

**CO-RESIDENCY
DIRECTIVE 19.0**

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DIRECTIVE #19.0: CO-RESIDENCY

Purpose of Directive

This directive provides the aspects for determining eligibility based on the applicant or participant's co-residency and spousal or same-sex partner status.

Legislative Authority

Section 1, Part VI, Section 45 and Part X, Section 84 of Regulation 134/98 state:

DEFINITIONS

1. (1) For the purposes of the Act and the regulations,...

“same-sex partner”, in relation to an applicant or recipient, means,

- (a) a person of the same sex as the applicant or recipient, if the person and the applicant or recipient have together declared to the administrator or to the Director under the *Ontario Disability Support Program Act, 1997* that they are same-sex partners,
- (b) a person of the same sex as the applicant or recipient who is required under a court order or domestic contract to support the applicant or recipient or any of his or her dependants,
- (c) a person of the same sex as the applicant or recipient who has an obligation to support the applicant or recipient or any of his or her dependants under section 30 or 31 of the *Family Law Act*, whether or not there is a domestic contract or other agreement between the person and the applicant or recipient whereby they purport to waive or release such obligation to support, or
- (d) a person of the same sex as the applicant or recipient who is residing in the same dwelling place as the applicant or recipient, if the social and familial aspects of the relationship between the person and the applicant or recipient amount to cohabitation and,
 - (i) the person is providing financial support to the applicant or recipient,
 - (ii) the applicant or recipient is providing financial support to the person, or
 - (iii) the person and the applicant or recipient have a mutual agreement or arrangement regarding their financial affairs; (“partenaire de même sexe”)...

“spouse”, in relation to an applicant or recipient, means,

- (a) a person of the opposite sex to the applicant or recipient, if the person and the applicant or recipient have together declared to the administrator or to the Director under the *Ontario Disability Support Program Act, 1997* that they are spouses,

- (b) a person of the opposite sex to the applicant or recipient who is required under a court order or domestic contract to support the applicant or recipient or any of his or her dependants,
- (c) a person of the opposite sex to the applicant or recipient who has an obligation to support the applicant or recipient or any of his or her dependants under section 30 or 31 of the *Family Law Act*, whether or not there is a domestic contract or other agreement between the person and the applicant or recipient whereby they purport to waive or release such obligation to support, or
- (d) a person of the opposite sex to the applicant or recipient who is residing in the same dwelling place as the applicant or recipient, if the social and familial aspects of the relationship between the person and the applicant or recipient amount to cohabitation and,
 - (i) the person is providing financial support to the applicant or recipient,
 - (ii) the applicant or recipient is providing financial support to the person, or
 - (iii) the person and the applicant or recipient have a mutual agreement or arrangement regarding their financial affairs. ("conjoint") O. Reg. 134/98, s. 1 (1); O. Reg. 227/98, s. 1 (1, 2); O. Reg. 272/98, s. 1; O. Reg. 32/00, s. 1 (1-4).

(2) For the purpose of the definitions of "spouse" and "same-sex partner", sexual factors shall not be investigated or considered in determining whether or not a person is a spouse or same-sex partner. O. Reg. 32/00, s. 1 (5).

(3) Revoked: O. Reg. 32/00, s. 1 (5).

REDUCTION OF BUDGETARY REQUIREMENTS – CO-RESIDENTS

45. (1) The amount payable for shelter under section 42 for an applicant or recipient who shares accommodation with one or more persons who are not his or her dependants shall be determined as follows:

1. Allocate equal shares of the entire cost of shelter among the applicant or recipient, his or her spouse or same-sex partner included in the benefit unit, if any, and each of the persons who are not his or her dependants.
2. Calculate the amount payable for shelter based on the shares allocated to the applicant or recipient and his or her spouse or same-sex partner included in the benefit unit, if any. O. Reg. 134/98, s. 45 (1); O. Reg. 32/00, s. 12 (1, 2).

(2) No costs shall be allocated under paragraph 1 of subsection (1) with respect to the following persons:

1. A person who resides in the same dwelling place as the applicant or recipient and provides daily physical assistance on an ongoing basis to the applicant or recipient or his or her spouse or same-sex partner included in the benefit unit if the applicant, recipient, spouse or same-sex partner requires assistance in order to function in a community setting.
2. A person provided with lodging by the applicant or recipient, if the person provides income to the applicant or recipient.
3. A person who provides lodging, whether or not with meals, to the applicant or recipient.

4. A person to whom subsection 44 (3) applies. O. Reg. 134/98, s. 45 (2); O. Reg. 32/00, s. 12 (3).

TRANSITION

84. (1) In this section,

"change in eligibility resulting from the same-sex partner amendments", with respect to a recipient, means a change with respect to the recipient's eligibility for assistance, the conditions of the recipient's continuing eligibility for assistance or the amount of assistance that the recipient is to receive, if that change results from amendments made to this Regulation by Ontario Regulation 32/00. O. Reg. 586/00, s. 3 (1).

(2) An administrator shall,

- (a) review and update the information recorded with respect to each recipient affected by the change in eligibility resulting from the same-sex partner amendments; and
- (b) make the determination required for the change in eligibility resulting from the same-sex partner amendments to take effect. O. Reg. 32/00, s. 20; O. Reg. 586/00, s. 3 (2, 3) .

(3) A change in eligibility resulting from the same-sex partner amendments shall take effect with respect to a recipient on the day an administrator makes the determination mentioned in clause (2) (b) with respect to that recipient. O. Reg. 32/00, s. 20; O. Reg. 586/00, s. 3 (4).

Intent of Policy

An applicant or participant is eligible as a single person or sole support parent if he/she resides with another person, but the financial, social and familial aspects do not amount to a spousal or same-sex partner relationship.

An applicant or participant is not eligible as a single person or sole support parent if he/she resides with another person, and the financial, social and familial aspects amount to a spousal or same-sex partner relationship.

Decision-Making Principles

The following principles apply:

- all three aspects - financial, social and familial - are considered and present to determine that a co-resident is a spouse or same-sex partner;
- a determination that two adults are not spouses or same-sex partners can be made using only Part 1 of the Co-resident Questionnaire; and
- a determination that two adults are spouses or same-sex partners cannot be made using only Part 1 of the Co-resident Questionnaire.

Standards

The following standards must be met:

- the Co-resident Questionnaire form is used in all cases of co-residency unless the applicant or participant declares that the co-resident is a spouse or same-sex partner;
- the three aspects - financial, social and familial – are present and documented for a decision that the co-resident is a spouse or same-sex partner;
- sexual factors are not investigated or considered;
- co-residents who are close relatives (see exemption later in this section) are not to be found to be spouses or same-sex partners; and
- a Co-resident Information Sheet is completed with new applicants or those declaring a new co-resident.

Audit Requirements

Random file reviews are completed to ensure that:

- a Co-resident Questionnaire is completed and on file for all applicants or participants who reside with a person of the opposite sex or same sex and do not declare that the co-resident is a spouse or same-sex partner;
- if spousal or same-sex partner status has been determined, the applicant or participant will be included in the determination of eligibility;
- the date of co-residence is noted and reviewed annually if a relationship is determined not to be a spousal or same-sex partner relationship;
- documentation is on file to support decisions; and
- follow-ups are documented and completed.

Application of Policy

In the case of co-residency, the applicant or participant must provide the Administrator with information to determine if the co-resident meets the definition of a “spouse” or “same-sex partner” and is therefore part of the benefit unit.

Effective March 1, 2000, regulations recognizing same-sex partner relationships apply to all new applicants. Changes apply to those already receiving Ontario Works assistance once the Administrator makes a determination based on the new rules, i.e. during the annual financial assessment review. Therefore, between March 1, 2000 and the time of the annual financial assessment review, no overpayment or other retroactive adjustment will occur as a result of the March 1, 2000 regulation changes.

Definitions

A "single person" is defined as an applicant or a participant with no dependants.

"Dependant" is defined as:

- a) a person who resides in the same dwelling place and who is:
 - the spouse or same-sex partner of the applicant or participant;
 - a dependent child of the applicant or participant or of his/her spouse or same-sex partner; or
 - a dependent adult of the applicant or participant or of his/her spouse or same-sex partner; or
- b) a spouse or same-sex partner who is absent from the dwelling place of the applicant or participant if the absence is for a reason other than a breakdown in the relationship with no reasonable prospect of reconciliation.

"Sole support parent" is defined as an applicant, participant or dependant with one or more dependants and no spouse or same-sex partner included in the benefit unit.

"Same-sex partner " is defined as:

- a) a person of the same sex as the applicant or participant, if the applicant or participant and the person have together declared to the Administrator or to the Director under the *Ontario Disability Support Program Act* that they are same-sex partners;
- b) a person of the same sex as the applicant or participant who is required under a court order or domestic contract to support the applicant or participant of any of his/her dependants;

- c) a person of the same sex as the applicant or participant who has an obligation to support the applicant or participant or any of his/her dependants under section 30 or 31 of the *Family Law Act*, whether or not there is a domestic contract or other agreement between the person and the applicant or participant whereby they purport to waive or release such obligation to support; or
- d) a person of the same sex as the applicant or participant who is residing in the same dwelling place as the applicant or participant, if the social and familial aspects of the relationship between the person and the applicant or participant amount to cohabitation and
 - the person is providing financial support to the applicant or participant;
 - the applicant or participant is providing financial support to the person; or
 - the person and the applicant or participant have a mutual agreement or arrangement regarding their financial affairs.

"Spouse" is defined as:

- a) a person of the opposite sex to the applicant or participant, if the applicant or participant and the person have together declared to the Administrator or to the Director under the *Ontario Disability Support Program Act* that they are spouses;
- b) a person of the opposite sex to the applicant or participant who is required under a court order or domestic contract to support the applicant or participant of any of his/her dependants,
- c) a person of the opposite sex to the applicant or participant who has an obligation to support the applicant or participant or any of his/her dependants under section 30 or 31 of the *Family Law Act*, whether or not there is a domestic contract or other agreement between the person and the applicant or participant whereby they purport to waive or release such obligation to support; or
- d) a person of the opposite sex to the applicant or participant who is residing in the same dwelling place as the applicant or participant, if the social and familial aspects of the relationship between the person and the applicant or participant amount to cohabitation and

- the person is providing financial support to the applicant or participant;
- the applicant or participant is providing financial support to the person; or
- the person and the applicant or participant have a mutual agreement or arrangement regarding their financial affairs.

Determination of Eligibility

An applicant or participant is eligible to receive assistance as a single person or sole-support parent, unless he/she resides with another person who is determined to be his/her spouse or same-sex partner. The Administrator would require evidence that satisfies him/her that the financial, social and familial aspects of the relationship do not amount to a spousal or same-sex partner relationship, in order for eligibility to continue.

Where an applicant or participant is ineligible as a single person or sole-support parent because he/she has a spouse or same-sex partner, the applicant or participant and the person who is the spouse or same-sex partner may together apply for assistance as a benefit unit.

Determination of Co-residency

Where the Administrator has reason to believe that an applicant or participant who is a single person or sole-support parent is residing in the same dwelling place as another person who is not a relative, co-residency must be established. To determine whether the applicant or participant co-resides with another person who is not a beneficiary of the applicant or participant's assistance, the following information is relevant:

- where an applicant or participant declares that another person lives with him/her, the declaration is sufficient evidence of co-residence;
- an applicant or participant is co-residing with another person if he/she shares the accommodation with that person, rooms or boards with that person, or has that person as a roomer or boarder;
- where an applicant or participant declares that he/she resides alone, but the Administrator has reason to believe that another person co-resides with the applicant or participant, the Administrator should investigate his/her suspicions and any other allegations, or written or oral complaints which indicate co-residence. All evidence gathered from an investigation should

be of an objective nature from which a determination of eligibility can be made; and

- related sources of information used in determining co-residence include:
 - statement from the landlord that the person lives in the applicant's or participant's dwelling or is listed on the lease;
 - driver's licence history;
 - car registration;
 - employment records;
 - credit checks;
 - self-declared common residency;
 - registry office records;
 - voters' lists or enumeration; and
 - telephone directory (i.e. a common phone number).

Determination of Spousal or Same-sex Partner Status

To determine if the co-residents are spouses or same sex-partners the following three aspects are considered:

- financial interdependence;
- social interdependence; and
- familial circumstances.

All three factors must be present to determine that the co-residents are spouses or same-sex partners.

Exemption from Spousal or Same-sex Partner Status

Co-residents will not be found to be spouses or same-sex partners where an applicant or participant co-resides with a person of the opposite sex, or same sex, to whom the person is related in any of the following ways:

- parent, stepparent, grandparent, uncle, aunt, son, stepson, daughter, stepdaughter, grandchild, sister, brother, niece, or nephew.

Note that the past exemption in policy for couples that could not lawfully marry under the *Marriage Act* has been changed to create an exemption that is appropriate for both opposite-sex co-residents and same-sex co-residents.

Financial Aspects

To determine whether a person is providing financial support to the applicant or participant, or the applicant or participant is providing financial support to the other person, or whether the applicant or participant and the other person have a mutual agreement or arrangement regarding their financial affairs, the following factors are relevant:

- joint parentage (natural or adoptive) of a child of the applicant or participant (legal obligation to support);
- jointly rented or jointly owned accommodation;
- an agreement about joint financial arrangements;
- jointly owned bank account, credit card, debt, pension, savings, investments, real estate, business, or other assets;
- jointly owned motor vehicle or joint motor vehicle insurance;
- evidence that financial support is given between co-residents;
- evidence that money or other assets are given or loaned between co-residents;
- the alleged spouse or same-sex partner's claim of the applicant or participant or any of the children for employee benefits (e.g. dental or drug) or tax purposes; or
- contributions toward shared costs of necessities, shelter and services (e.g. utilities, telephone, cable).

Financial contributions can be indirect. They can be payments made on the other's behalf or access to services and use of goods owned or paid for in whole or in part by the other party.

Social and Familial Aspects

The following situations can indicate social and familial relationships:

- legal marriage;
- acknowledgement by either party of a spousal or same-sex partner relationship;
- an insurance policy, RRSP account, tax return, will or other legal document (e.g. power of attorney) that gives recognition to the relationship;
- the couple is known by public authorities as a couple (e.g. law enforcement, school authorities);
- mail arriving in the household is addressed jointly;
- arrangements for sharing household chores, groceries or meals;
- receipt and acceptance of invitations as a couple and recognition at these social gatherings as a couple;
- the provision of care when a co-resident is ill;
- a pattern of previous co-residency (i.e. at a previous address);
- a co-resident's child is known by the other co-resident's surname;
- a co-resident's child regards or refers to the other co-resident as a parent;
- public or community organizations, or professional service providers regard both co-residents as having guardianship, responsibility for, or authority over children in the household; and/or
- the co-residents share child-care or other parenting responsibilities.

Absent Spouse

The definition of dependant includes a spouse or same-sex partner who is absent from the dwelling place of the applicant or participant if the absence is for a reason other than a breakdown in the relationship with no reasonable prospect of reconciliation. Persons who are in a spousal or same-sex partner relationship, where one spouse or same-sex partner is temporarily absent from the residence must meet all the conditions of eligibility, e.g. meeting participation requirements,

reporting spouse or same-sex partner's income. In these situations the co-residency of the spouse or same-sex partner shall be considered continuous despite the temporary absence. The person who remains in the residence is not eligible as a sole support parent or as a single person.

Procedure

At the intake verification interview, during an annual financial assessment review, or at any time an applicant or participant declares a co-resident, the worker must:

- explain the spousal/same-sex partner criteria;
- provide the Co-resident Information Sheet; and
- complete the Co-resident Questionnaire (form 2764).

The form is filled out together by the worker and the applicant or participant. Verification of the information is to be provided by the applicant or participant where appropriate.

Co-resident Questionnaire (Form 2764)

The *Co-resident Questionnaire* form is used in all cases of co-residency. The questionnaire focuses on whether a co-resident meets the criteria for inclusion in the benefit unit. The form has two parts: Part 1, which provides an initial screen, and Part 2, which provides additional detailed information if required:

- Part 1 contains a set of eight financial questions to be completed in all cases where there is another adult residing in the home. This initial screen assists the worker in determining if additional information is required. If the information provided in response to Part 1 questions does not suggest that the co-resident meets the financial part of the definition of "spouse" or "same-sex partner", the worker will not proceed with Part 2.
- Part 2 contains 23 additional, detailed questions. Responses to questions in Part 2 provide the worker with the additional information needed to determine if the defining social, familial and economic aspect of spousal or same-sex partner status are met.

The questionnaire also includes initial explanatory information and a declaration at the end of both Part 1 and Part 2 indicating that the information provided is correct and complete.

Before the questionnaire is administered, its purpose and implications must be explained to the applicant or participant. The applicant or participant is provided with a Co-resident Information Sheet and asked to sign indicating that its contents have been explained and that he/she has been provided with a copy. The Co-resident Information Sheet has been updated to reflect both spousal and same-sex partner relationships, as well as the application of the new Co-Resident Questionnaire.

As much information as possible should be recorded on the questionnaire. The information contained in the completed questionnaire has important implications in determining eligibility and the appropriate level of assistance, and in supporting decisions that are reviewed by the Social Benefits Tribunal or by the Courts.

Interpreting the Co-resident Questionnaire

There are a number of important factors to consider in determining if a co-resident is a spouse or same-sex partner as defined by regulations:

- these definitions of spouse and same-sex partner have been created solely for the purpose of determining eligibility under the Ontario Works program and the Ontario Disability Support Program;
- there is no correct number of questions that must be answered in a certain way – answers must be weighed together to determine if the relationship meets the definitions of spouse or same-sex partner, and, therefore, if the co-residents are found to be part of the same benefit unit;
- responses to questions must indicate that there is a financial, as well as a social and familial, relationship in place. Financial aspects alone are not sufficient to meet the definition of spouse or same-sex partner;
- Part 1 of the questionnaire is used to determine if there is a financial relationship and whether or not additional information is required. Note that you can determine that two adults are not spouses or same-sex partners using only Part 1 but you cannot determine that they are spouses or same-sex partners using only Part 1;
- for financial aspects to support a determination of spousal or same-sex partner status, there should be a pattern of mutual support or interdependence;
- the circumstances surrounding how rent and utilities are divided may be satisfactorily explained, however, the provision of financial support or joint

ownership of assets and/or liabilities are strong indicators of financial interdependence;

- past examples of declaring each other as dependants are strong indicators of financial interdependence;
- if a financial relationship is found under Part 1, Part 2 must be completed to determine whether there are social and familial factors in place. If there is no evidence of financial interdependence indicated in Part 1, Part 2 is not administered;
- the questions in Part 2 primarily reflect social and familial circumstances although some have financial elements;
- these questions are intended to reveal a pattern of social and familial interdependence. They are intended to show whether or not two people have created a relationship where they share social and familial ties;
- being named as someone's beneficiary does not create a spousal or same-sex partner relationship, but it is a factor that can, when weighed with other factors, support the determination of spousal or same-sex partner status; and
- being regarded as a couple, or being regarded as the parents of a child, is an important factor when there is also evidence of financial interdependence.

Confidentiality and Privacy

In determining the spousal or same-sex partner status of co-residents, the confidentiality of an applicant or participant's personal information must be safeguarded. Workers must be sensitive to how co-residents may characterize their relationships and their privacy concerns.

While applicants and participants are required to disclose financial information and other personal information in order to demonstrate eligibility, the determination and verification process should not reveal their personal relationship circumstances to other parties.

As sexual orientation is not a factor for consideration in eligibility (determination of relationship status is based on "economic, social and familial factors" and not "sexual factors"), there is no circumstance where it is appropriate for workers to discuss an applicant's or participant's sexual orientation with any other party.

Outcome of Determination

If the Administrator determines that the co-resident is not a spouse or same-sex partner, the applicant or participant remains eligible for assistance as a single person or sole support parent where he/she co-resides with another person in a renting or shared living arrangement. *See Directive 28.0: Calculating Assistance.* If a relationship is determined not to be a spousal or same-sex partner relationship, the date of co-residence should be noted and reviewed annually.

If the co-resident is determined to be in a spousal or same-sex partner relationship, he/she is ineligible as a single person or sole support parent and a letter of ineligibility is issued.

If the spouse or same-sex partner is added to the benefit unit, the combined income and assets of the applicant and spouse or same-sex partner are considered to determine if the couple qualify for assistance.

Head of Household

When a sole-support parent is found to be in a spousal or same-sex partner relationship and both adults wish to apply for assistance, or when two persons who were receiving Ontario Works as single applicants or participants are reapplying as a couple for assistance, it is up to the couple to determine who they wish to have as Head of Household.

Delivery agents must be aware that the head of the household should not be any person who has a recent or current problem that may result in misuse of the allowance or where there is evidence of abuse of the funds or a history of family violence.