

ISSUES WITH LONG-TERM CARE RATE REDUCTIONS¹

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In Ontario, income level is not a bar to admission to long-term care. Where the resident has a low income, they are entitled to apply for a rate reduction which will bring the rate down from the maximum rate to one that is based upon their income.

Long-term care homes are required to set aside a minimum of 40% of their rooms to be offered at a basic rate, no matter the layout of the room. While some homes only have “private” rooms, at least 40% of these must be offered at the basic rate. Rate reductions are only available for rooms offered at the basic rate.

Rate reduction applications are generally based on the resident’s income only, without considering the assets owned by the resident. Residents are required to maximize any government income for which they might qualify, such as Old Age Security, Guaranteed Income Supplement, ODSP, etc.

For most long-term care residents who are over age 65, the rate reduction is standard and there are usually no problems. The rate reduction will also be standard if a resident who is over age 65 has a spouse who is also over age 65 and in receipt of OAS benefits. In such circumstances, the resident or someone acting on their behalf will provide the home with a copy of the previous year’s Notice of Assessment, and the basic accommodation rate will be calculated based on the resident’s income less the “comfort allowance” (currently \$136/month), up to a maximum amount (presently \$1707.59).

However, there are situations where this simple application and calculation does not apply. Unfortunately, we have found that staff in homes whose role it is to assist the resident and their family/substitute decision-maker in completing the documentation are not always properly trained, resulting in incorrect reductions. This often causes residents and their families unnecessary financial difficulties and stress.

The following is a guide to some of the common problems related to the rate reduction scheme in long-term care homes.

¹ While this paper discusses the specific issues in long-term care, the problems are similar for chronic care copayment in hospital. The biggest difference between the two is the documentation requirement and the allowance for dependents, which is more generous in the hospital setting.

1. TIMING OF APPLICATION

Applications for rate reductions are made upon admission to the home (or to basic accommodation if the person is transferring from another accommodation level) and annually thereafter (usually in July of every year). Rate reduction applications can also be made if there is a change in income during the year - for example, if a person turns 65 and starts receiving Old Age Security benefits.

2. ADMISSION AGREEMENT

Homes will often try to make family members or substitute decision-makers “guarantors” or personally responsible for the fees of the resident. This is neither required nor necessary. Accommodation fees are the responsibility of the resident, not anyone else (except for sponsored immigrants).² In fact, under the *Long-Term Care Homes Act* regulations, ACE believes that homes are not allowed to make substitute decision-makers “guarantors”.³

Those signing on behalf of a resident, such as attorneys or guardians of property, are required to manage the resident’s money in accordance to the law, but are not required to use their own money. Where a third party, such as a family member, is agreeing to be responsible for **preferred accommodation** (private or semi-private accommodation), they should enter into a separate agreement for the amount that they are supplementing.

3. INVOLUNTARY SEPARATION

Involuntary separation is a recognition that spouses are living separate and apart due to one of the couple having health issues requiring them to reside in a care facility. Normally, the amount of the Guaranteed Income Supplement (GIS) is determined based upon the couple’s income. A couple’s benefits under the GIS are less than two single people. However, when one member of the couple is living in a care facility (such as a long-term care home) they will be treated as two single people **for the purpose of determining GIS only**.

Unfortunately, residents and their families are often told to apply for this despite the fact that they are not eligible. Involuntary separation is available only where both spouses are over the age of 65 and in receipt of Old Age Security. There is **NEVER** involuntary separation where one of the couple is under the age of 65.

² If a resident is still under a sponsorship agreement, there is a requirement that the sponsor pay for care O.Reg. 79/10 s. 249(2)4. To date, the ability to enforce this requirement is unclear.

³ What is allowed to be included in an agreement for basic accommodation is strictly regulated by *Long-Term Care Homes Act* s. 80 & O.Reg. 79/10 s. 227, and does not include guarantors.

4. SPOUSES AND OTHER DEPENDANTS

Rate reductions are available in certain circumstances where the resident has a dependant spouse or child residing in the community, in recognition that the dependants are reliant on the resident's income.

(a) Spouse as Dependant

For a spouse to be a dependant, he/she must be:

1. Under the age of 65, OR
2. Not eligible to receive regular Old Age Security benefits.

In most cases, spouses over the age of 65 would be in receipt of Old Age Security benefits and therefore NOT eligible for a reduction as a dependant. If the spouse is over age 65, they must apply for Old Age Security benefits and be turned down or show proof as to why they are not eligible for such benefits in order to be considered for a dependant reduction.

If the spouse is between the ages of 60-64 and are in receipt of the Spousal Allowance, they are still eligible to apply for a dependant reduction.

Before applying for the deduction for a dependant spouse, always first calculate the reduction for the resident only. After that calculation is done, only submit an application if the reduction would **lower** the rate for the resident. For example, if a resident is under the age of 65, they may have no income as they may not qualify for any government benefits, not have any private disability benefits, and not qualify for ODSP benefits. Their rate would already be \$0, so there is no need to apply for a reduction for the spouse. However, if the situation is reversed, where the resident has an income but the spouse does not qualify for Old Age Security and has no other income, an application would be made to reduce the resident's income rate. The amount of the available reduction is equivalent to what the spouse would receive if they were on Old Age Security.⁴ In order to receive the reduction, you have to apply by completing "Schedule A" to the Application for Reduction in Long-Term Care Home Basic Accommodation.

(b) Children as Dependants

There are also further reductions available for children up to the age of 18 or up to 25 if they are still in school and financially dependant on the resident.⁵ The application to complete is "Schedule B" to the Application for Reduction in Long-Term Care Home Basic Accommodation.

⁴ Presently the amount deducted to support the first dependant which is usually the spouse is \$1320.95. O.Reg. 79/10 s. 253(10)1.

⁵ O.Reg. 79/10 s. 251(1)(b). Amounts deducted for second and subsequent dependants is \$569.53.

5. DOCUMENTATION

When a resident applies for a rate reduction, they will be asked for the previous year's Notice of Assessment. The Notice of Assessment is a summary of your Tax Return you receive from Revenue Canada after you file your income taxes. For this reason, it is important that every long-term care home resident files their income taxes on time annually.

However, there are times when the Notice of Assessment will not reflect the person's actual income.

(a) Change of Income Prior to Admission/First Year

Upon admission, the person's income, or their spouse's income (when applying for a dependant deduction), may not be reflective of the prior year's income. For example, the person may have worked the previous year or have cashed out RRSPs not knowing they would be applying for long-term care, etc.⁶

In this case, even though the resident has a Notice of Assessment, they would complete an "Application for Rate Reduction in Long-Term Care Home Basic Accommodation – Resident without Notice of Assessment (NOA)" because the Notice of Assessment is not reflective of their present income. The resident will be required to obtain a "Service Canada Rate Letter"⁷ or other document⁸ to be included with the application to show the actual amount of the resident's present income.

Applications that are completed within 90 days of admission to long-term care can be approved through the regular process. If the application takes longer, the Director can approve the rate reduction back one year. If the process takes longer than one year, or you find out about the error after the fact, we recommend that you seek legal advice to help you resolve any issues.

(b) Change in Income After First Year

In these circumstances, you will be completing an application using the "Application for Reduction in Long-Term Care Home Basic Accommodation – Resident with a Notice of Assessment (NOA)".

Depending on the type of change in income and the reason for the change, you may still be able to have the actual income used. In this case you may be requested to provide either a "Service Canada Rate Letter" or an "Option C Printout".

⁶ When an RRSP is cashed out, it becomes income and will affect the following year's reduction as well as

⁷ This will prove income from a Federal Government source, such as OAS, GIS, CPP.

⁸ The documents needed to prove different incomes are outlined on the application form.

A Service Canada Rate letter is explained above and is obtained from Service Canada.

An Option C Printout is obtained from the Canada Revenue Agency. It is a more detailed breakdown of the information in the Notice of Assessment. This may be used, for example, to prove that you are no longer receiving a certain benefit and the amount of that benefit.

(c) Other Supporting Documents

There are occasions when other supporting documents may be required or used to show income. These may include:

- T4 Slips
- letters from official agencies stating that you are or are no longer in receipt of certain benefits
- ODSP Decision Letters showing eligibility/ineligibility
- Ministry of Revenue Rate Statement Letter for Gains
- OW or ODSP Cheque Stubs
- Worker's Compensation Letter
- Foreign Country Letter
- Regie de rentes Quebec Rate letter
- Private Insurance Letter
- Currently Applicable Court Order or Support Letter where support payments are due or owing
- Assistive Devices Receipt to have income excluded where income (usually an RRSP) are used to purchase an Assistive Device
- LTCH Accommodation Receipt for residents who elect to have income excluded that was used to pay for LTCH Accommodation

6. NO/SMALL INCOME

In a few unusual circumstances, residents may have little or no income due to ineligibility for public benefits. In these circumstances, residents need to complete the required rate reduction application, and their accommodation rate will be reduced accordingly. Residents will have the comfort allowance deducted from any income they receive. Where residents have no income, they will have no comfort allowance.

7. DEBTS OWING

There is no rate reduction available where the resident owes money elsewhere. The only exceptions are for support payments to spousal and child dependants as indicated above, or where RRSPs are cashed to pay for an eligible Assistive Device. Where residents are contemplating cashing an RRSP for the purchase

of an Assistive Device, we highly recommend getting advice prior to doing so, given potential impact on the resident's future benefits.

Residents may unexpectedly be admitted to long-term care homes, while having large mortgages, car payments, credit card bills, etc. There is no reduction for these debts. There is no deduction available for the purpose of paying these bills, even if the person is legally responsible for them. If there is a spouse in the community, this can put them in a precarious position, as they may be facing financial problems as they cannot pay for these bills themselves. We recommend that the spouse seek advice on these matters immediately.

Residents who find themselves in these situations may have less of a problem. Government benefits (OAS, GIS, GAINS, CPP, ODSP, OW), are non-garnishable: this means that, for the most part, even if you owe money and your creditor wins at court, they cannot take the money (garnish) from any of these sources.⁹ If you have other income or assets, they may be able to collect from those. However, if you owe the Canada Revenue Agency money, they will be able to collect from you. Support payments will also continue to be deducted unless you go back to court and get a new order.

However, it is important for you to know that you cannot be discharged (evicted) from a long-term care home for non-payment of fees. This does not mean you should not pay your fees. However, if you do find yourself in arrears for reasons beyond your control, you cannot be kicked-out. As long as no one else has agreed to be responsible for your fees (not signing as a guarantor or responsible party) then they cannot be sued for those fees either.¹⁰

CONCLUSION

These are just some of the problems you may encounter when applying for a rate reduction. If you believe that your rate has been calculated incorrectly, you should seek advice immediately to help resolve your situation.

⁹ *Metropolitan Toronto (Municipality) v. O'Brien*, 1995 CanLII 7053 (ON SC),

¹⁰ Your "guarantor" or "responsible party" are not the same as your attorney, guardian, or trustee. Where your attorney, guardian or trustee is using your money improperly, there can be both civil as well as criminal consequences.