



**Social
Benefits
Tribunal**

APPELLANT

Appellant's Representative

████████████████████
Sara Ageorlo

RESPONDENT

Respondent's Representative

Director, Ontario Disability Support Program
by Written Submission

PRESIDING MEMBER

Catherine Holtz

Hearing Date

July 12, 2023

SBT File No.

2209-04255

DECISION

ISSUE

[1] The Appellants disagree with the Director's August 9, 2022 decision under the *Ontario Disability Support Program Act* (the *Act*) to assess an overpayment in the amount of \$6,635 for the period of January 2022 to May 2022, divided between them equally. The Director held that this overpayment was a result of unreported federal income. The Appellants further disagree with the Director's resulting decision under the *Act* to reduce their assistance in June 2022 for overpayment recovery.

[2] The issues before the Tribunal are whether the decision to assess the overpayment was correct, whether the amount of the overpayment was correct, and if there are any circumstances affecting recovery of the overpayment. If a valid overpayment is found to exist, the Tribunal is also faced with the issue of whether or not the resulting June 2022 reduced payment regarding recovery was correct.

DECISION

[3] The appeal is granted. The assessment and calculation of the overpayment for the period of January through May 2022 was incorrect. Accordingly, the overpayments attributable to each of the Appellants are not recoverable.

REASONS

Respondent's Position

[4] The Director submitted that two letters were sent to the Appellant HO on January 28, 2021 and June 28, 2021 requesting that he apply for OAS benefits. On file review on June 22, 2022 it was discovered that Appellant HO had been in receipt of OAS and GIS benefits since January 2022, which had not been reported to the local ODSP office.

[5] It was found that the Appellants were ineligible for ODSP as their total OAS/GIS income exceeded ODSP entitlement. The overpayment calculation submitted with their original written submissions noted the OAS/GIS was charged against the income support at a rate of 100% as per section 37 of *Ontario Regulation 222/98*. They noted the original entitlement issued was \$1,327 each month between January and May 2022, with OAS/GIS income of \$1,656.53 received each of those months.

[6] An overpayment of \$6,635 for the period of January 2022 to May 2022 was thereby assessed and divided between the spousal Appellants equally, with a decision letter sent to them that same day. That decision was upheld on March 28, 2023, following the requested internal review.

[7] The Director submitted that the Appellants had not demonstrated through evidence that the income amounts reported from Service Canada were incorrect and that they had not discharged their onus to prove that the Director's decision was wrong under section 23(10) of the *Act*.

[8] Two subsequent revised overpayment calculations were provided by the Director, with no explanation for the changes contained therein. The first revised calculation still assessed the overpayment at \$6,635 with the Appellant's having been issued \$1,327 per month from ODSP while receiving OAS/GIS benefits in excess of that amount for the months of January through May 2022; however, the director noted under "Earnings

Deduction” arrears income of \$400.47 per month – which is unexplained and not contained in either of the other two calculations. The second revised calculation noted the original ODSP entitlement issued was \$2,057 per month, seemingly increasing the overpayment calculation to \$8,282.65 after deducting \$1,656.53 of OAS/GIS income each month, despite their prior assertion that the Appellants were only receiving \$1,327 per month from ODSP.

[9] No submissions were made by the Director regarding the June 2022 reduction in ODSP benefits paid as a result of overpayment recovery.

Appellant’s Position

[10] The Appellants’ representative submitted that on May 5, 2021 the Director sent a letter to Appellant HO requiring him to sign an authorization to allow the ODSP office to communicate with Service Canada regarding OAS, and to sign a Consent to Deduction, allowing ODSP to deduct the OAS benefit amounts.

[11] Appellant HO signed the provided forms on May 20, 2021 and promptly returned them to the ODSP office. The service note from the local ODSP office on June 14, 2021 indicated the consent to deduction had originally been mailed to the wrong location and was re-mailed to the correct address on that date.

[12] The Representative further submitted that the Appellants’ ODSP benefits had already been reduced as of January 1, 2022, which suggested to the Appellants that the OAS/GIS income was being properly deducted at that time, with nothing further required of them.

[13] Appellant AK testified that prior to January 1, 2022 she and Appellant HO received a total of approximately \$2,050 per month; however, bank records submitted confirm that they were only receiving \$1,327 per month as of January 2022.

[14] The Representative submitted that the appeal should be successful and the overpayment found unrecoverable for any one of three reasons, being that the Director failed to provide sufficient details of the case the Appellants needed to meet – barring procedural fairness, that the overpayment calculated was incorrect, and that even if the overpayment was correct, that it was due to administrative error.

Analysis

[15] In coming to its decision, the Tribunal has considered all of the available evidence, including both the Appellants' and Respondent's submissions, and the Appellant AK's sworn testimony.

[16] Insufficient evidence was provided by the Director to address why the Appellants' ODSP benefits were reduced as of January 2022, or why they provided three different, internally inconsistent overpayment calculations.

[17] The Appellant HO signed the authorization and the consent for deduction of OAS on May 20, 2021, which was acknowledged by the local ODSP office on both May 28 and June 14, 2021. The letter from the Director dated May 5, 2021 which accompanied these forms did not indicate that the Appellants needed to provide any further information or disclosure regarding OAS income after returning the sign authorization and consent.

[18] The Director required Appellant HO to apply for OAS and GIS, and he did so. They required him to sign an authorization to allow them to communicate with Service Canada for OAS, and he did so. The Director required him to sign a consent for the deduction of OAS benefits received from Service Canada, and he did so. The local office was aware that these documents were signed by mid 2021, approximately one year before they stated the OAS/GIS income was discovered in June 2022 upon file review.

[19] The Director reduced the Appellants' ODSP benefits from the \$2,057 entitlement they indicated the Appellants had in their second revised calculation (consistent with Appellant AK's estimation of \$2,050 being received previously), to the \$1,327 actually received commencing January 2022, when Appellant HO began to receive OAS. However, no explanation for this change or how this change did or did not impact the Director's overpayment calculation was provided by the Director.

[20] The Tribunal is unable to ascertain how the initial reduction in benefits as of January 2022 were determined and then the further overpayment was calculated in accordance with the Act. This case involves complex legislation and it should not fall to the Appellants, being

two elderly individuals with limited English language skills and disabilities, to determine the correct calculation.

[21] The Appellants have discharged their onus and persuaded the Tribunal that it was more likely than not that the Director's decision was incorrect, that the calculation of the overpayment was incorrect, and any assessed overpayment should not be collectible.

[22] Given that the Tribunal finds the assessed overpayment to be incorrect and unrecoverable, it need not go on to assess the merits of the secondary issue of the overpayment recovery from the reduced June 2022 benefits.

ORDER

[23] The decision to assess an overpayment for the period of January through May 2022 was incorrect and the calculation of the overpayment was also incorrect. The Appeal is granted and the Director's decision is rescinded. Any overpayment shall not be recovered and any amounts already recovered from the Appellants shall be returned to them forthwith.



Signed by Catherine Holtz

Date issued July 19, 2023