

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the “Act”);

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the “Superintendent”), dated December 21, 2001, with respect to an application for withdrawal of money from a life income fund, 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 Hearing under subsection 89(8) of the Act;

REASONS

FACTS

The Applicant in this matter filed an Application for Consent to Withdraw Money from an Ontario Locked-in Retirement Account, Life Income Fund, or Locked-in Retirement Income Fund (the “locked-in account”) based on Financial Hardship (the “Application”). The Applicant applied to withdraw \$2,104.37 to pay for medical expenses and an additional amount of \$1,660.80 for medical expenses anticipated to be paid over the 12 months following the date the Applicant signed the Application for a total amount of \$3,765.17. The amount of \$2,104.37 was in respect of medical expenses incurred and paid or payable by the Applicant for prescription drugs and hospital expenses. The amount of \$1,660.80 was in respect of the premium the Applicant intended to pay for drug and extended health care coverage for the coming year.

Consent was issued by the Superintendent to the Application that authorized the withdrawal and payment to the Applicant of the amount of \$3,466.77 from his locked-in account. The withdrawal was authorized on the basis of the information and accompanying documentation the Applicant provided which included the amount of a hospital bill: \$2,104.37, an additional amount for the Applicant’s medical prescriptions for the past year: \$681.20, and another \$681.20 for medical expenses the Superintendent determined would be payable for the 12 months following the date the Applicant signed

his Application.

On December 21, 2001, the Superintendent issued a Notice of Proposal to Refuse to Consent to the Application for \$298.40, the difference between the amount the Applicant requested to withdraw in his Application, \$3,765.17, and the amount in the consent, \$3,466.77 for the reason that none of the documentation submitted with the Application supported the granting of consent to withdraw any amount in excess of the \$3,466.77 amount allowed. With respect to the Applicant's documentation relating to the cost of a drug plan and extended health plan coverage, the Superintendent stated in the Notice of Proposal that premium amounts paid in respect of such coverage do not constitute medical expenses incurred and claimed under such plans. The Superintendent's consent only authorized the withdrawal of amounts to cover expenses related to prescriptions or hospital expenses actually incurred or to be incurred.

The Applicant filed a Request for Hearing, dated January 24, 2002 with the Financial Services Tribunal (the "Tribunal") with respect to the Superintendent's Notice of Proposal to Refuse to Consent to his Application.

ISSUE

The issue in this proceeding is whether the Superintendent should have consented to the payment of the cost of the premium for drug plan and extended health plan coverage as had been set out in the Applicant's Application

Pension Benefits Act

Subsection 67(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "Act") generally prohibits the commutation or surrender of a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement. Subject to express exceptions in the Act, assets related to benefits accrued under a registered pension plan are meant to provide retirement income. Property division and payment of support orders under the *Family Law Act* are such exceptions under the Act. Subsection 67(5) of the Act provides a further exception to this general rule in circumstances of financial hardship, stating:

67(5) Despite subsections (1) and (2), upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

The circumstances of financial hardship in which the Superintendent may consent to such applications are prescribed by section 87(1) of Regulation 909, R.R.O. 1990, as amended (the "Regulation"). The Application in issue in this proceeding was based on withdrawal for medical expenses, in accordance

with paragraph 3 of subsection 87(1) of the Regulation which states that:

The owner, his or her spouse or same-sex partner or a dependant has incurred or will incur medical expenses for treatment of the illness or physical disability of any of them, and the expenses claimed are reasonable and are not subject to reimbursement from any other source.

“Medical expenses” is defined under 83(1) of the PBA Regulation, as:

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

- (a) medical or dental services provided for by a hospital or a health care provider,
- (b) services provided by an attendant or by a nursing home to a person suffering from a server 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 by 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, and
- (k) diagnostic testing;

It is the Superintendent’s submission that premiums paid in respect of drug and extended health coverage do not constitute “goods and services of a medical or dental nature”. Such amounts are not paid to a doctor, dentist, hospital or other health care provider but are paid to an insurance company providing the coverage. Premium amounts are payable regardless of the actual amount of any expenses incurred and are, in fact, payable even if no expenses are incurred. However, it is clear from a plain reading of subsection 83(1) of the Regulation that the definition or list of “medical expenses” is broad and is not exhaustive. The issue is, whether or not the premiums paid for a drug plan or extended

health insurance coverage that pays for or reimburses an insured for prescription, medical or hospital expenses can themselves be characterized as permitted “medical expenses” so as to permit the Applicant access to his locked-in funds to pay for such premiums.

It is the Tribunal’s determination in the case of the Applicant that such premiums are such a permitted medical expense. The Applicant suffers from a host of serious and debilitating ailments that are chronic in nature. He has had frequent hospital stays, has undergone numerous surgical procedures and must take a variety of costly prescription medications. In the case of the Applicant, for the coming year, the Tribunal accepts that the costs that will be incurred by the Applicant to address his medical condition may exceed the cost of the premium for coverage. To uphold the Superintendent’s Notice of Proposal could as a consequence, require the Applicant to deplete his locked-in funds at a faster rate than otherwise required.

Accordingly, on the basis of the facts specific to the Applicant, and having regard to the open and non-exhaustive definition or list of “medical expenses”, the Tribunal hereby directs the Superintendent to refrain from carrying out the Notice of Proposal dated December 21, 2001, and refers the matter of the Applicant’s Application to the Superintendent for re-determination on the basis of this Order.

DATED at Toronto, this 20th day of June, 2002

“Martha Milczynski”

Martha Milczynski
Chair, Financial Services Tribunal