



Ontario's Watchdog  
CHIEF OF PUBLIC INQUIRY

September 24, 2009

Robert T. Chisholm  
251 Ridgepark Private  
Ottawa, ON K2G 1H1

Dear Mr. Chisholm:

**Re: Our File No. 189373**

This is in response to your submission to our Office, in which you requested that we review a decision of the Social Benefits Tribunal (the Tribunal), dated February 23, 2007. In that decision, the Tribunal upheld the decision of the Administrator to assess and seek recovery of an overpayment of benefits received by you under the *General Welfare Assistance Act*. Our Office has completed our review and has determined that we will not be further reviewing your complaints, for the reasons set out below.

In your submissions to our Office, you stated that you felt that the Tribunal decision is irregular, unfair and vexatious for a number of reasons. You stated that one of the members of the Federal Board of Referees that had denied an earlier claim for federal Unemployment Insurance benefits had subsequently become a member of the same Tribunal that later heard and denied your social assistance appeal. You complained that you did not receive any notice from the City of Ottawa regarding collection of the overpayment amount until October 2008, months after the date of the Tribunal decision, and years after you initially began receiving benefits. You made allegations of unprofessional conduct on the part of certain Tribunal members. Finally, you complained that government "rules" for income determination for the purposes of social assistance benefits are unfair, because you feel that they are rigid and yielded an unfair result in your case.

As our Office has previously discussed with you, the Ombudsman's Office has a mandate to review complaints about the administrative conduct of provincial government organizations. In reviewing decisions of administrative tribunals, such as the Social Benefits Tribunal, we consider such factors as whether the Tribunal complied with existing legislation, whether the decision is based upon the available evidence, whether the Tribunal followed its administrative procedures, and whether adequate reasons were provided for its decision. As discussed, the Ombudsman is not an appeal body and does not have the power to overturn decisions of administrative tribunals, nor to substitute his opinion for theirs.

The Social Benefits Tribunal has a specific mandate to hear appeals of decisions regarding social assistance benefits. Its powers are prescribed by regulations to the *Ontario Works Act*,

Bell Trinity Square  
483 Bay Street, 10th Floor, South Tower, Toronto, ON M5G 2C9  
483, rue Bay, 10<sup>e</sup> étage, Tour sud, Toronto (Ontario) M5G 2C9  
416-586-3300  
416-586-3485 1-866-411-4211

1997, which also set out the amount of financial assistance and method of calculation, the amount and types of income and assets that are considered in the determination of eligibility, and the reasons for which assistance can be refused or cancelled by the administrator. The Tribunal does not have the legislative authority to amend legislation pursuant to which appeals of social benefits decisions can be heard.

As part of our Office's review of your complaint, we examined the Tribunal's February 23, 2007 decision, your written reasons for requesting review, your application for reconsideration and the Tribunal's decisions on your reconsideration requests. We also spoke to relevant Tribunal staff and reviewed relevant legislation and additional documents, including correspondence provided by you and by the Tribunal.

With regard to your complaint about a Tribunal Member having previously served on the Federal Board of Referees that denied your application for federal benefits, you had the opportunity to raise this issue before the Tribunal. The Tribunal considered your complaint but concluded that as the Member in question was not the person to hear the appeal, there was no issue with regard to the fairness of the hearing. As you have not provided any specific information to support your claim of unfairness, our Office will not be further reviewing this aspect of your complaint.

You next complained that the City of Ottawa did not pursue the overpayment of benefits, upheld by the Tribunal, until years after the benefits in question were initially received. As the Tribunal has previously advised you, including in a letter dated November 10, 2008, your file with the Tribunal was closed following its denial of your first request for reconsideration, and is not involved in the overpayment collections process. You may want to raise your concerns about delay to the City of Ottawa's Overpayment Recovery Unit, which is responsible for collection of the overpayment.

You next made allegations of unprofessional conduct on the part of certain Tribunal members, including Roslynn Mains. The Tribunal confirmed that it has received and reviewed your complaints against certain members, including your request for a response to an "ultimatum" that you issued to Ms Mains. You will need to provide specific information to support a claim of bias or unfairness on the part of a Tribunal member. The Tribunal has indicated that it is willing to receive and review any new information that you are able to provide in support of your allegations; in light of this, our Office will not be further reviewing this aspect of your complaint.

Finally, you reiterated your complaints that certain social benefits "rules" are rigid and unfair, in that their application by the administrator led to the assessment of an overpayment as a result of undeclared income and an asset in excess of the allowable level. This was also

the substantive basis of your appeal of the administrator's decision to the Tribunal. As the Tribunal noted in its February 2007 decision, you agreed that when you applied for social assistance benefits, you failed to report a rental property you owned because you were not making any profit from that property, and because you knew that declaring the asset would have made you ineligible for assistance. You complained that social assistance regulations pertaining to the calculation of income are unfair, because in your case, they did not allow you to claim mortgage payments as expenses against any rental property income.

As the Tribunal stated in its decision, the legislation in effect at the time did not allow the administrator to consider mortgage payments as expenses for the purposes of calculating income. Furthermore, since the property was not your principal residence at the time, the rental property was not exempt in calculating your level of assets. As the Tribunal noted, neither the then-*General Welfare Assistance Act* nor the *Ontario Works Act* provides for the deduction of mortgage payments as expenses, or for the exemption of a non-principal residence as an asset. Given this, the Tribunal found that the administrator properly found an enforceable overpayment, and upheld the administrator's decision.

As noted above, the Tribunal does not have legislative authority to amend social benefits legislation. If you have done so already, you may want to raise your concerns about social benefits regulations, as they pertain to the calculation of income and determination of assets, to your Member of Provincial Parliament, who is your representative at the Ontario Legislative Assembly. You may also want to discuss with your lawyer any legal avenues of bringing constitutional challenges against certain provisions of social benefits legislation.

Given all of the above, our review has determined that the Tribunal outlined its consideration of the issues and evidence in accordance with its mandate. Based on the information provided, your file with our Office will now be closed.

Thank you for contacting the Office of the Ontario Ombudsman. Sincerely yours,



Jenny Ryu  
Early Resolution Officer