

## PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Social Innovation (the “Ministry”) dated December 18, 2014, that the Appellant is not eligible for a supplement to pay a security deposit or a supplement to pay for the purchase of co-op housing shares.

## PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (the “Regulation”), sections 43 and 56  
Interpretation Act, section 8

## PART E – Summary of Facts

The evidence before the Reconsideration Officer included copies of a receipt to the Appellant dated May 2, 2014, for \$1,500 for “Shares - [Unit #]” (the “Receipt”); Assumption of Responsibility form of the Appellant’s housing cooperative (the “Co-op”); Ministry Shelter Information form; letter dated June 11, 2014, from the Co-op, bearing the Ministry’s date stamp of June 12, 2014 (the “Letter”); statements of the Employment and Assistance Worker (the “Worker”); and the submission of the Appellant dated December 9, 2014.

Neither the Appellant nor the Ministry tendered further evidence or made further submissions on the Appeal.

Based on the evidence contained in the Appeal Record, the relevant facts are as follows.

1. The Appellant has been receiving disability assistance since 2001. During the time material to this Appeal, his family unit consisted of himself.
2. Due to the Appellant’s disability, he often has difficulty remembering specific conversations and requires assistance to complete application forms, such as an application for a benefit.
3. On or about May 2, 2014, the Appellant acquired shares in the Co-op for \$1,500.00 and paid the June housing charge for a particular unit in the Co-op’s premises (the “Unit”). The Appellant signed the Assumption of Responsibility form which indicates “Share Purchase Price Paid”, confirms receipt of “Housing Charges”, and bears a handwritten note, “Note: Request reimbursement of coop share purchase” and the Appellant’s social insurance number, also handwritten. The panel is unable to determine who made the handwritten notation, the assistance worker, a representative of the Co-op, the Appellant, or someone else, or when the notation was made.
4. The Appellant had difficulty paying the purchase price for the shares.
5. On May 5, the Ministry received the Appellant’s Shelter Information form showing “Client’s Portion of Rental Amount” as \$656.00; “Security Deposit Required” ticked “Yes” with the notation “Shares”; and “Client’s Portion of Security Deposit” as \$1,500.00; signed on behalf of the Co-op on May 2, 2014; bearing the Ministry’s date stamp of May 5, 2014. The panel finds that nothing turns on the assistance worker’s misstatement that the Appellant submitted the Shelter Confirmation (sic) form on May 15, 2014.
6. On May 5 or May 15, the assistance worker observed that the Appellant was acquiring shares in a housing cooperative for \$1,500.00.
7. On May 28, the Appellant moved into the Unit.
8. On June 12, the Ministry received the Letter, written on the Co-op’s letterhead, addressed “To Whom It May Concern”, and signed by the coordinator of Co-op confirming payment of the Appellant’s June housing charge.
9. On June 19, the assistance worker again observed that the Appellant had to pay \$1,500.00 to acquire shares in the Co-op.
10. The assistance worker recounts a discussion with the Appellant on June 20 in which the Appellant confirmed payment of the “shares fee” and stated that he had (in the assistance worker’s words) “submitted the

Shelter [I]nformation form to notify the ministry of his new address and shelter costs.” The assistance worker concludes, “No further action was required.”

11. In August, the Appellant’s health care worker informed him that he could apply to the Ministry for reimbursement for all or part of the amount he had paid for his shares in the Co-op.
12. In October, he received the application forms.
13. On November 13, the Appellant submitted his request to the Ministry for reimbursement of the \$1,500.00 he had paid for membership shares in the Co-op in May and submitted copies of the Receipt and the Assumption of Responsibility form with his request.
14. Without reimbursement, the Appellant anticipates being unable to afford housing in premises owned by the Co-op.

## PART F – Reasons for Panel Decision

### *Issues*

There are two issues.

1. Does the evidence reasonably support the decision of the Minister that the Appellant is not eligible for a supplement to pay a security deposit?
2. Does the evidence reasonably support the decision of the Minister that the Appellant is not eligible for a supplement to pay for the purchase of co-op housing shares?

With regard to both issues, was the decision of the Ministry a reasonable application of the Regulation in the circumstances of the Appellant?

### *Relevant Law*

Section 43 and 56 of the Regulation provide:

#### **Supplement for purchase of co-op housing shares**

**43** (1) To enable the family unit of a recipient of disability assistance to obtain residential accommodation, the minister may provide a lump sum to or for the family unit for the purchase of membership shares in a cooperative housing association.

(2) A lump sum may be paid under subsection (1) only if

- (a) the family unit has received disability assistance or income assistance for at least the 3 previous calendar months, and
- (b) the recipient agrees in writing to repay the lump sum.

(3) The amount of the lump sum under subsection (1) is limited to the smaller of the following:

- (a) \$850;
- (b) 50% of the cost of the membership shares.

....

#### **Supplement to pay a security deposit**

**56** (1) In this section:

**"cooperative association"** means a cooperative association as defined in the *Real Estate Development Marketing Act*;

**"security deposit"** means a security deposit as defined in the *Residential Tenancy Act*, or an amount required by a cooperative association to be paid by a recipient to the cooperative association for the same or a similar purpose as a security deposit under the *Residential Tenancy Act*.

(2) The minister may provide a security deposit to or for a family unit that is eligible for disability assistance or hardship assistance if

- (a) the security deposit is necessary to enable the family unit to rent residential accommodation,

- (b) the recipient agrees in writing to repay the amount paid under this section, and
- (c) the security deposit does not exceed 50% of one month's rent for the residential accommodation.

(3) The minister may recover the amount of a security deposit provided under subsection (2) by deducting \$20 for each calendar month, or a greater amount with the consent of a recipient, from disability assistance or hardship assistance provided to or for the family unit starting with the disability assistance or hardship assistance provided for the calendar month following the calendar month during which the security deposit is paid.

....

Section 8 of the Interpretation Act provides:

### **Enactment remedial**

**8** Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

### *Analysis*

The Appellant submits that he was unaware until August that he was entitled to apply for a supplement to pay a security deposit or a supplement to pay for the purchase of co-op housing shares and that he did not receive the documentation for applying until October. Further, he has difficulty remembering specific conversations and requires assistance to complete and submit such applications. He also submits that the Co-op provides a safe residence, which is important for his mental health, and that reimbursement of the purchase price for the shares will help him pay his “rent” which recently increased.

The Minister relies on the Act, the Regulation, and the reasoning expressed in the Reconsideration Decision.

#### **1. Security Deposit**

A cooperative housing association, such as the Co-op, owns or leases the land on which its members reside. Ownership of shares in a co-op gives the owner membership in the co-op, the right to occupy a part of the land that the co-op owns, and the right to vote on all matters to be decided by members of the co-op. A security deposit, on the other hand, is money that a tenant pays to a landlord which the landlord holds as security for any liability or obligation of the tenant in respect of the rented property.

The Appellant paid \$1,500.00 to acquire shares in the Co-op. He did not pay a security deposit. He did not pay an amount required by the Co-op to be paid for the same or a similar purpose as a security deposit.

The evidence reasonably supports the decision of the Minister that the Appellant is not eligible for a supplement to pay a security deposit. The decision is a reasonable application of the Regulation, specifically section 56, in the circumstances of the Appellant.

#### **2. Share Purchase**

The Ministry’s position is that since the Appellant paid for the shares in May, at the time of the Reconsideration Decision, in December, the Appellant did not “currently require membership shares or the reimbursement of these shares in order to obtain residential accommodation as [he had] already done so.” The Appellant does, in

fact, currently require the shares he paid for in May as a condition of his right to occupy the Unit even though he had made a one-time payment for them in May. Section 43 of the Regulation makes no reference to an applicant for the supplement “currently” requiring or acquiring the shares as a condition for eligibility for the supplement. Subsection (1) of section 43 provides that the purpose of the lump sum payment under the section is “to enable [the recipient] to obtain residential accommodation.” A person, such as the Appellant, receiving disability assistance necessarily has few assets and very limited income. Even though the Appellant managed to purchase his shares in the Co-op, doing so was financially difficult and has had the ultimate effect of jeopardizing his ability to meet his shelter costs. Since ownership of shares in the Co-op is an ongoing condition of the right of the Appellant to reside in the Unit, reimbursement of part of the cost of the shares would serve the purpose of the section. The Appellant anticipates being unable to pay his monthly housing charge to the Co-op. Normally, one way to satisfy that ongoing expense would be to sell his shares in the Co-op. But, if he were to sell his shares in the Co-op, he would be unable to remain in the Unit. The supplement would allow him to retain his shares and continue to pay the housing charge, thus enabling him to obtain accommodation.

The only prerequisites for eligibility for the supplement relevant to this Appeal are that the applicant purchase shares in a cooperative housing association, be receiving disability assistance, and have received it for at least the three previous calendar months. Although previous to what is not clear, the Appellant satisfies those prerequisites since he is receiving disability assistance and has done so since 2001, and he has purchased his shares in the Co-op. Section 43 leaves it open to the Ministry to provide a lump sum advance for a purchase of shares or to provide a lump sum to reimburse the applicant for an earlier purchase of shares. The section establishes no time limit for the Ministry to provide the lump sum. Understandably, the longer a delay in requesting lump sum reimbursement, the less likely that the Ministry will exercise its discretion in favour of the applicant under section 43. A delay in applying for a lump sum payment must not be unreasonable. Once the Appellant learned in August that he could apply for the supplement, he appears to have acted promptly to apply for it. There is no evidence in the Record to indicate why he did not receive the application forms until October. The evidence does not reasonably support the decision of the Ministry that the Appellant is not eligible for a supplement to pay for the purchase of co-op housing shares.

Even though it did not receive the Receipt and the Assumption of Responsibility form until November, the Ministry knew as early as May 15 that the Appellant had paid \$1,500.00 to acquire shares in the Co-op. To acquire status under the Employment and Assistance for Persons With Disabilities Act as a person with disabilities, the person must necessarily have a significant disability. Since the hearing of this appeal was a written hearing, the panel did not have the opportunity to inquire into the exact nature of the Appellant’s disability. However, his uncontradicted evidence that he often has difficulty remembering specific conversations and requires assistance to complete application forms, such as an application for a benefit, leads the panel to conclude that he has a serious cognitive disability. Since it has been providing disability assistance to the Appellant since 2001, the Ministry knew or ought to have known that the Appellant, without guidance from the Ministry, might not be aware of his eligibility to request a supplement to defray the cost of the shares and would need assistance to apply for the supplement. That the Appellant stated that he submitted the Shelter Information form “to notify the ministry of [his] new address and shelter costs” is immaterial. The Ministry requires the form for that purpose. The Appellant’s statement does not indicate that he was content in paying for the shares without contribution from the Ministry and does not support the conclusion that “no further action was required.” The Record shows that on five occasions, two of which preceded the Appellant moving into the Unit, the assistance worker, an employee of the Ministry, received information or noted that the Appellant was purchasing shares in the Co-op, yet said nothing about the availability of a supplement. Further action was required: applying under section 43 for a supplement. The Appellant’s delay in applying for the supplement appears to have been a factor in the Ministry’s decision. The Appellant has provided a reasonable explanation

for the delay.

Further, particularly since under section 43 a person may apply for the supplement before or after purchase of the shares, the Interpretation Act requires a “fair, large and liberal construction and interpretation” of remedial legislation such as the Employment and Assistance for Persons with Disabilities Act, including the Regulation, as best ensures the attainment of the objects of the legislation. Since these enactments have the benevolent object of providing assistance to persons with disabilities, a section that admits of more than one interpretation should be construed in favour of the Appellant.

The decision of the Ministry that the Appellant is not eligible for a supplement to pay for the purchase of co-op housing shares was not a reasonable application of the Regulation in the circumstances of the Appellant, particularly in view of the right of the Ministry under section 43(2)(b) to require that the Appellant repay the supplement.

### *Conclusion*

Based on the foregoing analysis, the panel finds that the Reconsideration Decision that the Appellant is not eligible for a supplement to pay a security deposit was reasonably supported by the evidence and was a reasonable application of the Regulation in the circumstances of the Appellant. The panel further finds that the Reconsideration Decision that the Appellant is not eligible for a supplement to pay for the purchase of co-op housing shares was not reasonably supported by the evidence and was not a reasonable application of the Regulation in the circumstances of the Appellant.

Since the Reconsideration Officer presented the decisions on the two issues as a single decision, the panel rescinds the decision.