



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **LONG-TERM CARE SUBSIDIZATION ACT REGULATIONS**

## PLEASE NOTE

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For more information concerning the history of these regulations, please see the *Table of Regulations* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## LONG-TERM CARE SUBSIDIZATION ACT

### Chapter L-16.1

## REGULATIONS

Pursuant to section 12 of the *Long-Term Care Subsidization Act* R.S.P.E.I. 1988, Cap. L-16.1, Council made the following regulations:

### 1. Definitions

(1) In these regulations

- (a) “**Act**” means the *Long-Term Care Subsidization Act* R.S.P.E.I. 1988, Cap. L-16.1;
- (b) “**administrator**” means the senior administrative officer of a nursing home;
- (c) “**agent**” means an adult person who applies for, or has applied for, financial assistance on behalf of an applicant;
- (d) “**applicant**” means
  - (i) a person who applies for financial assistance, or
  - (ii) a person who receives financial assistance;
- (d.1) “**assessed income**” means, in respect of an applicant, the assessed income of the applicant for the previous taxation year, as determined by the Director in accordance with these regulations;
- (e) “**comfort allowance**” means a comfort allowance granted by the Director under subsection 12(2) to an applicant living in a nursing home for the purchase of items relating to recreation and comfort;
- (f) “**dependent**” means a person who wholly or substantially relies on an applicant for items of basic need;
- (g) “**established rates**” means the categories and rates of financial assistance established by the Lieutenant Governor in Council under section 5 of the Act;
- (h) “**estate**” means the value of real and personal property of an applicant at the time of the applicant’s death, less mortgages and other secured debt and before estate expenses and disbursements;
  - (i) revoked by EC747/06;
  - (j) revoked by EC747/06;
- (k) “**nursing home**” means a residential institution that is
  - (i) a manor or other facility owned and operated by the province, or
  - (ii) a nursing home licensed under the *Community Care Facilities and Nursing Homes Act* R.S.P.E.I. 1988, Cap. C-13,

- that provides to an applicant sleeping accommodations, meals, and nursing, medical or similar care and treatment based on assessed needs;
- (l) “**person with a disability**” means a person in need who has a continuing intellectual, mental or physical impairment;
  - (m) revoked by EC747/06;
  - (n) “**single applicant**” means an applicant who is unmarried, widowed, separated or divorced, and who is not living with another person as the other person’s spouse;
  - (o) “**spouse**” means, in respect of an applicant, a person with whom the applicant has gone through a marriage or a form of a marriage and includes a person who, although not married to the applicant, lives with the applicant as if they were married;
  - (p) “**written policies**” means the written policies established under subsection 7(4) of the Act.

#### **Approved residential institutions**

- (2) Nursing homes are approved residential institutions for the purposes of the Act and these regulations. (EC615/05; 747/06)

## **POLICIES**

### **2. Established rates included in written policies**

The Director may include the established rates of financial assistance in the written policies. (EC615/05)

- 3. Revoked by EC747/06. (EC615/05; 747/06)

## **APPLICATION**

### **4. Application for financial assistance**

- (1) A person who wishes to obtain financial assistance shall submit an application for such assistance to the Director.

#### **Form, completion, joint applications**

- (1.1) An application for financial assistance shall be made on a form approved by the Minister and shall
  - (a) be completed by the applicant and the applicant’s spouse, except where the Director
    - (i) is satisfied that the applicant’s spouse does not reside with the applicant, or
    - (ii) determines that the signature of the applicant’s spouse cannot be obtained; and
  - (b) be treated by the Director as a joint application by both spouses if the applicant resides with his or her spouse.

#### **Agent of applicant**

- (2) The Director may
  - (a) accept an application for financial assistance from an agent of an applicant, where the Director is satisfied that the applicant is incapable of making the application personally by reason of infirmity, illness, minority or other cause; and



- (b) enter into an agreement for repayment of a debt due by a recipient of financial assistance to the government with an agent of the applicant under subsection 11(3) of the Act.

**Information and evidence**

- (3) An applicant and the applicant's spouse shall provide such information and evidence in support of an application for financial assistance as may be required by the Director under the Act and these regulations to determine the applicant's eligibility for financial assistance.

**Required tax documents**

- (3.1) An applicant shall submit with his or her application for financial assistance
  - (a) a copy of his or her Income Tax and Benefit Return, as submitted to the Canada Revenue Agency, for the previous taxation year; and
  - (b) a copy of a notice of assessment from the Canada Revenue Agency that confirms the validity of the amount of net income, as reported to the Canada Revenue Agency, on line 236 of the applicant's Income Tax and Benefit Return for the previous taxation year.

**Property of Minister**

- (4) A submitted application form for financial assistance and related documentation are the property of the Minister.

**Ineligibility**

- (5) A person who does not, for any reason, complete the application process as set out in these regulations, shall be deemed to be ineligible to receive financial assistance.

**Exception**

- (6) A person shall not be deemed to be ineligible to receive financial assistance pursuant to subsection (5) by reason only that the person has not submitted the documents referred to in subsection (3.1). *(EC615/05; 747/06)*

## FINANCIAL RESOURCES

**5. Enquiry into financial resources**

- (1) The Director
  - (a) may enquire into the income and other circumstances of an applicant and the applicant's spouse to determine an applicant's assessed income and eligibility for financial assistance;
  - (b) may investigate and verify the accuracy of information provided by or on behalf of an applicant; and
  - (c) shall review the applicant's financial information at least once annually.

**Case audits**

- (2) The Director shall
  - (a) conduct case audits on a random or continuing basis and shall take such action as may be necessary to monitor and evaluate the delivery of financial assistance; and
  - (b) report to the Minister on the conduct and results of such audits or other activity. *(EC615/05; 747/06)*

**6. Test for determination of need**

Subject to the Act and these regulations, an applicant for financial assistance is a person in need if the amount of accommodation assistance required by the applicant for a year of accommodation exceeds the applicant's assessed income, and the Director may grant financial assistance to the applicant based on the established rates of assistance. (EC615/05; 747/06)

**7. Applicant includes spouse and dependents**

- (1) Notwithstanding clause 1(1)(d), for the purposes of this section, "applicant" includes the applicant's spouse.

**Determination of assessed income**

- (2) Where an applicant submits with his or her application
- (a) a copy of his or her Income Tax and Benefit Return, as submitted to the Canada Revenue Agency, for the previous taxation year; and
  - (b) a copy of a notice of assessment from the Canada Revenue Agency that confirms the validity of the amount of net income, as reported to the Canada Revenue Agency, on line 236 of the applicant's Income Tax and Benefit Return for the previous taxation year,

the Director shall calculate the assessed income of the applicant by using the formula

$$A - B$$

where

- A is the amount of net income, as reported to the Canada Revenue Agency on line 236 of the applicant's Income Tax and Benefit Return for the previous taxation year; and
- B is the total amount of the types of income of the applicant for the previous taxation year that are exempted under section 8 for the purposes of determining an applicant's assessed income.

- (3) Revoked by EC747/06. (EC615/05; 747/06)

**EXEMPTIONS FROM CALCULATION****8. Types of income not included in assessed income**

- (1) The following types of income of an applicant are exempted for the purposes of determining an applicant's assessed income under subsection 7(2), where the applicant provides the Director with documentary evidence satisfactory to the Director establishing payment to the applicant of the following:
- (a) a one-time payment of surplus pension funds if the payment is attributable to a taxation year in which the applicant was not receiving financial assistance;
  - (b) the Canada Pension Plan one-time death benefit;
  - (c) retroactive income for taxation years preceding the taxation year used in the assessment if the income is attributable to taxation years in which the applicant was not receiving financial assistance; and
  - (d) such other types of income that the Minister may exempt from the calculation of an applicant's assessed income.



**Deduction of fees of Public Trustee**

- (1.1) Where an applicant's financial affairs are managed by the Public Trustee, the Director shall deduct the Public Trustee fees from the applicant's assessed income.

**Aggregate financial resources**

- (2) The assessed income of an applicant is deemed to be
- (a) one-half of the aggregate of the assessed income of the applicant and the applicant's spouse; or
  - (b) the prorated value of the assessed income of the applicant or of the applicant and the applicant's spouse, where the applicant has dependents or a spouse and dependents, if the spouse or dependents are living with the applicant.

**Reduced aggregate calculation**

- (3) Notwithstanding subsection (2) and subject to subsection (6), the Director may vary the amount of financial assistance payable to an applicant, if the Director is satisfied that the variation is necessary to enable the applicant's spouse or dependents to meet financial liabilities or to maintain a reasonable standard of living.

**Prepaid funeral**

- (4) Revoked by EC747/06.

**Reasonable standard of living**

- (5) A reasonable standard of living for the purposes of subsection (3) is based on the annual calculations for Old Age Security and Guaranteed Income Supplements calculated under the *Canada Pension Plan Act* (Canada) as indexed annually.

**Exemption limits**

- (6) The financial liabilities referred to in subsection (3) are limited to the following items of expense at values not exceeding the rates established for social assistance pursuant to the *Social Assistance Act* R.S.P.E.I. 1988, Cap. S-4.3:
- (a) food expenses;
  - (b) dental, drug and personal expenses;
  - (c) rent, mortgage or bank loan payments;
  - (d) fuel or heating expenses;
  - (e) utilities;
  - (f) taxes;
  - (g) insurance premiums;
  - (h) room and board expenses;
  - (i) transportation expenses;
  - (j) clothing expenses;
  - (k) special care expenses;
  - (l) other expenses considered appropriate by a the Director. (EC615/05; 747/06)

## GRANTING OF ASSISTANCE, REASSESSMENT

### 9. Assistance for applicant in nursing home

- (1) The Director may grant financial assistance to an applicant at the established rates.

#### Improvement in financial situation

- (2) Where there is a change in the financial situation of
- (a) an applicant residing in a nursing home; or
  - (b) the spouse of such applicant,

the Director shall reassess the eligibility of the applicant for financial assistance.

#### Powers after reassessment

- (3) If the Director determines, after a reassessment under subsection (2), that
- (a) the applicant is no longer a person in need, the Director shall discontinue the financial assistance provided to the applicant and shall bill the applicant for any assistance provided during a period when the applicant was not a person in need; or
  - (b) the applicant no longer requires the same level of financial assistance, the Director shall vary the amount of financial assistance provided to the applicant. *(EC615/05; 747/06)*

### 10. Refusal to grant financial assistance

- (1) The Director may refuse to grant financial assistance to an applicant where
- (a) the applicant has transferred or reduced income, or divested himself or herself of any income-producing asset, within two years preceding the date of the applicant's application; and
  - (b) in the opinion of the Director, the transfer or reduction of income, or divestment of an income-producing asset, was made for the purpose of making the applicant eligible for financial assistance.

#### Information supply

- (2) Where an applicant has transferred or reduced income, or divested himself or herself of any income-producing asset, within two years preceding the date of the applicant's application, the Director may require the applicant to submit information concerning the applicant's entire income for the two year period. *(EC615/05; 747/06)*

### 11.

- (1) Revoked by EC747/06.
- (2) Revoked by EC747/06. *(EC615/05; 747/06)*

## COMFORT ALLOWANCE

### 12. "trust account", defined

- (1) For the purposes of this section, "trust account" means a comfort allowance trust account established for residents of a nursing home by the administrator under subsection (4).





**Comfort allowance**

- (2) The Director may grant additional financial assistance to an applicant at the established rates in the form of a comfort allowance if the applicant is a person in need and resides in a nursing home.

**Administrator may hold comfort allowance in trust**

- (3) An applicant receiving a comfort allowance may request that the administrator of the nursing home in which the applicant resides receive and hold the comfort allowance in trust on behalf of the applicant.

**Trust account**

- (4) Subject to subsections (5) and (7), an administrator who holds a comfort allowance in trust on behalf of an applicant shall deposit the money to the credit of the applicant in a comfort allowance trust account.

**Interest on trust accounts for comfort allowances**

- (5) The administrator may use the interest accrued on money held in trust under subsection (4) for the purchase of items for recreation and comfort that benefit residents at the nursing home.

**Balance \$300 or more**

- (6) Revoked by (EC218/07).

**Comfort allowance balance after death of applicant**

- (7) Where an applicant who resides in a nursing home dies leaving a positive balance in a trust account, the administrator shall credit that balance toward the nursing home fees payable by the applicant.

**Accounting of resident's trust account**

- (8) The Director may require the administrator of a nursing home to provide an accounting of a resident's trust account. (EC615/05; 218/07)

**13. Applicant's bank accounts**

Nothing in these regulations shall be deemed to interfere with the right of an applicant who resides in a nursing home to open and maintain bank accounts in his or her own name, and the administrator may, at the request of an applicant, act as an agent for the applicant respecting the account under a power of attorney duly executed by the applicant. (EC615/05)

**RECOVERY OF DEBT****14. Debt owing**

- (1) Where, under subsection 9(3), the Director determines that an applicant who has received financial assistance no longer
- (a) is a person in need; or
  - (b) requires the same level of financial assistance,

the Director shall determine the amount of debt due by the applicant to the government under section 11 of the Act.

**Recovery from estate**

- (2) Where an applicant who resides in a nursing home dies, recovery of a debt due by the applicant to the government by the applicant's estate under section 11 of the Act is subject to the following exclusions from calculation:
- (a) the first \$2,500 of the estate; and
  - (b) where the deceased applicant leaves a surviving spouse or dependents, the Minister's claim shall not exceed 50% of the applicant's estate. *(EC615/05; 747/06)*

**15. Satisfaction of certificate**

If

- (a) a certificate has been filed with the Registrar of the Supreme Court under subsection 11(5) of the Act; and
- (b) the debt due by the applicant to the government has been paid, cancelled, discharged or written off under clause 11(4)(c) of the Act,

the Minister shall file a satisfaction of the certificate with the Registrar and serve it on the debtor. *(EC615/05)*

**APPEALS, MISCELLANEOUS****16. Grounds of appeal**

- (1) Pursuant to subsection 9(1) of the Act, an applicant may appeal a decision of the Director respecting the provision of financial assistance under the Act or these regulations on any of the following grounds:
- (a) the Director refused to accept an application for financial assistance;
  - (b) the application for financial assistance was denied;
  - (c) the amount of financial assistance granted was not in accordance with these regulations, the established rates of financial assistance or the written policies;
  - (d) the applicant's financial assistance was reduced, suspended, cancelled or withheld.

**Appeal**

- (2) An appellant shall serve a notice of appeal on the Minister setting out the grounds of appeal within 30 days of the date of the decision being appealed.

**Right to be represented**

- (3) An appellant may be represented on an appeal by counsel or a third party. *(EC615/05)*

**17. Convening a Panel**

Upon receipt of a notice of appeal, the Minister shall, within 30 days,

- (a) convene a Panel of not more than three members to hear the appeal; and
- (b) provide the panel with a copy of the notice of appeal. *(EC615/05)*

**18. Panel provides documentation**

On receipt of a copy of the notice of appeal, the Panel shall notify the Director and the Director shall provide the Panel with



- (a) a copy of the appellant's written application for financial assistance made under the Act;
- (b) the particulars of the financial resources of the appellant as calculated by the Director; and
- (c) other documents and records pertaining to the matter under appeal. *(EC615/05)*

**19. Appeal hearing within 15 clear days**

(1) The Panel shall commence a hearing of the appeal within 15 clear days after receipt of the notice of appeal.

**3 clear days' notice of the hearing**

- (1) The chairperson of the Panel, if one has been so designated, shall provide the appellant and the Director at least three clear days' notice of the date, time and place of the hearing.

**Service of notice**

- (2) Notice of the hearing shall be sent by registered mail to the appellant at the address shown on the notice of appeal.

**Re-scheduling the hearing of the appeal**

- (3) Subject to subsection (1), the Panel may reschedule the hearing after giving the parties reasonable notice of the new time and place of the hearing.

**Withdrawal of appeal**

- (4) An appellant may withdraw an appeal at any time before the date set for the hearing of the appeal by notifying the Panel either verbally or in writing of the appellant's decision to withdraw. *(EC615/05)*

**20. Continued assistance pending appeal**

- (1) Where an appeal is made against a decision to reduce, suspend or cancel financial assistance, the amount of financial assistance previously granted shall continue to be paid until the Panel renders its decision.

**No assistance where appeal against refusal**

- (2) Where an appeal is made against a refusal by the Director to grant financial assistance, no financial assistance shall be paid to the appellant unless the Panel grants the appeal. *(EC615/05)*

**21. Open or closed hearing**

- (1) The appellant may request that the hearing of the appeal be held in private or be open to the public.

**Failure of appellant to attend**

- (2) Where the appellant or the person acting on behalf of the appellant does not attend the hearing, the Panel shall dismiss the appeal. *(EC615/05)*

**22. Panel decides matters before it**

- (1) The Panel shall decide only the matters that fall within the Act and these regulations and that are raised as the grounds of appeal.

**Conclusion of hearing**

- (2) At the conclusion of the hearing of the appeal, the Panel shall
- (a) dismiss the appeal; or
  - (b) allow the appeal and vary the decision made by the Director.

**Written decision within 15 days**

- (3) The Panel shall provide a copy of the decision to the parties on the appeal within 15 clear days from the conclusion of the hearing of the appeal.

**Decision final**

- (4) Subject to subsection (5), the decision of the Panel is final and binding on the parties.

**Review of appeal on new evidence**

- (5) Within 10 clear days of receipt of the written decision, the Director or the appellant may, on the basis of new evidence only, request that the Panel review its decision on the appeal.

**Decision final**

- (6) The decision of the Panel on a review under subsection (5) is final and binding on the parties.

**Effective date of decision**

- (7) The effective date of the decision of the Panel under subsection (2) or subsection (6) shall be retroactive to the date of the Director's decision on the appeal. *(EC615/05)*

**23. Costs**

- (1) Where an appeal is allowed by the Panel, the Panel may award costs to the appellant in an amount sufficient to cover the appellant's reasonable expenses, excluding legal fees, resulting from the appeal.

**Overpayment**

- (2) Where an appeal is dismissed by the Panel, the Panel may determine that the financial assistance granted under subsection 20(1) is an overpayment within the meaning of the Act. *(EC615/05)*

