

### PART C – Decision under Appeal

The decision under appeal is the ministry reconsideration decision dated 30 April 2012, in which the ministry upheld the original decision to deduct the appellant's monthly Municipal Pension Plan Benefit from his disability assistance. The ministry found that the appellant is in receipt of a monthly pension benefit of \$189.44 which is unearned income under Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 1.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act Section 11  
Employment and Assistance for Persons with Disabilities Regulation, Section 1 definitions "unearned income", Schedule B, section 6, section 7.

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration was:

- A Ministry of Social Development, Employment and Assistance Request for Reconsideration dated April 02, 2012, containing a 2 page letter of explanation from the appellant.
- A letter from the Municipal Pension Plan to the appellant providing the details of his pension and dated January 28, 2012.
- A statement from the Canadian Imperial Bank of Commerce, detailing the appellant's chequing account statement from January 11, 2012 to February 09, 2012.
- A 2 page online inquiry detailing bank activity in the appellant's chequing account.

The appellant provided oral testimony at the hearing stating that he is a disabled person and was just starting to feel better when notification of a reduction of ongoing benefits was forwarded to him and he relapsed back to the mental state he was at before he started to receive his municipal pension. With the pension, he was able to move into an apartment closer to town which better suited his needs. The appellant is classified by the ministry as a Person with Disabilities (PWD) and he perceives that as such he has become an object and therefore not human in the eyes of the ministry. He provided details such as the misspelling of his name by the appeal adjudicator in a reconsideration decision and the fact that the ministry staff are not signing their names, only initialing documents as evidence of such. The appellant stated that he had provided the ministry with documentation that he had earned income in 2006 and that a copy of this was not included in the file. The appellant stated that he only goes to the ministry office when he has to as he feels they are understaffed and overworked and therefore do not have assigned case workers anymore. Without an assigned case worker the appellant feels he is at a disadvantage.

The appellant stated that he was not provided with any information regarding his benefits, his responsibilities to the ministry or the ministry's responsibilities to him when he was notified of his PWD designation. He was not informed about the difference between earned income and unearned income and considered his pension to be earned income as he feels he worked hard to get the pension and indeed paid for it with his health. The ministry did not provide him with a Welcome package or orientation or explain to the appellant how to access benefits and did not provide him with a copy of the applicable legislation until his appeal. The appellant went on to say that the ministry did not and does not provide him with any employment assistance. The appellant states that he does not have access to a computer, and is not capable of finding the details of the legislation online as he can only sit at a computer for a maximum of 30 minutes due to his overwhelming anxiety. The appellant did not ask the ministry office for a copy of the legislation as he believed they would provide him with one if it was needed.

The appellant voiced his concern regarding the fact that the legislation only provides details regarding the appellant's responsibilities and does not address the issue of staff performing their jobs adequately.

The appellant's position is that the legislation has not been reasonably applied because the staff did not inform him of the legislation that pertained to his case. The appellant also stated he believed there was a difference between PWD and welfare and that is why he did not complete the income reporting section on his pay stub. He states that if he had known his income assistance would be

decreased as a result of his municipal pension, he would not have applied for it when he did and he would not have moved to the new accommodation. The appellant states that although he signed the application for benefits he did so under pressure as he was told if he did not sign he would not be provided with any benefits. The appellant states that his health was compromised at the time of his application and he did not read what he was signing.

The appellant states "it is neither fair nor just that I should be held accountable because the ministry staff did not adequately and properly perform their duties."

The appellant is requesting that his pension of \$189.44 per month be subject to his earned income exemption of \$500.00.

The ministry provided information to the panel that the appellant has been in receipt of income assistance since September 30, 2005 and was approved for disability designation January 13, 2006. There have been months since that time that the appellant was designated as Medical Services only when he did not receive benefits due to employment. In March of 2012, the appellant was advised that his disability assistance would be reduced by the amount of his Municipal Pension Plan benefit.

The ministry states that the appellant's electronic record shows that he reported earned income in November 2006 and that he did not declare any income or changes until March 2012. During a routine file review in March 2012, the ministry received information that the appellant was receiving a monthly pension, and at the ministry's request, the appellant submitted a letter dated January 28, 2011 from the Municipal Pension Plan advising him of his eligibility for a monthly pension of \$183.56. The appellant also submitted a CIBC statement showing a deposit of \$189.44 from the Municipal Pension Plan of January 30, 2012. The same letter also forecasts possible annual cost of living increases.

The ministry states that when the appellant was determined eligible for the PWD designation, he was sent a letter dated January 13, 2006. This letter and the brochure sent with it form the "welcome" package referred to in the ministry's reconsideration decision. The ministry states that correspondence sent by the ministry is deemed to have been delivered if it is not returned by the post office and the January 13, 2006 letter was not returned.

The ministry maintains that the appellant's pension does not meet the criteria for "earned income" according to the legislation EAPWDR S.1 and is therefore not subject to an earning exemption. The pension he receives does not meet the legislative requirements of "Unearned income" EAPWDR S.1 and therefore his monthly disability assistance must be reduced by the amount of his monthly pension.

The ministry provided clarification for the appellant that he did not have an option to delay his application for the municipal pension when he became eligible as disability assistance is an asset based program and the ministry is viewed as a last resort for income. It is a requirement of the program for recipients to apply for pensions once eligible.

The ministry states that when the appellant signed his application for disability assistance he acknowledged his responsibility to declare any changes in circumstance, to declare any and all assets, and pursue access to all other forms of income.

The ministry clarified that all staff are qualified to assist clients when they attend the office. It is not possible for the ministry to provide copies of legislation to all clients as the legislation is constantly changing and computers are available for use by clients in the ministry offices.

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The ministry stands by its decision to deduct his monthly municipal pension benefit from his disability assistance and argues that this is a reasonable application of the legislation.

## PART F – Reasons for Panel Decision

The issue under appeal is the ministry decision to deduct the Monthly Municipal Pension benefit of \$189.44 from the appellant's disability assistance and whether this decision is reasonably supported by the evidence and by the EAPWDR Section 24 (a) (b), EAPWDR Sections 1 definitions, 9, 24 and 29.

## EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

**"earned income"** means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) tax refunds,
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

**"unearned income"** means any income that is not earned income, and includes, without limitation, money or value received from any of the following:  
(e) superannuation benefits;

**Limits on income**

**9** (1) For the purposes of the Act and this regulation, **"income"**, in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

**Amount of disability assistance**

**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.

### Reporting requirement

**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.

The appellant's position is that ministry staff did not provide him with a proper orientation to his disability benefits and did not provide a copy of the applicable legislation when he was designated as a PWD. He says he was not told what the ministry expectations were of him and that ministry staff did not properly perform their job. He feels he has been treated as an object and not as a human being and that his health is at real risk of deteriorating if he is forced to comply with the ministry decision to deduct his municipal pension benefit of \$189.44 per month from his disability assistance. He states that he believed there was a difference in persons with disabilities and welfare and so did not complete the required forms as he felt they did not apply to him. The appellant admits that he signed the forms when applying for disability assistance but did not read them due to his mental health issues; all he knew was that if he did not sign the form he would not be eligible for disability assistance. The appellant wishes to have his municipal pension benefits considered as earned income.

The ministry maintains that the legislative requirement is clear and that the appellant signed his initial application which outlined what his responsibilities were. He was also sent a letter which outlined the benefits which are part of disability assistance and identified the web site which would provide the appellant with all the legislative details of the program.

The panel finds that Section 24 of EAPWDR sets out that 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.

The panel finds that the appellant is a single recipient of disability assistance and therefore under Schedule A is eligible of support allowance in the amount of \$531.42 per month, a shelter allowance of \$375.00 per month, for a maximum monthly allowance of \$906.42.

The panel finds that EAPWDR Section 1 clearly defines unearned income and finds that the appellant's Municipal Pension Benefits are covered under section (e) superannuation benefits. The Municipal Pension Plan Benefits are therefore considered unearned income.

The panel finds that EAPWDR Section 1 defines earned income clearly and that the appellant's Municipal Pension Plan Benefits do not meet the definition of earned income.

The panel notes that that Schedule B does not provide for an income exemption to reduce the amount of income applied against total eligible allowances. Therefore the appellant's non exempt income is \$189.44, the amount of his Municipal Pension Plan Benefit.

The panel finds that the ministry decision to deduct the appellant's monthly Municipal Pension Benefit of \$189.44 from his disability assistance is a reasonable application of the legislation and is supported by the evidence.

The panel confirms the ministry decision.