserted they were there on one of their rare visits.

The appellant disputed most of the Department's evidence. They denied telling the Department <name removed> sent them <amount removed> per month, and asserted that they told the Department their spouse bought <amount removed> in toys. The appellant objected to the Department contacting their landlord. The appellant asserted that the school denied telling the Department <name removed> was involved in the children's lives. The appellant stated there was no requirement for them to tell the Department when they visited the United States.

The advocate observed that the e-mail exchange in Attachment 19 between the Department investigator and the Canada Border Services Agency showed that <name removed> lived in the United States and the appellant lived in Canada. The advocate objected to the language used in the e-mail by the investigator, asserting that it demonstrated bias.

The advocate told the Board the appellant worked regularly after they emigrated to Canada, but had to stop working for health reasons. The advocate acknowledged that they received some support from their spouse initially, but the support stopped because of a breakdown in their relationship.

The advocate maintained that it was not accurate to state that <name removed> was barred from Canada. The spouse is allowed in as a visitor, but is barred from living in Canada. The Department told the Board it had a <year removed> letter on file from Citizenship and Immigration Canada ordering <name removed> and their family to

leave Canada, but <name removed> did not leave until <year removed> and the rest of the family never left.

The advocate asserted that the appellant is now registered with Legal Aid to obtain a separation agreement.

In response, the Department stated that, when a recipient's spouse or partner resides outside Manitoba, the spouse or partner must provide all relevant financial information. <name removed> and the appellant did not provide the requested information, despite a follow-up letter from the Department on <date removed>.

The Department told the Board that <name removed> had a Manitoba drivers licence in <year removed>, and moved to the United States in <year removed>. The spouse did not advise Manitoba Public Insurance of the move until <year removed>. The Department asserted that <name removed> transferred their Manitoba-registered vehicle to the appellant in <year removed>.

The Department maintained that it learned of the appellant's name change in <year removed> through a prior investigation.

The Department reiterated that the appellant told it that <name removed> could not come to Canada, and that statement was proven untrue by the Department's investigation and the appellant's own evidence. The Department noted <name removed> and the appellant had conceived a child while they were living in the United States, which implied an ongoing physical presence.

The Department stated the appellant did not explain why they presented to CFS as married, with their spouse present, despite having separated months before.

The Department asserted that the appellant's financial circumstances were unusual for an assistance applicant, and required explanation. <name removed> transferred <amount removed> to the appellant in <date removed>, despite their reported unemployment. The appellant pays <amount removed> per month in rent and owns two vehicles worth <amount removed>. The appellant is responsible for providing enough information to assess their eligibility, and the Department asserted that they did not do so.

In response to a question from the Board, the appellant stated they also receives approximately <amount removed> per month in Canada Child Benefit. The appellant told the Board they worked part-time in the home care field.

The Board asked the appellant why they offered to set up an in-person meeting between <name removed> and the Department if they did not visit Manitoba. The appellant stated the spouse came to Manitoba twice in <date removed>, as they were attempting to take four of their eight children to the United States.

In response to a question from the Board, the appellant stated they did not take action to obtain a legal separation agreement because they were planning to move to Edmonton. The appellant asserted that they were unaware that they required a legal separation agreement once they and their spouse separated.

The appellant told the Board they were an honest person who worked hard all their life. Their advocate added that the Department had raised a number of issues about the appellant's statements and actions which were irrelevant, and should be discounted because the Department did not include those issues in its written report.

The Department suggested that the appellant should be cautious about relying on their assertions of honesty, given their widely-varying statements and their lack of explanation of the <amount removed> transfer or the CFS meeting.

The Board asked The appellant to explain why they presented to CFS as married. The appellant stated that their CFS worker told them that they needed to present a spouse and demonstrate that the family was financially stable in order for the CFS case to be closed. The appellant stated the CFS process was not relevant to this appeal. The Department noted that the appellant told two mutually exclusive stories to two different agencies, but is asking the Board to rely on their honesty.

Neither party disputes that the appellant and <name removed> are legally married and do not have a legal separation agreement. Consequently, the provisions of *The Family Maintenance Act* apply, and <name removed> has an obligation to provide reasonable support to the appellant.

Since <name removed> has a legal obligation to provide reasonable support to the appellant, spousal support is an available financial resource and the Department must consider it when calculating the appellant's eligibility for assistance.

While Section 5(1)(c)(i) authorizes the Department to provide assistance to a person living separate and apart from his or her spouse, the Department must still assess eligibility using the rules set out in the *Regulation*. The advocate's reliance on the term "household" in the *Regulation* is misplaced, since a financial resource available to a household of necessity comes from an external source – in this case, <name removed>.

It is clear that <name removed> has a legal obligation to support their spouse, and the Department is authorized to include that support when calculating the appellant's eligibility. The only question is what level of support is reasonable, given <name removed>'s circumstances.

The appellant asserts that their spouse is unable to provide any support. Their reasons for this assertion have varied over time. They have asked the Board to rely on their word in determining that <name removed> is unable to provide support.

The Board agrees with the Department that relying on the appellant's word is problematic. In the course of their interaction with the Department, as well as at the hearing, the appellant made the following points:

- <name removed> has alternatively been employed and unemployed;
- The spouse was unable to provide them with support, but they did provide them with support until their relationship broke down;
- The spouse is barred from entering Canada but they visit 10 times per year. Despite visiting 10 times per year, the spouse only comes to Winnipeg 4 times per year;
- They have not lived together since <year removed>, when they were married in Winnipeg, but he lived in Winnipeg until <year removed> and the separation happened in <year removed>;
- The spouse may or may not be addicted to fentanyl;
- The appellant is not required to tell the Department they visited the United States, but they did tell the Department they did not visit the States when they had;
- The appellant's statement to the Department that they are separated and their spouse is unemployed was true. Their statement to CFS that they were not separated and their spouse was employed was an unfortunate necessity to achieve an important outcome; and
- The appellant told CFS that they were moving to the United States, but they told the Board that they were moving to Edmonton.

The Board determines that there are sufficient inconsistencies in the appellant's varying accounts of the circumstances of their spouse and them that the Department was unable to determine their financial circumstances. However, it is clear that their spouse was employed. While the decision letter simply states that the appellant's file was closed because they were married, the Department's report indicates the closure occurred because the Department was unable to establish financial eligibility.

Based on a careful review of the written and verbal evidence, the Board determines that the appellant has not provided sufficient information for the Department to establish their financial eligibility. The Board confirms the decision of the Director to close the appellant's file.

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