



**Social
Benefits
Tribunal**

APPELLANT

Appellant's Representative

Adrian Merdzan

RESPONDENT

Respondent's Representative

Director, Ontario Disability Support Program
Geoff Baker

PRESIDING MEMBER

Jonelle Van Delft

Hearing Date

September 27, 2022

SBT File No.

2106-02871

DECISION

ISSUE

[1] The Appellant appeals the Director's March 19, 2021, decision to suspend her benefits for failing to provide information in regard to living in a spousal relationship.

DECISION

[2] Based on the preliminary issue, the Appellant was denied procedural fairness when asked to provide information to prove her ongoing eligibility. The Director's decision, dated March 19, 2021, is rescinded.

PRELIMINARY ISSUE

[3] The Appellant also raises a preliminary issue: does the Director's decision to suspend the Appellant from ODSP on the same day as its Request for Information dated March 19, 2021, violate the duty of procedural fairness owed to the Appellant?

[4] The following facts are not in dispute. On March 19, 2021, the Director requested information from the Appellant for a determination of her eligibility for assistance. On

this same day, March 19, 2021, the Appellant's benefits from the Ontario Disability Support Program (ODSPA) were suspended.

[5] The Appellant's Legal Representative submits that the Appellant had a legitimate expectation that she would have until April 18, 2021, to submit documents to the Director.

[6] In the Request for Information dated March 19, 2021, (which forms the basis of the suspension decision) the Director notes a list of documents that they require from both Mr. X and Ms. Y by April 18, 2021:

"It is very important that you send us your information by April 18, 2021. If we do not receive this information, we may have to stop your income support and other benefits, such as drug or dental. If you need more time to send us your documents, please contact your caseworker right away."

[7] If, in fact the Appellant failed to meet the Director's request for information, Appellant's Counsel submits that, only then could a decision be rendered by the Director suspending the Appellant's benefits for "failing to provide information."

[8] I refer to Appellant's Counsel's Submissions at paragraph 21, "The duty of procedural fairness is flexible and variable, involving a contextual inquiry into the particular statute and the rights affected. In the leading case of *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras 22-28 the Supreme Court set out a list of five non-exhaustive factors to consider in the inquiry: the nature of the decision, the nature of the statutory scheme, the importance of the decision on the individual, the legitimate expectations of the individual, and respect for the procedural choices made by the decision-maker."

[9] Appellant's Counsel submits, "three of the five *Baker* factors weigh in favour of granting the Appellant a significant level of procedural fairness. First, the decision to suspend the Appellant from receiving ODSP benefits, the only monthly income that she relies on to survive, is of the utmost importance to the Appellant and her livelihood. The Supreme Court notes that this is a "significant factor" in determining the content of

procedural fairness owed: "The more important the decision is to the lives of those affected and the greater its impact on that person ... the more stringent the procedural protections that will be mandated" (*Baker* at para 25). Second, the nature of the decision to suspend the Appellant from ODSP resembles judicial decision-making because the determination was adjudicative and based on legislative authority rather than based on policy (*Baker* at para 32)."

[10] Third, the Appellant had a legitimate expectation that the procedure outlined in the March 19, 2021 Request for Information would be followed before a suspension decision was made. As noted by the Supreme Court, government representations that give rise to a legitimate expectation must be "clear, unambiguous and unqualified", procedural in nature, and within the scope of authority of the government official who makes them.³³ Proof of reliance is not required, rather "[i]t will be a breach of the duty of fairness for the decision maker to fail in a substantial way to live up to its undertaking."³⁴ In the Request for Information, the Director states: "It is very important that you send us your information by April 18, 2021. If we do not receive this information, we may have to stop your income support and other benefits, such as drug or dental. If you need more time to send us your documents, please contact your caseworker right away."

[11] According to Appellant's Counsel, this representation by the Director indicates that a failure to send information *by April 18, 2021*, will result in an ODSP suspension. Counsel submits, a review of these *Baker* factors demonstrates that the Appellant should have been afforded a significant degree of procedural fairness. The specific procedural fairness right that was owed in this case was the right to provide submissions via oral or written evidence to the Director before her ODSP was suspended, in accordance with the Director's own direction in the March 19, 2021, Request for Information. According to Counsel, this window of time could have allowed Ms. Y to have the opportunity to explain to the Director that Mr. X was her caregiver and not her spouse, ideally orally since Ms. Y requires literacy-based support. Instead, the confusion and disarray created due to her immediate suspension from ODSP, the benefits she has relied on for over 20 years, exacerbated her stress, worsened her

disabilities, and left her without a caregiver in a misguided attempt to cooperate. This distress could have been avoided had the Director abided by its own representation that she would have an opportunity to submit evidence.

[12] The Director concedes on the Appellant's point of procedural fairness. The Director ought to have issued the decision to suspend the Appellant's benefits after the timeline she had been provided (after April 18, 2021). However, he argues, that granting the appeal on this basis would only result in a new decision, retroactively suspending the Appellant's benefits to April 2021 to the present because, despite the evidence submitted to date, she still has not "cured" the decision that she is living in a spousal relationship.

[13] Counsel for the Appellant submits that a new decision to suspend can only be based on a new request for specific required information to determine her spousal status. Only after the Appellant has delivered that specific information, much of which is already before the Director, can the Director then make a decision to suspend the Appellant's benefits. That decision can then be appealed, and the Director will have to provide what it is about the information provided by the Appellant that makes it issue impossible to determine her eligibility. It won't be enough then to suspend her benefits because she failed to provide information.

[14] I agree with Appellant's counsel in this regard. There is no future decision, retroactively dating back to the April 2021 before the Tribunal. If I accept the Director's position that there will be, that decision and the rationale behind may be very different than the one before the Tribunal today.

[15] I am dismissing the Appeal on the basis of the preliminary issue. The Appellant was denied procedural fairness in the Director's decision to suspend her benefits on March 19, 2021. No further hearings will be scheduled in this matter.

ORDER

[16] The Director's March 19, 2021, to suspend the Appellant's benefits is rescinded.

JONELLE VAN DELFT
Signed by

October 7, 2022
Date issued