

### PART C – Decision under Appeal

The Decision under appeal is the Ministry's Reconsideration Decision, dated June 11 2012, which denied the Appellant's request not to deduct monthly pension benefits from the monthly disability allowance she received. The Ministry determined that the Appellant was in receipt of a monthly pension benefit, which was unearned income as defined in sec. 1 of the Employment and Assistance for Persons with Disabilities Regulation, (EAPWDR) and that this had to be deducted from the monthly disability the Appellant was receiving pursuant to sec. 24 of the EAPWDR.

### PART D – Relevant Legislation

EAPWDR - Employment and Assistance for Persons with Disabilities Regulation,  
Sec. 1-Definitions, Sec. 24, Schedule A and Schedule B.

## PART E – Summary of Facts

The evidence before the Ministry was that the Appellant was a single recipient of disability assistance, (DA), and that she received \$906.42 per month, for shelter and support, under Schedule A of the EAPWDR. Included in the material before the Ministry at Reconsideration, was a letter dated Jan. 18, 2012 from the Teamsters Canadian Pension Plan, which indicated the Appellant's spouse had passed away the previous month. The letter indicated the Appellant was entitled to \$524.12 (less withholding tax), if applicable, commencing Jan 1, 2012, from the deceased's pension plan. The letter, in several spots, describes the Appellant's entitlement as a "benefit." The Ministry determined that the monthly pension benefit was considered unearned income and must be deducted under the provisions of Schedule A and B of the Regulations.

The Appellant requested reconsideration and stated in that request that she had originally gone to the Employment and Assistance Tribunal to obtain her Persons with Disability (PWD) status and she requested the ministry provide the letters she had used as evidence in that hearing be produced as she had no copies. She also requested a copy of the tribunal decision in that PWD hearing. The Appellant stated that in the PWD hearing she believed the tribunal found not only that she met the PWD designation, for which she was now receiving DA, but that the prior tribunal had told her this pension benefit she would receive in the future, for nursing the pension earner until death, would be considered earned income and should not be deducted from her DA. The Appellant added she needed the funds to live alone with as little pain as possible; she needs work done on her knees and teeth. She deserved the money for a job well done, nursing the pension earner until his death, and the prior tribunal agreed she had earned this money.

On June 11, the Ministry provided its Reconsideration Decision. The covering letter, signed by the Reconsideration Officer, identified the benefits the Appellant was receiving as "monthly Canada Pension Plan benefits." The ministry determined that under the EAPWDR, sec. 1 defined "unearned income" as any income that is not earned income, and included, without limitation, money or value received from any of the following; "(f) any type or class of Canada Pension Plan benefits." As such, the Appellant had ongoing monthly unearned income of \$524.12 based on the pension benefits she was receiving. The decision noted there was no income exemption available under Schedule B of the regulation to reduce the amount of income applied against total eligible allowances. As such, the Appellant's unearned income was deducted and the Appellant was eligible for \$382.30 in monthly DA.

The Reconsideration Decision also noted the request for prior tribunal materials was not clear. As such, copies of old decisions would be forwarded to the local office for the Appellant, but these documents were not reviewed for the reconsideration. In relation to the Appellant's submission of ongoing pain and the prior tribunal's agreement that the appellant had earned the pension, the decision noted it would be decided on the information provided at the time of the reconsideration and the current legislation. As Sec. 24, as written, is imperative, it did not allow the ministry any discretion to arrive at any other conclusion.

The Appellant appealed and stated in her appeal notice that the pension benefits were "not earned income." (sic). The appellant stated she moved in with the now deceased pension earner, whom she had known for 20 years, to share a house as he had severe medical issues. His mother could no longer care for him and the Appellant was promised that she would receive his pension if she cared for him

until his death. The pension earner had informed his mother the two had married and the two actually did discuss marriage so no one could contest their deal. After several years the Appellant had lost her job, was having her own medical issues and she won her PWD designation. The PWD Tribunal Panel knew about her deal, agreed she deserved her PWD, and stated her deal would not affect her DA as this was earned income. The pension earner's medical conditions worsened and he eventually passed away. The Appellant cared for this person for 13 years, she deserved what was promised and what the PWD tribunal said she would get. The assistance the Appellant receives does not cover her medications, does not cover her dental extractions and she will have to move if she is denied these benefits.

The Appellant did not attend at the hearing. After confirming that the Appellant was properly notified of the hearing, the matter proceeded under section 86(b) of the Employment and Assistance Regulation.

The Ministry stated that in its view this was pension income under the Canada Pension Plan and as such unearned income. When asked whether any other exemptions might apply the ministry also argued that this would fall under "union or lodge benefits" as defined under subsection (h).

**PART F – Reasons for Panel Decision**

The issue to be determined is whether the Ministry reasonably determined the Appellant's benefit's received through the Teamsters Canadian Pension Plan is properly deductible as unearned income under the EAPWDR.

The Legislation states the following;

*Employment and Assistance for Persons with Disabilities Regulation*

**Definitions**

1 (1) In this regulation: ...

**"earned income"** means

(a) any money or value received in exchange for work or the provision of a service,

...

**"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;

...

(h) union or lodge benefits;

...

**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.

...

## Schedule A

**Disability Assistance Rates***(section 24 (a) )***Maximum amount of disability assistance before deduction of net income**

**1** Subject to sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

...

## Schedule B

**Net Income Calculation***(section 24 (b) )***Deduction and exemption rules**

**1** When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation,

- (a) the following are exempt from income:

...

- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

...

**Exemption — earned income**

3 (1) The amount of earned income calculated under subsection (2) is exempt for a family unit if

(a) a recipient in the family unit has been receiving continuously for the 3 calendar months immediately preceding the calendar month for which the exemption is claimed

- (i) disability assistance under the Act,
- (ii) income assistance under the *Employment and Assistance Act*,
- (iii) disability assistance or income assistance under a former Act,
- (iv) a youth allowance under the *BC Benefits (Youth Works) Act*, or
- (v) any combination of the assistance and allowances referred to in subparagraphs (i) to (iv).

(b) Repealed. [B.C. Reg. 369/2002.]

(2) The exempt amount for a family unit that qualifies under subsection (1),

(a) in the case of a family unit that is composed of one recipient who is designated as a person with disabilities, is calculated as the lesser of

- (i) \$500, and
- (ii) the family unit's total earned income in the calendar month of calculation, or

(b) in the case of a family unit that is composed of two recipients, both of whom are designated as persons with disabilities, is calculated as the lesser of

- (i) \$750, and
- (ii) the family unit's total earned income in the calendar month of calculation.

...

### Exemptions — unearned income

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 issue is whether the Appellant's receipt of the pension benefits is properly assessed as unearned income under the EAPWDR. The Appellant argues she need the funds, she earned this income and a prior tribunal found this would not affect the DA she was receiving. The Ministry argues this is unearned income and must be deducted from her DA.

In relation to the Appellants prior Tribunal Hearing for her PWD status, no material was provided in relation to this matter. The panel agrees, as the ministry stated in the Reconsideration Decision, that the decision must be based on the legislation as it stands at the time of the reconsideration. Further, if the prior tribunal was dealing with an appeal on a PWD application, the tribunal only had jurisdiction to deal with that matter, not a separate issue that might arise in the future, such as this. Also, it is noted that the previous findings of the Tribunal are not binding authority for this panel. As such, the panel finds that the prior Tribunal hearing's proceedings and findings are not relevant to the current appeal and are not necessary to the decision making process of this appeal.

In relation to the Appellant's ongoing medical issues and her need for these funds to help pay for these problems, or the fact that she may have to move if her income is reduced, the Tribunal finds that there are no available exemptions in the legislation, and as a such, although sympathetic with the appellant's situation, cannot consider this factor.

It is undisputed, and the panel finds, that the Appellant is eligible for DA for a monthly allowance of \$906.42, as of the time of the reconsideration decision. It is also undisputed that the Appellant is receiving, and the panel finds is receiving, money from the Teamster's Canadian Pension Plan in the amount of \$524.12. The question is how are those benefits to be defined?

Under the EAPWDR, "earned income" means any money or value received in exchange for work or the provision of a service and "unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any type or class of Canada Pension Plan benefits. This was the sole basis for the denial of the Appellant's reconsideration request. None of the other portions of the legislation defining unearned income were referred to.

The tribunal finds that the monthly pension benefit that the Appellant is receiving is not from "Canada Pension Plan benefits." It is notable that this term as defined in the legislation is capitalized and as such denotes a title. The panel finds the legislation is referring to Canada Pension Plan benefits, commonly known as CPP. This is the Government of Canada's Retirement Pension Plan which provides a monthly taxable benefit to retired contributors. The legislation does not refer to any

Canadian pension benefits, or any pension benefits received, it specifically refers to "Canada Pension Plan" benefits. The Appellant is receiving death benefits from a large Canadian union's pension plan. The panel finds this is not a pension as defined in subsection (f) of the "unearned income" definition in the regulation. It is also noted that if this was to be categorized as a CPP benefit, there does not appear to be any calculation done by the ministry under sec. 7(e) of Schedule B which sets a formula for exempted unearned income received from CPP. The panel finds the Ministry has mischaracterized this income.

The question that then arises is how is this benefit to be categorized? The Appellant argues this is earned income, as it is money received in exchange for the work or service she performed in caring for the deceased pension earner for many years. The ministry argues it is a union benefit and is unearned income. It does not appear that the Ministry, in its reconsideration, considered other portions of the legislation. For example, under subsection (h) of the definition, is this a union benefit?

It is clear, and the panel finds, that this is from a Union, the Teamsters. Further, the letter to the Appellant from the Teamsters describes this as a "death benefit" and uses the word benefit several times in the letter describing what the Appellant is entitled to. As such, the panel finds this is a "union benefit" and falls under the definition of unearned income under subsection (h) of the definitions. As the legislation states that a union benefit is unearned income "without limitation", the panel finds that the Ministry was correct in deducting this from the Appellant's DA. As such, the reconsideration decision is reasonable and the panel confirms the decision.

The panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and is a reasonable application of the legislation based on the circumstances of the Appellant and confirms the Decision.