

PART C – Decision under Appeal

This is an appeal of a reconsideration decision of the Ministry of Social Development ('the ministry') dated March 19, 2013, in which the ministry determined that it would not consider as an "essential operating cost" the portion of the appellant's mortgage payment devoted to principal repayment, as it applied as an expense against the income from his rental suites. The ministry relied on the Employment and Assistance Regulation (EAR), sections 1, 24, 28 and Schedule B, sections 1, 6(b) and 7.

PART D – Relevant Legislation

EAR sections 1, 28 and Schedule B, sections 1 and 6.

PART E – Summary of Facts

The following information was before the ministry at the time of reconsideration, relevant to the appellant's appeal:

- A title search listing the appellant as an owner of the property in question.
- Bank statements showing monthly mortgage payments of \$1,101.12.
- Utility and tax bills relating to the rental property in question.
- The Request for Reconsideration, which states that the appellant owns 1/3 of the property with monthly property tax of \$139.99, house insurance of \$140, mortgage interest of \$481.34, hydro of \$120 and gas of \$177, totaling \$1212.87. The portion of the residence rented out is 72%, therefore the expenses related to the rental units is \$873.36. Rental income is \$1600 therefore the income is \$1600-\$873.36, or \$726.64. As the appellant is 1/3 owner, his income is \$242.21.
- In his request for reconsideration and notice of appeal, the appellant states that the ministry had previously accepted the inclusion of the principal portion of his mortgage payments as an essential operating cost relating to the income from his rental suites.
- The appellant had requested that gas and hydro costs be annualized and that essential maintenance costs be a permitted expense. These requests were approved at reconsideration, however the ministry did not approve the request to include the principal payment portion of the mortgage as an essential operating cost of the suite.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's decision denying the inclusion of the principal portion of the mortgage payments as an "essential operating cost" as it applies to the calculation of the appellant's unearned income from his rental suites, was reasonably supported by the evidence, or was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Section 28 of the EAR states:

Amount of income assistance

28 Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Section 1 of the EAR states:

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

...

(n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;

Schedule B, section 6 EAR states:

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

Appellant's submission

The appellant and his advocate made three arguments: first, that the ministry permitted the inclusion of the principal payment as an essential operating cost "for years." The appellant referenced the ministry's policy of Administrative Fairness, arguing it was unreasonable to reduce his benefits and that the ministry did not provide adequate reasons.

Secondly, the appellant argues that the principal portion of the mortgage payment qualifies as an essential operating cost. Without the inclusion of principal payments as a deductible expense, the appellant argues that the bank will foreclose on his property; therefore the deduction of this cost meets the definition of "essential."

Finally, the appellant argues that there is ambiguity in the definition of "essential operating costs." As the enabling legislation provides benefits within a social welfare context, he argues that the ambiguity must be resolved in his favour.

Ministry's submission

In a submission received subsequent to the reconsideration decision, the ministry states:

"It is the minister's position that essential operating costs for rental suites include costs that can reduce net rental income for income tax purposes (i.e. interest on the mortgage, strata fees, maintenance, utilities [if they are included in the rent charged rather than paid by the tenant]). It is the minister's opinion that the mortgage principle (sic) is not an essential operating cost."

Reasoning

The facts of this case are not in dispute: the appellant pays a mortgage payment which includes principal and interest portions. A portion of the mortgage payment is related to the suites in his home which he rents out. The ministry permits the appellant to deduct a portion of utility and mortgage interest costs from the rental income in determining his assistance payments. Previously, the ministry permitted the deduction of the principal portion when calculating the appellant's unearned income, upon which his assistance payment was based. The ministry discontinued this practice after a review of the appellant's file.

The panel will first address the question of administrative fairness and whether the ministry is obliged to continue a benefit after it determines that it was provided in error. While a person is entitled to fair and consistent treatment from a government agency, this right does not extend to the provision of benefits in a manner that is inconsistent with the governing legislation. The panel finds the ministry was not unreasonable to discontinue the categorization of the principal component of the mortgage payment as an essential operating cost, once the ministry realized this was not consistent with the EAR.

The panel next turns to whether the ministry was reasonable in finding that the principal component of the mortgage payment was not an essential operating cost. The ministry relied on what is included as operating costs for income tax purposes. It included as examples "interest on the mortgage, strata fees, maintenance, utilities [if they are included in the rent charged rather than paid by the tenant]."

The appellant argues that permitting the expense is essential: without it the banks will foreclose on his property. Further, he argues the definition is ambiguous and should therefore be interpreted in his favour, as the Employment and Assistance Act (EAA) and EAR are benefits-conferring legislation.

In addition to the "essential" nature of expense, the deduction must also meet the definition of "operating." The panel notes that there is no definition of "essential operating cost" in the EAR, the EAA or the Interpretation Act. In the absence of a statutory definition the ministry must rely on the common usage of the term. Subsequent to the reconsideration decision, it stated that it had referenced income tax law in determining what constituted an operating cost. The panel finds this a reasonable definition for the ministry to access. Operating costs are those required in the day to day operation of an endeavor and are distinguished from capital expenditures, which increase the equity position of the owner. The principal portion of the mortgage payment falls in this latter category.

The definition relied upon by the ministry is not ambiguous and is consistent with conventional usage,

therefore the ministry was not obliged to interpret it in favour of the appellant.

The ministry also noted that it pays the appellant shelter allowance of \$367.04 to cover the portion of the mortgage payment related to the appellant's residence. The panel finds that this does not affect its assessment of the ministry's reasonableness one way or the other, with respect its interpretation of what constitutes an essential operating cost under the EAR.

In conclusion, the panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The decision is confirmed.