

# Ontario Disability Support Program - Income Support Directives

## 2.3 - Spouse

### Summary of Policy

A person is considered a spouse if:

- the person and the applicant/recipient have together declared to the Director that they are spouses;
- he/she is required under a court order or domestic contract to support the applicant/recipient or any of the applicant's/recipient's dependants;
- he/she has an obligation under the Family Law Act to support the applicant/recipient or the applicant's/recipient's dependants; or
- the person and the applicant/recipient have been living in the same dwelling place for a period of at least three months, and
- the social and familial aspects of the relationship between the two persons are consistent with cohabitation, and
- the financial support provided by one person to the other or the degree of financial interdependence is consistent with cohabitation.

### Legislative Authority

Subsection 5(1) of the ODSP Act

[Subsections 1\(1\), 6\(1\)2., 6\(2\), 14\(2\)8, 14\(2\)9 and Sections 8 and 23 of the ODSP General Regulation](#)

### Summary of Directive

This directive explains how to determine if two adults living together who have not declared themselves to be spouses are living in a marriage-like relationship based on financial, social and family-like factors.

This directive also provides guidance on the age of a spouse, a spouse who is a visitor to Canada, treatment of a spouse's income and spousal participation in an Ontario Works program.

### Intent of Policy

- To ensure that where two adults, (who have not declared themselves to be spouses and do not have support obligations) are living together, only

- those living in marriage-like relationships are treated as couples for the purposes of social assistance;
- To establish a three month minimum timeframe before spousal status is assessed based on family-like, social, and financial factors;
  - To ensure that the income and assets of spouses of ODSP applicants/recipients are considered when determining eligibility for ODSP and the amount of income support.

## **Application of Policy**

An applicant or recipient who has been living with another adult (other than a close relative) for at least three months must provide ODSP staff with information about the financial, social and family-like aspects of the relationship to determine if the relationship between the two adults is marriage-like and amounts to a spousal relationship.

## **Determination of Eligibility**

An applicant or recipient is eligible to receive income support as a single person or sole-support parent, unless he/she resides with another person who is determined to be his/her spouse.

Where an applicant or recipient is ineligible as a single person or sole-support parent because he/she has a spouse, the applicant or recipient and the person who is the spouse may apply for income support as a couple.

ODSP applicants and recipients continue to have the option of self-declaring someone as a spouse for the purpose of including them as a member of their benefit unit.

## **Decision-Making Principles**

- The test to determine if two adults living together who have not declared themselves to be spouses and who are not close relatives are "spouses" is three part:
  - First, there must be a determination that the two adults have been living together for three months or more; and
  - Second, there must be a determination that the extent of financial support by one adult to the other adult or the degree of financial interdependence between the two adults is marriage-like; and
  - Third, there must be a determination that the social and family-like aspects of their relationship are marriage-like (i.e., the adults live and interrelate with family, friends and community as a couple rather than as two individuals sharing a residence).

- The Questionnaire (for applicants and recipients who are living with another adult) is used to assess and determine whether there is a marriage-like relationship based on financial, social and family-like factors.

## **Standards**

The following standards must be met:

- The Questionnaire (for applicants and recipients who are living with another adult) is used in all cases where two adults have been living together for at least three months and have not declared themselves to be spouses or been confirmed as close relatives;
- The three-part test for determining whether two persons are living in a marriage-like relationship is applied: the two adults must have been living together for three months or more, their financial relationship must be 'marriage-like', and the social and family-like aspects of their relationship must be 'marriage-like';
- Sexual factors are not investigated or considered;
- An adult living with another adult who is a close relative, including parent, stepparent, grandparent, uncle, aunt, son, stepson, daughter, stepdaughter, grandchild, sister, brother, niece, or nephew is not given the Questionnaire;
- The Information Sheet for Applicants and Recipients Who Are Living With Another Adult is provided to all applicants at the time of the application; and
- The Information Sheet for Applicants and Recipients Who Are Living With Another Adult is reviewed with applicants and recipients immediately before completing the Questionnaire;
- Documentation is on file to support decisions.

## **Determining Spousal Status**

- All applicants and recipients must be provided with information about spousal criteria at the time of the application or at any time an applicant or recipient indicates that he or she is living with another adult (other than a close relative).

The applicant / recipient must be given:

- an explanation of the spousal criteria
- a copy of the Information Sheet for Applicants and Recipients Who Are Living With Another Adult
- If an applicant or recipient has been living with another adult (other than a close relative, including parent, stepparent, grandparent, uncle, aunt, son, stepson, daughter, stepdaughter, grandchild, sister, brother, niece, or nephew) for less than three months, the case should be flagged and

brought forward at the three month point for assessment of the relationship using the new Questionnaire.

- If an applicant or recipient has been living with another adult (other than a close relative) for at least three months and has not declared the person as a spouse, an assessment of the relationship is done to determine if the relationship is marriage-like. The assessment is based on the individual's responses to the Questionnaire.
- The applicant or recipient must be provided with a copy of the Information Sheet for Applicants and Recipients Who Are Living With Another Adult and asked to complete the Questionnaire.
- Prior to completion of the Questionnaire, ODSP staff must review the Information Sheet and the Questionnaire "Note to Applicant or Recipient" with the individual.
- The Questionnaire is filled out together by ODSP staff and the applicant or recipient. Verification of the information is to be provided by the applicant or recipient where appropriate.
- Any change in spousal status will be effective as of the date spousal status is determined to have begun. Note that spousal status under subsection 1(1)(d) cannot be assessed and determined until the couple has been living together for at least three months.

The effective date would normally be the date that an assessment is completed (after two adults have been living together for three months) and a determination is made that a couple are living in a marriage-like relationship based on the assessment of financial, social and family-like factors.

When a couple has been living in a marriage-like relationship for a period of time prior to the assessment, previous eligibility should be reviewed to determine when the marriage-like relationship began. The effective date of spousal status should be the date that spousal status is determined to have begun based on evidence of financial, social and family-like factors. Note that spousal status under subsection 1(1)(d) cannot be assessed or determined until a couple has been living together for at least three months.

- If the relationship is determined not to be a marriage-like relationship, an SDMT task is created to "review co-residency status" as part of regular review.

## **Interpreting the Questionnaire**

The Questionnaire involves an assessment of whether the financial relationship between two adults living together for at least three months is marriage-like and, if so, whether the social and family-like aspects of the relationship are also marriage-like.

The Questionnaire is only completed in situations where two people have been living together for at least three months and have not declared themselves to be spouses or been confirmed as close relatives.

When considering whether the financial relationship between the two adults living together is marriage-like (e.g., consistent with co-habitation), ODSP staff should consider whether the two adults living together pool money or assets, whether they cross-subsidize one another's assets or expenses, and/or whether they directly or indirectly support one another.

For example, objective indicators of a "marriage-like" financial relationship (e.g., the extent of financial support provided by one person to the other or the degree of financial interdependence between the two persons is marriage-like) include:

- one person subsidizing the expenses of the other person
- one person contributing to the purchase of assets owned by the other person
- shared ownership of assets
- the pooling of incomes
- one person assumes liability for the debts of the other person

If a decision is made that the financial relationship is marriage-like, then an inquiry is made as to whether the social and family-like aspects of the relationship are marriage-like. In order for the social and family-like aspects of the relationship to be marriage-like, it is necessary to determine whether the two adults living together present themselves as spouses to family, friends and the community (e.g., the adults live and interrelate with family, friends and community as a couple rather than as two individuals sharing a residence).

## **Questionnaire Overview**

- The Questionnaire includes a Note to Applicant or Recipient followed by three Parts. There is a declaration section for the applicant's or recipient's signature at the end of Part 1, Part 2, and Part 3 indicating that the information provided is correct and complete.
- Part 1 must be completed in all cases where two adults have been living together for at least three months and have not declared themselves to be spouses or been confirmed as close relatives.
- If the applicant or recipient indicates in Part 1 that he or she is the spouse of the other adult, there is a support obligation, or together they are the parents of a child, only Part 1 is completed. The relationship is determined as that of spouse.
- Part 2, Financial Factors, contains a series of financial questions to assist ODSP staff in assessing whether the financial aspects of the relationship between the two adults living together is marriage-like. This part is

completed if the responses to Part 1 do not indicate that a spousal relationship exists.

- If the responses to Part 2 indicate that a marriage-like financial relationship does not exist, only Part 2 is completed and there is no need to proceed to Part 3. The applicant or recipient is considered as a single person or single parent.
- Part 3, Social and Family-Like Factors, contains additional questions to assist ODSP staff in assessing whether the social and family-like aspects of the relationship are marriage-like. This part is completed only if the responses to Part 2 indicate that a marriage-like financial relationship exists.
- If the responses to Part 3 indicate that a marriage-like social and family-like relationship does not exist, the applicant or recipient is considered as a single person or single parent.
- Space is provided for the applicant/recipient to provide relevant additional information throughout.

## **Assessment Principles**

1. When assessing whether a spousal relationship exists between two adults living together, self-declaration is always the first option for the applicant or recipient.
2. There is no single, correct number of questions that conclusively indicates in all cases that a spousal relationship exists - answers must be weighed together to determine if the relationship meets the definition of a spouse. The only exception is self-declaration by the applicant/recipient.
3. The explanation provided by an applicant or recipient is very important - each situation is assessed individually to determine whether the relationship is marriage-like.
4. If, after considering all responses to the Questionnaire, there is a reasonable indication that only a roomer, boarder, roommate, friend or caregiver relationship is in place and no marriage-like relationship exists, ODSP staff should not find that the applicant or recipient is in a spousal relationship.
5. When a person with a disability is living with another adult, ODSP staff must consider whether the person's disability explains the financial, social and family-like aspects of their relationship. For example, an applicant or recipient may have joint bank accounts and other joint assets because he/she is unable to do the banking or manage finances. The need for assistance from another person due to a disability may also explain why two people spend a significant amount of time together.
6. Only if, after considering all responses to the Questionnaire, ODSP staff conclude that there is a marriage-like relationship, should an assessment that the relationship is marriage-like be made. ODSP staff must be able to

refer to a pattern of responses and relevant evidence to support that assessment.

## **Assessing Responses to the Questionnaire**

- In assessing the responses to Part 2, the following are some possible situations where the financial relationship between the two people is marriage-like. However, note that the applicant or recipient may give a reasonable explanation to the contrary, in which case the financial relationship should not be found to be marriage-like:
  - evidence of significant joint ownership of assets or property and/or significant joint sharing of responsibility for debt (2 or more "Yes" answers to Q.4. and/or Q.5 - for example joint ownership of car and joint credit card ); or
  - evidence of significant dependency of one party on the other (e.g., answers to Q. 4. and/or Q. 5., and response to Q. 8. indicate that one person owns the majority of assets and is mainly responsible for debts, liabilities and expenses and no fair sharing arrangement exists - for example, the person owns a car, applicant / recipient also drives this car, and other person pays most living expenses); or
  - identification of one person as the other person's dependant, spouse or common-law partner for income tax purposes, pension, life insurance, benefit plan, will or any other significant financial asset ("Yes" answer to any of Q.9.-20.); or
  - identification of one person's children as the other person's dependant/s for income tax purposes, pension, life insurance, will or any other significant financial asset ("Yes" answer to any of Q.11.-20).
- Proceed to complete Part 3 of the questionnaire only if it is determined that the financial relationship is marriage-like.
- If the answers to questions in Part 3 indicate that the two people present themselves to the community as spouses ("Yes" answers to Q.21 and Q.22) and / or parents ("Yes" answers to Q.23 or any part of Q.24) to each other's children, (i.e., the adults live and interrelate with family, friends and community as a couple rather than as two individuals sharing a residence), there is a strong indication that the social and family-like aspects of the relationship between the couple is marriage-like. However, note that the applicant or recipient may give a reasonable explanation to the contrary, in which case the social and family-like aspects of the relationship should not be found to be marriage-like.

Note: Only if both the financial relationship and the social and family-like aspects of the relationship are assessed and determined as marriage-like, should a decision be made that the two adults living together are spouses.

## **Confidentiality and Privacy**

- In determining the spousal status of applicants or recipients who are living with another adult, the confidentiality of an applicant's or recipient's personal information must be safeguarded.
- While applicants and recipients 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 factors are not investigated or considered in determining the spousal status of applicants or recipients who are living with another adult (determination of spousal status is based on financial support or financial interdependence, social and family-like factors and not sexual factors), there is no circumstance where it is appropriate for staff to discuss an applicant's or recipient's sexual relationship with the applicant/recipient or any other party.

## **Age of Spouse**

The ODSP Act and its regulations do not place an age restriction /condition for the spouse of a recipient. A recipient must be 18 years of age and a spouse must meet the definition of spouse in subsection 1(1) of the ODSP General Regulation.

In order to add an individual to an ODSP benefit unit as a spouse, the person has to meet the definition of spouse under subsection 1(1) of the ODSP General Regulation.

The spouse cannot be in two benefit units at the same time. If the spouse in question is a dependant child on an Ontario Works budget, ODSP budget or on an Ontario Works Temporary Care case respectively, before he/she can be added as a spouse of an ODSP recipient, he/she would need to be removed first as a dependant in each of the above situations.

There may be special issues associated with a spouse under the age of 18, in particular under the age of 16. For example, there may be parental support obligations, or the circumstances are such that Children's Aid Society is responsible for the care and custody of the person. Such support obligations may impact the amount of income support.

With respect to persons under 16, it is also possible that there is an issue in relation to the age of consent. These issues will depend on individual circumstances and will not arise in every case. ODSP staff should be aware of these issues and it is advisable that where staff have particular concerns in a specific case related to a spouse who is under the age of 18, they contact Legal

Services Branch or the Ontario Disability Support Program Branch for further assistance and direction.

## **Treatment of Income of the Spouse**

A spouse is considered to be a dependant in the benefit unit. The budgetary requirements, income and assets of the recipient and any dependants are to be included in determining the eligibility and the amount of income support for the benefit unit. Therefore, the combined income, assets and expenses of the couple are taken into account to determine financial eligibility and the amount of income support.

## **Requirements of Spousal Participation in an Ontario Works program**

Participation requirements for a non-disabled spouse are mandatory, unless he or she meets the criteria for non-referral. (e.g. caregiving obligations to a family member who is ill, elderly or disabled).

If the person meets the criteria for non-referral, he or she should not be referred to Ontario Works employment services.

## **Spouse as Visitor to Canada**

Where a spouse is a visitor to Canada, and has not made a claim for refugee status or has not made an application for status as a permanent resident, the conditions of eligibility have not been met. Where a member of the benefit unit is non-compliant with a condition of eligibility, the benefit unit remains the same, but the amount of income support is reduced by an amount equal to the income support paid on behalf of the non-compliant member of the benefit unit. Therefore, the portion of social assistance payable to the recipient on behalf of the spouse is reduced.

When the income support for a benefit unit is reduced due to non-compliance, any income received by the non-compliant member is still included in the calculation of assistance for the benefit unit.

## **Hyperlinks Associated with this Policy Directive**

### **Related Directives:**

[1.1 Applications](#)

[2.5 Tourists, Immigrants, Refugees and Deportees](#)

[3.1 Consolidation Verification Information Requirements](#)

[6.1 Basic Needs Calculation](#)

[6.2 Shelter Calculation](#)

[6.3 Board and Lodge](#)