



Tribunal File No. 0605-04207	Hearing Date: January 17, 2007
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APPELLANT	RESPONDENT
Mr. Robert Chisholm	Administrator, Ontario Works

Appellant's Representative	Respondent's Representative
	Richard Fox, Case Presenting Officer

Legislation Ontario Works Act Family Benefits Act	Date of decisions July 1995 September 18, 2003 August 30, 2005	Date of Appeal May 18, 2006
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Preliminary Issues

1. In his submission the Respondent had raised the following preliminary issue:

Has the Appellant commenced his appeal within the time period prescribed by the General Welfare Act and the Ontario Works Act?

At the hearing, the Case Presenting Officer indicated that he was withdrawing raising this preliminary issue and wanted the Tribunal to deal with the substantive issue under appeal as the Appellant had indicated not having received a letter of decision in July 1995.

2. In his letter dated January 15, 2007 the Appellant indicated that he was opposed to the Tribunal accepting the Respondent's submission because it had not been provided within the prescribed time. In this particular case, although the Tribunal received the submission dated December 21, 2006 on December 27, 2006; the Appellant only received the submission by courier on January 15, 2007. The Appellant indicated that the arguments contained in the Respondent's submission should be rejected for the following reasons:

The Appellant indicated that when he received the submission dated December 21, 2006 on Monday January 15th, 2007. He noted that the courier envelope was marked "RE-DELIVERY"- However he was not apprised in any way until Friday January 12th, 2007 of any further documentation coming from the Respondent. More specifically, on January 12th, 2007, the Appellant received a telephone call from the courier company requesting directions to his residence.

The Appellant then quoted the Notice of Hearing which states that documents and submission must be produced in accordance with the timelines in the legislation.

The Appellant also quoted the legislation which dictates that in addition to providing a written submission within 30 days of receiving the appeal, the legislation also states that the Administrator/Director who intends to produce written or documentary evidence or written submissions shall provide copies to the parties at least 10 days before the hearing.

Reasons

In order to come to its decision the Tribunal considered the legislation. Section 73(2) of Ontario Regulation 134/98 as amended which states:

73. (2) If the Administrator intends to file a written submission, it shall be filed with the Tribunal within 30 days after the Administrator receives a copy of the notice of appeal.

In this case, the Appellant filed his appeal on May 18, 2006 however the Respondent's submission was provided later than 30 days after the appeal was filed.

The Tribunal also considered section 76 of Ontario Regulation 134/98 as amended which states:

76. (2) Unless the parties agree otherwise, a party who intends to produce written or documentary evidence or written submissions, other than reports referred to in subsections 64 (1) and (2), at an oral hearing shall provide copies of that evidence or those submissions to the other parties and the Tribunal,

- (a) in the case of the appellant, at least 20 days before the hearing; and
- (b) in the case of the Administrator and any other parties, at least 10 days before the hearing. O. Reg. 222/98, s. 65 (2); O. Reg. 394/04, s. 18 (1).

In this particular case the Tribunal did receive the Respondent's submission 20 days prior to the hearing, however unfortunately, the Appellant did not receive the Respondent's submission until 2 days prior to the hearing.

The Tribunal found particularly relevant section 76(3) of the Regulation which provides the Tribunal with discretion to choose one of the following three avenues on terms and conditions it considers appropriate

(3) If a party does not produce evidence or submissions in accordance with subsection (2) or subsection 73(2), the Tribunal may, on the terms and conditions it considers appropriate,

- (a) adjourn the hearing;
- (b) refuse to accept the evidence or written submissions; or
- (c) accept the evidence or written submissions.

The Tribunal considered that to refuse the evidence of the Respondent because it was not provided within the prescribed time would be prejudicial to the Respondent and would prevent the Tribunal from reaching a fair and informed decision.

However to be fair to the Appellant who only received the Respondent's submission two days prior to the hearing, the Tribunal indicated to the Appellant that the Tribunal was willing to grant the Appellant an adjournment so that he could have more time to respond to the evidence and arguments provided in the Respondent's submission. The Appellant indicated that he was willing to proceed on the substantive issue.

The Appellant then indicated that he had had adequate time to reply to the Respondent's submission but he requested that the overpayment be dismissed because part of the reason that he had to rely on GWA was because he had been denied UI by the chairperson of the board of referee who has since become a Social Benefits Tribunal member.

With respect to this other concern raised by the Appellant, the Tribunal indicated that the Appellant might question the fairness of this hearing if the Social Benefits Tribunal member who made the decision to deny him Unemployment Insurance in 1995 was the same member to hold this hearing, however this is not the case.

Substantive Issue

The Appellant is appealing the Administrator's decisions to assess and recover an overpayment as a result of income and/or assets in excess of his eligibility. The Appellant want to be released from the obligation to reimburse the Administrator the overpayment.

Background as per the Respondent's submission

The Appellant was a recipient of benefits under the General Welfare Assistance Act from January 1995 to July 1995.

The Appellant applied for General Welfare assistance as a result of his recent unemployment. The Appellant declared that he applied for Unemployment Insurance (UI) pending finding alternate work. The Appellant's spouse had recently left her employment to give birth and had applied for UI maternity benefits. The couple received General Welfare Allowance pending receipt of UI. The couple completed assignment of benefits form as well as repayment agreements to the City.

The Appellant's claim for UI was initially denied. His spouse's claim for UI was granted and was deducted from their General Welfare assistance.

In July 1995 the Appellant was asked to provide his Revenue Canada Tax Assessment, which had been requested at the time of application, but had not been submitted by the Appellant. The Appellant complied with providing the assessment,

which indicated that he was in receipt of rental income. When questioned about the income, the Appellant indicated that he owned property in M. An overpayment in the amount of \$6,458.45 representing the General Welfare assistance the Appellant received from January 1995 to July 1995 was assessed to the Appellant as a result of undeclared income from his rental property, as well as an asset in excess of the allowable level. The Appellant was given notice of the overpayment.

The overpayment assessed in 1995 remained part of the backlog of cases awaiting collection until 2003 when the City was able to review and pursue the collection of the debt. On September 18, 2003 the Appellant was advised in a letter that he had an outstanding overpayment from 1995 which was to be recovered. On August 30, 2005 another reminder notice was sent to the Appellant requesting that he reimburse the City the overpayment in the amount of \$6,007.55 previously assessed on his file.

Another letter from the Administrator dated November 30, 2005 states that his file has been reviewed and the decision to recover the existing overpayment had been upheld.

The Appellant commenced payment of the debt in 2006 by way of post dated cheques of \$75.00 with the exception of a \$150.00 payment in November 2006. The Appellant's current overpayment balance is \$5,107.55.

On May 18th, 2006, the Appellant commenced an appeal with the Social Benefits Tribunal.

Appellant's case

In his submission the Appellant indicated that he was forced to apply for social assistance because he was forced to leave his employment on account of an impending employer bankruptcy and wage arrears amounting to over \$2000. He expected to receive Unemployment insurance benefits but was initially denied around December 1994 based on lack of insurable weeks despite having been previously advised that he would be eligible for benefits.

When he applied for social assistance in January 1995, the Appellant agrees that he did not report a small rental property he owned because it was not making any profit. This property had been bought in April 1988 with a small inheritance from his mother who died in 1986. This property was giving constant trouble and it was the worst possible time to purchase the property because the market started going down rapidly afterwards. They opted to hold on to the property hoping for better times ahead.

In about August 1995 the Appellant had to show his tax return to the Welfare office. This tax return showed details of losses on the property in question however their social assistance was cut off based on what the Welfare office considered to be fraud.

The Appellant feels that the Ontario government rules for calculating the expenses of a rental property were not correct. More specifically he feels that the rules which did not allow mortgage payments to be included in the expenses were not correct since in their case the mortgage payments were the major expense-so according to the government's rules the Appellant was making a profit when in reality, the opposite was true.

On September 23, 2003 the Appellant got a letter from the City of O demanding that the Appellant repay the overpayment of social assistance. The Appellant received another letter dated October 27th, 2003 reiterating the demand along with some supporting documents. The Appellant had previously spoken to Councillor RC about this matter and then met him on Monday, November 24th, 2003. Councillor RC understood and told the Appellant that he would contact the City Solicitor's office with a view of having the claim against him cancelled. After that the Appellant did not hear anything about the overpayment and so thought that everything was well until he received another letter from the City of O on August 30th, 2005. The Appellant again informed Councillor RC of this and pointed out what had transpired in 2003. The councillor communicated with various people but the end result of this was another letter signed by CS dated November 30th, 2005 was received by the Appellant. This letter again reiterated the demand, except at this time the Appellant was able to pay it in instalments of \$75.00 per month. This letter also indicated that the lawyer had provided the Councillor with an opinion that "...the City of O has no jurisdiction or authority to cancel or to forgive the overpayment of financial assistance that Mr. C received in 1995."

The Appellant was not represented by a lawyer at the hearing but the Appellant provided the parties with a lawyer's letter dated February 8, 2006 which states in part:

"It is our position that the provincial legislation in place in regard to reporting of income for purposes of obtaining social assistance contributed directly to an unfair result in Mr. C's case. This legislation restricted Mr. C's ability to claim legitimate expenses relating to his rental property, which would have confirmed that he was not receiving actual income. Specifically, the mortgage payments on the property could not be included, although they constituted the single largest expense relating to the property. This rule is clearly counter-intuitive. The very same money which was adjudged to be income was used to maintain the property which created that income. Yet this expense was determined to be somewhat irrelevant. The fact is simple. Mr. C was losing money on the property, which made his need for social benefits all the more real.

It is important to note that Mr. C advised that he did not hear anything about the alleged overpayment until 2003, more than eight years after the benefits in question had been received. This situation is unacceptable, and the excessive delay in pursuing (sic) the claim clearly serves to prejudice Mr. C's ability to provide a fair challenge to its merit."

Appellant's testimony

At the hearing the Appellant indicated that when he applied for General Welfare Assistance in 1995, he did not declare that he owned an apartment building because he was desperate and concerned about his family ending up on the street because he could not pay rent as he had been denied UI, and he knew that if he had declared that he owned the building, he would not have been eligible for assistance. The Appellant indicated that when he bought the small apartment building in April 1988, he paid \$245,000. He put \$70,000., as a down payment and the balance was mortgaged. The value of the building went down and in May 2000 when the bank reclaimed the building because they were unable to keep up with the payments, the actual proceed from the sale of the apartment building was only about \$150,000.

When asked by the Case Presenting Officer about explaining why the Appellant did not report rental income at the time of his application, the Appellant indicated that he had no real income because the expenses exceeded the income. The Appellant agreed that his gross rental income was about \$25680. per year. The Appellant's view is that the Respondent should only consider net income in order to determine eligibility for assistance and that the legislation is not correct in the way it calculates income.

The Appellant agreed with the Case Presenting Officer that the Welfare office knew that he had applied for Unemployment insurance and so had his wife as she was on maternity leave. The Appellant and his wife signed an Agreement to Reimburse however it is so long ago that the Appellant does not remember what transpired. The Appellant does not agree that his wife's maternity leave Unemployment Insurance should have been budgeted against their social assistance. The Appellant opined that this is another problem with the social assistance program.

Legislation

Ontario Works Act 1997

Recovery of overpayments

19. (1) If an amount has been provided to a recipient under this Act in excess of the amount to which the recipient was entitled, the amount of the excess is an overpayment. 1997, c. 25, Sched. A, s. 19 (1).

Same

(2) If a recipient or a dependant fails to honour an assignment or an agreement to reimburse the delivery agent, the prescribed amount is an overpayment. 1997, c. 25, Sched. A, s. 19 (2).

Recovery of overpayments from other programs

(3) An overpayment enforceable against a recipient or the recipient's spouse under the *Ontario Disability Support Program Act, 1997*, the *Family Benefits Act* or the *General Welfare Assistance Act* is recoverable under this Act even though the overpayment was made by,

- (a) the Director under the *Ontario Disability Support Program Act, 1997*;

- (b) a welfare administrator under the *General Welfare Assistance Act*; or
- (c) the Director under the *Family Benefits Act*. 1997, c. 25, Sched. A, s. 19 (3); 1999, c. 6, s. 50 (2); 2005, c. 5, s. 54 (2).

General Welfare Assistance Act

Ontario Regulation 537

1(1) "liquid assets" means cash, bonds, stocks, the cash surrender value of a life insurance policy, debentures, an interest in real property, a beneficial interest in assets held in trust and available to be used for maintenance, and any other assets that can be readily converted into cash, but does not include,

- (b) an interest in real property used by the applicant or recipient as his principal residence

4(1) In determining whether a person in need is eligible for assistance and the amount of assistance payable or provided to the person, a welfare administrator shall,

- (a) take into account the budgetary requirements of the applicant and any of his or her dependants and the liquid assets and the income that are available

15(1) For the purpose of determining a person in needs and for the purpose of subsection 12(1) and subsection 18(1), the income of an applicant or recipient shall include all payments of any nature or kind whatsoever received by or on behalf of,

- (a) the applicant or recipient

- (b) the spouse of the applicant or recipient where the spouse is living with the applicant or recipient, as the case may be;...

(2) For the purpose of subsection (1) and without restricting the generality of subsection 1, income shall include.

- 15. subject to subsection (7), all payments received by or on behalf of an applicant, recipient or beneficiary under the *Pension Act (Canada)*, the *Unemployment Insurance Act (Canada)*...

but shall not include,

- 17. 40 percent of the gross income as determined by the welfare administrator received from rented self contained quarters

Reasons

The Tribunal was very sympathetic to the Appellant's desperation and need to apply for social assistance in 1995 due to having been denied Unemployment Insurance at the time. The Tribunal considered the Appellant's testimony that at the time of his application for General Welfare Assistance, the Appellant failed to declare that he was the owner of an apartment building because he knew that to do so would make him ineligible for assistance.

The Tribunal considered that the Appellant had put \$70,000 as down payment on the apartment building in 1988 and had been paying mortgage from 1988 to the time of his application for General Welfare Assistance in 1995 and therefore he had equity in the real estate property even though the value may have gone down. The Tribunal considered the Appellant's testimony that the market value went down however when the Appellant lost the property in 2000, the bank was able to sell it for

\$150,000. The Tribunal finds that although the market value of the property went down the value of the property was likely at least \$150,000 and if the Appellant had sold it in 1995 the Tribunal is persuaded that the Appellant would likely have had access to at least the value of the original down-payment. The asset was therefore above the allowable limit at the time of the Appellant's application for assistance.

The Tribunal considered the definition of liquid assets contained Ontario Regulation 537:

1(1) "liquid assets" means cash, bonds, stocks, the cash surrender value of a life insurance policy, debentures, an interest in real property, a beneficial interest in assets held in trust and available to be used for maintenance, and any other assets that can be readily converted into cash, but does not include,

(b) an interest in real property used by the applicant or recipient as his principal residence

Since the Appellant's property was not his principal residence at the time, it was therefore not exempt from being taken into account in assessing the Appellant's level of assets.

The Appellant also had gross income from the property in the amount of about \$25,000 a year and the Legislation in effect at the time did not allow the Administrator to consider all the mortgage payments the Appellant was making and all the expenses incurred in running a building.

The Tribunal looked at s. 15 of Ontario Regulation 534

15(1) For the purpose of determining a person in needs and for the purpose of subsection 12(1) and subsection 18(1), the income of an applicant or recipient shall include all payments of any nature or kind whatsoever received by or on behalf of,

(c) the applicant or recipient

(d) the spouse of the applicant or recipient where the spouse is living with the applicant or recipient, as the case may be;...

(2) For the purpose of subsection (1) and without restricting the generality of subsection 1, income shall include.

15. subject to subsection (7), all payments received by or on behalf of an applicant, recipient or beneficiary under the *Pension Act (Canada)*, the *Unemployment Insurance Act (Canada)*...

but shall not include,

17. 40 percent of the gross income as determined by the welfare administrator received from rented self contained quarters

The above Regulation shows that only 40 % of the income from the rental of self-contained quarters was exempted as income. Even if the Appellant's expenses, including his mortgage payment, were greater, this was all the administrator could exempt from the rental income.

The Tribunal agrees with the respondent that neither the GWA legislation nor the Ontario Works legislation exempts rental income as income or exempts the assets from a property that is not the Appellant's principal residence.

Furthermore, both the Appellant and his wife had signed an Agreement to Reimburse at the time of their application for Assistance as they had applied for Unemployment Insurance. Evidence shows that the Appellant's wife was granted Unemployment Insurance because she went on Maternity leave. Evidence also shows that after the Appellant's benefit unit's General Welfare Assistance was terminated, the Appellant was subsequently granted Unemployment Insurance benefits for the same time period when he was a recipient of General Welfare Assistance. The Unemployment Insurance Benefits the Appellant and his wife received were therefore refundable to the Administrator on receipt. This was not done.

The Ontario Works Act, sections 19 states:

Recovery of overpayments

19. (3) An overpayment enforceable against a recipient or the recipient's spouse under the *Ontario Disability Support Program Act, 1997*, the *Family Benefits Act* or the *General Welfare Assistance Act* is recoverable under this Act even though the overpayment was made by,

- (a) the Director under the *Ontario Disability Support Program Act, 1997*;
- (b) a welfare administrator under the *General Welfare Assistance Act*; or
- (c) the Director under the *Family Benefits Act*.

Subsection 28(11) of the *Ontario Works Act, 1997* states that the onus lies on the Appellant to satisfy the Tribunal that the decision of the Administrator is wrong. In this case, after considering the Appellant's testimony, arguments and written submissions, as well as the documents relied on by the Respondent and the Respondent's written submission and the Respondent's representative's arguments, the Tribunal does not find that this onus has been met. The Tribunal finds that there was an enforceable overpayment that is recoverable under this Act even though it was made by a welfare administrator under the general Welfare Assistance Act.

Had the Appellant not accrued an overpayment as a result of owning an apartment building, and getting income from this building, he would nevertheless have incurred an overpayment because once he signed an Agreement to Reimburse, the Unemployment benefits received by his benefit unit for the period he was on assistance had to be reimbursed to the administrator.

The Tribunal considered that the Appellant is presently not working and the rate of recovery of \$75 per month may be causing his family undue hardship, therefore Appellant should consider renegotiating the amount that he is paying for recovery per month if he finds the amount too high. The Respondent is to cooperate with the Appellant to come to an agreement as to the rate of recovery that would be more manageable for him if the Appellant so requests.

Order

Appeal denied. The decision of the Administrator is affirmed. The Administrator is to cooperate with the Appellant to negotiate a lower rate of recovery if so requested by the Appellant.

H. Buckley-Routh

H. Buckley-Routh
Presiding Member

FEB 23 2007
