

APPEAL

PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision dated February 14th, 2012 in which, pursuant to ss. 24 and 29 of the *Employment and Assistance for Persons with Disabilities Regulation*, the ministry determined that the Canada Pension Plan disability benefit received by the appellant in September, 2011 was properly deducted from the disability assistance received by the appellant in November, 2011.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation ("EAPDR"), ss. 1, 24 and 29 and Schedules A and B.

PART E – Summary of Facts

The evidence before the ministry on reconsideration was comprised of the following documents:

- (a) comments of the appellant contained in Section 3 of the Employment and Assistance Request for Reconsideration; and
- (b) note from appellant's mother dated November 7th, 2011 [*this note is referred to in the reconsideration decision but was not reproduced in the appeal record*].

This was an appeal in writing. Neither party sought to introduce new evidence at the hearing. The written submission of the appellant was in the form of a half-page letter from the appellant's mother dated March 26th, 2012. The written submission of the ministry was limited to a reference to the reconsideration decision.

The evidence before the ministry on reconsideration was to the effect that the appellant, a recipient of disability assistance under the EAPDR, had also been in receipt of CPP disability benefits for a period of time in 2011. The payment of CPP benefits came to an end in September, 2011. The appellant was not aware that these payments had been terminated until November, 2011.

While both the appellant and the ministry agreed that the disability assistance paid to the appellant pursuant to the Employment and Assistance for Persons with Disability Act (the "EAPDA") and regulations thereto was reduced for the month of November, 2011 by the amount of the CPP disability benefit received in September, 2011, the Summary of Facts in the reconsideration decision states that "your September 2011 CPPD must be deducted from your December disability assistance". The panel proceeded with the appeal on the basis that this statement was incorrect as to the month in which the deduction would be applied. In any event, the panel was of the view that this error or inconsistency, if such it was, was not relevant to the issue to be decided on this appeal.

The appellant did not dispute the evidence of the ministry set out in the previous two paragraphs. Indeed, it was the appellant's monthly report in October, 2011 that she submitted in compliance with these provisions that triggered the adjustment in her November, 2011 disability assistance that led to this appeal.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision on reconsideration is reasonably supported by the evidence, that is did the evidence before the ministry reasonably support its determination that, pursuant to sections 24 and 29 of the EAPDR, the CPP disability benefit received by the appellant in September, 2011 was properly deducted from the disability assistance received by the appellant in November, 2011.

The legislation relevant to this appeal is excerpted below:

EAPDR

1 (1) In this regulation:

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

(f) any type or class of Canada Pension Plan benefits;

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

29 For the purposes of section 11 (1) (a) [reporting obligations] of the Act,

- (a) the report must be submitted by the 5th day of the calendar month following the calendar month in which there is a change that is listed in paragraph (b), and
- (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 315/2005:
 - (i) change in the family unit's assets;
 - (ii) change in income received by the family unit and the source of that income;
 - (iii) change in the employment and educational circumstances of recipients in the family unit;
 - (iv) change in family unit membership or the marital status of a recipient.

Schedule B

Net Income Calculation

7 The following unearned income is exempt:

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula $(A-B) \times C$, where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

- B = (i) In respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or
- = (ii) In respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;
- C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*.

The submission of the ministry was that the procedure set out in the EAPDR for determining the entitlement of the appellant to financial assistance required, first, that the maximum amount of assistance be calculated under EAPDR, Schedule A and, second, that from this maximum income described in EAPDR, Schedule B be subtracted, provided that income described in EAPDR, Schedule B, ss. 1, 6 and 7 be deducted, or exempted, from inclusion in the Schedule B calculation. Further, the evidence of the ministry was that the appellant was required to submit a report by the 5th of each month setting out any change in her income in the previous month and that such information was used to determine the quantum of disability assistance to be paid in the next month.

The ministry stated that the CPP disability benefit received by the appellant was an amount to which EAPDR, s. 1 applied, that is it was "unearned income" of a character that it had to be deducted from the maximum disability assistance to which the appellant was otherwise entitled and that no deduction or exemption pursuant to EAPDR, Schedule B, ss. 1, 6 or 7 was applicable.

The written submission of the appellant, set out in the letter from her mother dated March 26th, 2012, was to the effect that she was unaware that her CPP disability benefit was terminated in September, 2011 and, accordingly, it was not appropriate that her disability payments be reduced in November, 2011. To remedy the financial difficulty in which she found herself, her November 2011 disability payment should be increased by the amount of the CPP disability benefit she did not receive that month. The appellant agreed that her disability entitlement under the EAPDR had properly been reduced by the amount of the CPP disability benefit she had received prior to October, 2011 but, she argued, as soon as that benefit was terminated, there should not have been a one-month delay in restoring her maximum disability payment entitlement, that is her maximum entitlement to disability assistance should have continued with reduction.

The panel concluded that the appellant's submission was based on a misunderstanding of the regulatory framework used to calculate her entitlement to disability assistance. That framework required that she report her income for any month by the 5th of the following month which information is then used to calculate the disability payment for the next month. Applying this formula to the

appellant's circumstance, since in October, 2011 she reported a CPP disability benefit received in September, 2011, this benefit was deducted from the disability payment she received under the EAPDR for November, 2011. This formula must necessarily result in a delay in calculating an applicant's entitlement to disability assistance and, in consequence, the possibility of an excess payment or a deficient payment, is sometimes inevitable. In the circumstances of the appellant, this resulted in a deficiency in November, 2011, the second month following the last CPP disability benefit she received in September, 2011..

There are no provisions in the EAPDR, or the EAPDA, to deal with this asymmetry. The absence of such provisions is not a matter that can be dealt with in this appeal which addresses the narrow question of whether or not, in the context of the existing regulatory framework, the reconsideration decision was a reasonable application of that framework to the circumstances of the appellant. Subject to what is said in the next paragraph, it is the opinion of the panel that the reconsideration decision was a reasonable application of the regulations in those circumstances.

The panel noted that in the reconsideration decision the ministry stated that:

Section B, sections 1, 6 and 7 [of the EAPDR] set out types of unearned income that may be deducted or exempted from the calculation of your monthly income. There are no provisions for exempting CPP Disability benefits under sections 1, 6 or 7.

In reviewing these sections of the EAPDR the panel agreed that there was nothing in sections 1 or 6 or subsections 7(a) through (d) which had any relevance to the issues in this appeal. However, the panel noted that subsection 7(e) refers to Canada Pension Plan Benefits - that is the type of income germane to this appeal - and sets out a formula for determining whether or not any of those benefits are exempt from inclusion in unearned income. The panel lacked the information necessary to determine whether all or any part of the appellant's CPP disability benefits could or should have been exempted under this subsection. The failure of the ministry to discuss this subsection in the reconsideration statement - other than the bald statement quoted above which is of no help - left the panel without any means of determining whether or not that failure was reasonable in the circumstances of this appeal. Notwithstanding these reservations, as a practical matter the panel decided that since the relevance of subsection 7(e) would have been a live issue throughout the time the appellant had received CPP disability benefits and since there was no suggestion that the appellant had ever raised it as an issue, the panel lacked jurisdiction to pursue this matter.

Accordingly, the ministry decision - to deduct the CPP disability benefit received by the appellant in September, 2011 from the disability assistance paid to the appellant in November, 2011 - was a reasonable application of EAPDR, ss. 24 and 29 in the circumstances of the appellant. The panel confirmed the decision of the ministry.