



December 21stth, 2006

Mr. Robert Chisholm

[REDACTED]
**Ottawa, Ontario
K2G 1H1**

Tribunal File: **0605-04207**

Dear Mr. Chisholm:

Attached is the City of Ottawa's response to the Social Benefits Tribunal's request for submission.

Should you choose to withdraw your request for a hearing after reviewing the attached information, please contact your client service representative at; **1-800-753-3895 ext. 65905 or fax at 1-416-326-5135.**

Failure to contact the Tribunal will result in a hearing proceeding on January 17th, 2007 at 9:00 AM.

Yours truly,

A handwritten signature in black ink that reads 'R. Fox'.

Richard Fox
Case Presenting Officer
Operations and Program Support
5th, Floor, 100 Constellation Cres.
Ottawa, Ontario
K2G 6J8

CC - Master File
- Mr. Raymond S. MacDonald, (Representative)



December 21st, 2006

Social Benefits Tribunal
1075 Bay Street, 7th floor
Toronto, ON
M5S 2B1

Re: **Mr. Robert Chisholm**

[REDACTED]
Ottawa, Ontario
K2G 1H1

Tribunal File: 0605-04207
City of Ottawa
Date of Birth: [REDACTED]

Issues:

The appellant is appealing the administrator's decision to assess and recover an overpayment as a result of income and/or assets in excess of his eligibility. The appellant is seeking from the Social Benefits Tribunal a review, which would release him from the obligation to refund the overpayment.

Background:

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

The appellant applied for GWA 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 GWA pending receipt of UI. The couple completed assignment of benefit forms as well as repayment agreements to the City.

As the appellant has described in his submission, his claim for UI was initially denied. His spouse's claim for UI was granted and was budgeted from their GWA 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. 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 a rental property in Montreal. An overpayment of

\$6,458.45 representing the GWA 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 his eligibility. The appellant was given notice of the overpayment.

The overpayment assessed in 1995 remained part of a backlog of cases awaiting collection until 2003 when the City was able to review and pursue the collection of the debt.

The appellant commenced payment of the debt in 2006 by way of post dated cheques of \$75.00 monthly 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.

Preliminary Issues:

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

Is the overpayment collectible by the Administrator?

Law - Time within which to commence an appeal:

General Welfare Assistance Act, 11. (1), (2).

11. (1) in this section, "board of review" means the Social Assistance Review Board under The Ministry of Community and Social Services Act.

(2) Any applicant or recipient affected by a decision of a welfare administrator made under this act or the regulations with respect of the payment of a class of assistance prescribed as general in the regulations may by notice mailed within thirty days after he or she receives notice of the decision to the chairman of the board of review request a hearing and review of the decision by the board, and an applicant or recipient who so mails or delivers such request is entitled to a hearing by the board.

Law - Recovery of overpayments:

In the alternative, if the Tribunal decides not to dismiss this appeal solely because the Appellant is out of time, it is the Administrator's position that it is nevertheless entitled to enforce the overpayment.

The Ontario Works Act: states 19. (1), (2), (3) 20. (1), (2).

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.

(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.

(3) An overpayment enforceable against a recipient or the recipient's spouse or same-sex partner 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*.

20. (1) The administrator may recover the amount of an overpayment by deducting it from the recipient's basic financial assistance.

(2) The amount deducted under subsection (1) shall not exceed the prescribed amount unless the recipient agrees to a greater amount being deducted.

Ontario Works regulation 134/98, made pursuant to the Ontario Works Act states:

62. (1) For the purposes of subsections 20 (2) and 23 (3) of the Act, the prescribed amount is,

(a) 10 per cent of basic financial assistance;

Analysis:

The Appellant was given notice of the overpayment in 1995 and again in 2003. The appellant has acknowledged in his submission having received notices of the overpayment repeatedly since incurring the debt, but he believes the overpayment should have been exempt, because his apartment complex was not generating a profit.

The Appellant clearly did not appeal within the 30 day time period set out in the General Welfare Assistance Act. Thus, it is the Administrator's submission that this appeal be dismissed on this basis alone.

The Ontario Works Act and its regulations allow administrator's to enforce overpayments, which were incurred under the General Welfare Assistance Act.

The Appellant was given notice in 1995 when the overpayment was incurred and again in 2003 when the City reviewed the debt. He did not appeal and therefore the administrator's position is that the overpayment remains enforceable.

The appellant's GWA assistance was terminated in 1995 after a review of his Tax Assessment, which indicated that he was in receipt on rental income and an asset, which exceeded his allowable level. The appellant failed to disclose at the time of his application that he was the owner of an apartment complex, and failed to declare his rental income.

The appellant was specifically asked at the time of his application whether he was in receipt of income, the owner of real estate or property, which he's acknowledged denying at the time of his application for assistance.

The appellant has indicated in his submission that he misrepresented his situation at the time of his application because his property was not producing a net income, therefore exempt in his view, from having to be declared.

Neither the GWA legislation nor the Ontario Works legislation exempts rental income as an asset or income.

In addition, the appellant received Employment Insurance, which as he indicated was received as a result of an appeal, months after his GWA file was closed, but chargeable for the same period the appellant received GWA. The appellant was clearly made aware at the time of his application and completed repayment agreements acknowledging his obligation to reimburse the City once the UI was in pay.

The appellant commenced repayment of the overpayment in 2006, having negotiated these payments with the Overpayment Recovery Unit of the City. The arrangements have been satisfactory to the City and no interest or charges have been applied as a result of the settlement.

Conclusion:

The appellant has the onus to show that the overpayment was not assessed properly, or is being improperly collected. The appellant has provided the Tribunal with no statutory authority for his position.

There is no regulation in either the General Welfare Act or the Ontario Works Act, which limits the time that the administrator is allowed in the collection of overpayments. The Ontario Works Act specifically provides the authority for the administrator to collect overpayments created under the General Welfare Act.

The appellant was charged an overpayment because he failed to disclose an asset (apartment complex), and rental income in excess of his eligibility.

In addition, the appellant received Employment Insurance retroactively to the period of GWA, which was not refunded. Funds received from employment Insurance are budgetable for the period intended. Therefore had the appellant not accrued an overpayment as a result of his apartment complex, the outcome of the overpayment would nevertheless remain the same, because his obligation to reimburse the GWA payments once his UI was in pay.

The appellant did not exercise his right to appeal to the Social Benefits Tribunal within the required time frame, therefore the administrator submits that the overpayment remains enforceable against the appellant.

Request:

It is therefore requested that the Social Benefits Tribunal dismiss the appeal of the appellant.

All of which is respectfully submitted.



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- Mr. Raymond S. MacDonald, (Representative)