

PART C – Decision under Appeal

The issue under appeal is the Ministry of Social Development (ministry's) reconsideration decision of June 15, 2012 which determined that the appellant's Canada Pension Plan (CPP) funds is "unearned income" as defined within the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and deducted dollar for dollar from disability assistance.

PART D – Relevant Legislation

The Employment and Assistance for Persons with Disabilities Regulation – Sections 1(1),24 and Schedule B Section 7 and 11.

PART E – Summary of Facts

The evidence before the ministry on reconsideration consisted of:

On March 21, 2012 the appellant's sister submitted the appellant's Canada Pension Plan – Disability (CPPD) application which was forwarded to Service Canada on that same date for review.

On April 4, 2012 confirmation was received from Service Canada that the appellant was deemed eligible for CPPD and a request for payment was faxed to Service Canada that same date.

On May 25, 2012 confirmation was received that the appellant would be eligible for \$147.90 per month for CPPD effective April, 2012

On May 28, 2012 through the appellant's sister who attended the ministry's office, the appellant was informed that as the appellant's CPPD was now being paid, these monies were to be deducted dollar for dollar from the appellant's monthly benefit amount.

On May 31, 2012 through the appellant's sister who attended the ministry's office, the appellant was informed that the deduction from the appellant's Income Assistance cheque would be deducted dollar for dollar each month and that \$299.80 was reimbursed to the ministry from the appellants CPPD.

On June 6, 2012 the appellant submitted a reconsideration for deduction of CPPD monies.

In the appellant's request for reconsideration and further at the hearing the appellant argued that the CPPD benefits received are earned income and so did the office of the CPP. At the hearing the appellant expressed the opinion that he had worked hard for the CPP benefits having to stop working only due to a severe medical condition and under no circumstances should the ministry now take those funds away.

At the hearing the ministry explained that the ministry was not taking away the appellant's CPP benefits, the appellant is still receiving those benefits and that the ministry was simply complying with the EAPWDR which defines CPP as "unearned income" and must be deducted dollar for dollar from any disability assistance received by the appellant. The ministry further pointed out that CPP is correctly considered "unearned income" as supported by the BC Supreme Court decision 1995.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the appellant's CPP benefits are "unearned income" and should be deducted dollar for dollar from any disability assistance provided to the appellant by the ministry.

Part 1 – Definitions – Section 1(1) EAPWDR "**unearned income**" means any income that is not earned income, and includes, without limitation, money or value received from (f) "any type or class of Canada Pension benefits".

This definition of "**unearned income**" is further supported in **Ministry of Social Services and Housing v. Dungey** (26 June 1995) 95/0298 (Bouck J., B.C.S.C.) In this judgement Justice Bouck quashed a decision made by a Tribunal that CPP benefits should not be deducted from income assistance payments provided to the appellant as unearned income.

Contrary to both the definition of "**unearned income**" as provided by definition in the EAPWDR and the BC Supreme Court decision 1995, the position of the appellant was that the CPP monies received should not be defined as "unearned income" and therefore should not be deducted from any income assistance provided by the ministry.

The ministry's position was that they must be considered the payor of last resort and as the appellant was in receipt of monthly CPP payments of \$147.90 defined within the EAPWDR as "unearned income" it follows that these funds must be deducted dollar for dollar by any income assistance received by the appellant.

In addition both Sections 7 and 11 of Schedule B EAPWDR established that the full amount of the appellant's CPP of \$147.90 must be deducted from his monthly income assistance benefit without any further CPP tax exemption and that the appellant's backdated CPP benefit must be treated as unearned income and is considered to have been received by the appellant in that month.

The Panel finds that the ministry's decision to classify any CPP benefits earned by the appellant as "unearned income" and therefore deducted from any income assistance received by the appellant as a reasonable application of legislation and therefore confirms the decision.