

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the “Act”);

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent (a “Notice”) by the Superintendent of Financial Services (the “Superintendent”) with respect to an application for withdrawal of money from a life income fund, a locked-in retirement account or a locked-in retirement income fund (a “locked-in account”) based on financial hardship;

AND IN THE MATTER OF a Request for Hearing under subsection 89(8) of the Act.

REASONS

1. The Applicant in this matter made two successive applications to the Superintendent for access to funds associated with a locked-in account in her name. The first application was based in part on medical expenses, one of several criteria of financial hardship prescribed by subsection 87(1) of Ontario Regulation 909, as amended (the “Regulation”), adopted under the Act. The second application was based solely on medical expenses.
2. The first such application, which requested a withdrawal from the locked-in account for medical expenses, was dated February 14, 2007. The Superintendent allowed that application, in the full amount requested, by a Consent dated February 27, 2007.
3. The second application, which requested a withdrawal of an additional amount from the locked-in account for medical expenses, was dated February 27, 2007. The Superintendent proposed to refuse that application by a Notice dated April 13, 2007, on the basis that section 89 of the Regulation precludes the making of more than one application for withdrawal from a locked-in account on the basis of low income during any 12-month period.
4. The Applicant submitted a Request for Hearing, dated May 2, 2007 to this Tribunal in accordance with the Act.

5. The Hearing before the Tribunal in this matter was held by means of the exchange of documents.

6. Section 83(1) of the Regulation defines “medical expenses” as follows:

“medical expenses” means expenses for goods and services of a medical or dental nature including, without limiting the generality of the foregoing, expenses for:

- (a) medical or dental services provided by a hospital or a health care provider,
- (b) services provided by an attendant or by a nursing home to a person suffering a severe and prolonged disability,
- (c) services provided by a caregiver,
- (d) ambulance services,
- (e) travel by a person and a companion to obtain medical services,
- (f) finding an organ donor,
- (g) medical devices such as wheel chairs, artificial limbs and eyeglasses,
- (h) a guide dog or hearing ear dog,
- (i) dentures,
- (j) rehabilitative therapy,
- (k) prescription drugs, and
- (l) diagnostic testing.

7. Both applications made by the Applicant were for medical expenses within the definition of Section 83(1) of the Regulation.

8. Section 89 of the Regulation provides that the Superintendent’s authority to consent to a withdrawal of funds from a locked-in account on applications based on medical expenses is subject to the condition that only one such application may be made during each 12-month period, but an unsuccessful application is not to be counted as an application for the purposes of that limitation. In the present case, as the second application was based on medical expenses and was made within 12 months of the first application, which was made successfully on the same basis, the Superintendent had no authority to approve the second application even if the medical

expenses criteria of financial hardship, which was found to be satisfied on the first application, continued to be met on the occasion of the second application, as may well have been the case. In other words, the Superintendent was not entitled to consider the merits of the second application. This Tribunal cannot consider those merits and direct the Superintendent to act in a manner that is inconsistent with the Regulation.

9. In the circumstances, we must affirm the Superintendent's Notice in respect of the second application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in his Notice of Proposal to Refuse to Consent, dated April 13, 2007, directed to the Applicant and relating to an application dated February 27, 2007 for a withdrawal from a locked-in account of the Applicant.

Dated at Toronto, this 5th day of June, 2007.

"Anne Corbett"

Anne Corbett

Vice Chair

Financial Services Tribunal