

APPEAL #

### PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision of 3 August 2012 which upheld the ministry's decision to deduct the appellant's monthly Canada Pension Plan Benefit from his disability assistance pursuant to Section 23 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* as it is "unearned income" as defined in Section 1 of Schedule B and is not exempt.

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*,  
Definitions  
Section 24, Amount of Disability Assistance  
Schedule A, Disability Assistance Rates  
Schedule B, Section 1, Deduction and Exemption Rules

## PART E – Summary of Facts

The records before the ministry at reconsideration included:

- The statement that the appellant is in receipt of disability assistance as a Person with Disabilities.
- The statement that the appellant qualifies as a sole applicant for \$531.42 in support and as 1 person \$375.00 in shelter assistance for a total amount of \$906.42 under Schedule A of the *EAPWD Regulation*.
- A record from Service Canada indicating that effective 2012-05 the appellant receives a monthly benefit in the amount of \$131.36
- A letter written by the appellant dated June 6, 2012 addressed To Whom This May Concern, Ministry of Housing and Social Assistance.
- The appellant's request for reconsideration dated July 16 with an attached letter 2012 addressed To Whom This Concerns Continued.
- A letter written by the appellant dated July 19, 2012 addressed to the Ministry of Social Services and Housing, To Whom This May Concern, retracting and apologizing for the previous (July 16<sup>th</sup>) letter sent by the appellant.

The appellant's Notice of Appeal set out the position that the CPP benefits he now receives are benefits that he earned while working and paying into the plan. As such he feels these benefits should properly be considered earned income and fall within the \$500.00 exemption under Schedule B, Section 3(2)(a)(i) of the *EAPWDR*.

There was no additional information nor records produced at the hearing.

The panel makes the following finds of fact:

- The appellant began receiving CPP benefits in the amount of \$131.36 in May 2012.
- The ministry reduced the appellant's disability assistance by \$131.36.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry acted reasonably in reducing the appellant's disability assistance in an amount equal to the amount the appellant receives from Canada Pension Plan.

The relevant legislation is set out in the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, as follows:

### PART 1 - INTERPRETATION

#### 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,
- (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:

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

### Division 2 - Income and Asset Restrictions

#### Effect of applicant applying for other sources of income

7 (1) In this section, "**income**" does not include

- (a) earned income described in paragraphs (a), (d) or (e) of the definition in section 1, or
- (b) income exempt under section 1 of Schedule B.

(2) A family unit is not eligible for disability assistance if an applicant in the family unit has applied for income from another source unless

- (a) the applicant enters into a repayment agreement with the minister,
- (b) if the source of the other income is federal employment insurance under the *Employment Insurance Act* (Canada), the applicant, in addition to the requirement under paragraph (a), satisfies the minister that a direction has been completed in accordance with subsection (3), and
- (c) if the source of the other income is a benefit under the *Canada Pension Plan* (Canada), the applicant, in addition to the requirement under paragraph (a), satisfies the minister that the applicant has made a Consent to Deduction and Payment form under the *Canada Pension Plan* (Canada) directing that
  - (i) an amount up to the amount of disability assistance provided to or for the family unit under this section be deducted from the amount of the Canada Pension Plan benefit, and
  - (ii) the amount deducted be paid to the minister.

(3) A direction referred to in subsection (2) (b) must be completed under the *Employment Insurance Act* (Canada) by the applicant who applies for the federal employment insurance and must direct that

- (a) an amount equal to the amount of disability assistance provided to or for the family unit under this section be deducted from the employment insurance, and
- (b) the amount deducted be paid to the minister.

### Requirement to apply for CPP benefits

8 If a family unit includes a recipient who may be eligible for a benefit under the *Canada Pension Plan* (Canada), for the family unit to continue to be eligible for disability assistance, the recipient, when requested by the minister, must complete a Consent to Deduction and Payment under the *Canada Pension Plan* (Canada) directing that

- (a) an amount up to the amount of disability assistance provided to or for the family unit from the date that the recipient becomes eligible for the Canada Pension Plan benefit be deducted from the amount of that benefit, and
  - (b) the amount deducted be paid to the minister.
- (B.C. Reg. 463/2003)

### 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 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:
  - (i) any income earned by a dependent child attending school on a full-time basis;
  - (ii) the basic family care rate paid for foster homes;
  - (iii) Repealed (B.C. Reg. 48/2010)
  - (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
  - (v) the basic child tax benefit;
  - (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
  - (vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*low income climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia); (B.C. Reg. 180/2010)
  - (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
  - (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
  - (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
  - (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
  - (xii) money that is
    - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
    - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry; (B.C. Reg. 276/2004)
  - (xiii) the BC earned income benefit;
  - (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
  - (xv) a rent subsidy provided by the provincial government, or by a council, board, society or

- governmental agency that administers rent subsidies from the provincial government;
- (xvi) an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability due to income received under the Forest Worker Transition Program;
- (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution,
- (xxi) Repealed; (B.C. Reg. 85/2012)
- (xxii) payments granted by the government of British Columbia under section 8 of the *Child, Family and Community Service Act [agreement with child's kin and others]*;
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program. (B.C. Reg. 115/2003)
- xxiv) Repealed; (B.C. Reg. 85/2012) (BC Reg. 209/2003)
- (xxv) payments granted by the Government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child to a person other than a parent of that child. (BC Reg. 209/2003)
- (xxvi) a loan that is
- (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
  - (B) received and used for the purposes set out in the business plan. (B.C. Reg. 462/2003)
- (xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
- (A) Autism Funding: Under Age 6 Program, or
  - (B) Autism Funding: Ages 6 - 18 Program, (B.C. Reg. 22/2005)
- (xxviii) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court. (B.C. Reg. 91/2005)
- (xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program.  
(B.C. Reg. 90/2005)
- (xxx) a refund provided under Plan I, "Fair PharmaCare", of the PharmaCare program established under the Continuing Care Programs Regulation, B.C. Reg. 146/95; (B.C. Reg. 292/2005) (B.C. Reg. 32/2012)
- (xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC. (B.C. Reg. 192/2006)
- (xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act (Canada)*. (B.C. Reg. 250/2006)
- (xxxiii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990,

- except money paid under that agreement as income replacement. (B.C. Reg. 165/2007)
- (xxxiv) money withdrawn from a registered disability savings plan, (B.C. Reg. 362/2007 )
- (xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada), (B.C. Reg. 48/2008)
- (xxxvi) Repealed (B.C. Reg. 180/2010)
- (xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*, (B.C. Reg. 94/2008)
- (xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age, (B.C. Reg. 87/2008)
- (xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry. (B.C. Reg. 242/2010)
- (xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program; (B.C. Reg. 85/2012)
- (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program; (B.C. Reg. 85/2012)
- (xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program, (B.C. Reg. 85/2012)
- (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), and
- (b) Repealed (B.C. Reg. 265/2002)
- (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.C. Reg. 117/2003) (B.C. Reg. 43/2006)
- (b) in the case of a family unit that is composed of two recipients, both of whom 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. (B.C. Reg. 43/2006)

## Deductions from unearned income

- 6 The only deductions permitted from unearned income are the following:
- (a) any income tax deducted at source from employment insurance benefits;
  - (b) essential operating costs of renting self-contained suites.

## Exemptions - unearned income

- 7 (1) The following unearned income is exempt: (B.C. Reg. 83/2012)
- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
  - (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
  - (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [*asset limits*] of this regulation;
  - (d) a payment made from a trust to or on behalf of a person referred to in section 12 (2) [*assets held in trust for person with disabilities*] of this regulation if
    - (i) the payment is applied exclusively to or used exclusively for disability- related costs as defined in section 12 (1) of this regulation, and
    - (ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5 484.
  - (d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if
    - (i) the payment is applied exclusively to or used exclusively for disability- related costs as defined in section 12 (1) of this regulation, and
    - (ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5 484;
 (B.C. Reg. 83/2012)
  - (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 the 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*.
 (B.C. Reg. 58/2003)
- (2) Subsection (1) (d.1) applies in respect of a person only if
- (a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

- (b) the settlement agreement requires the defendant to
- (i) make periodic payments to the person for a fixed term or the life of the person,
  - (ii) purchase a single premium annuity contract that
    - (A) is not assignable, commutable or transferable, and
    - (B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,
  - (iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and
  - (iv) remain liable to make the payments required by the settlement agreement.
- (B.C. Reg. 83/2012)

(3) In this section, “**structured settlement annuity payment**” means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection. (B.C. Reg. 83/2012)

In the reconsideration decision the ministry found that the \$131.36 the appellant received as a Canada Pension Plan payment was non-exempt unearned income under the regulation and therefore subject to deduction from the appellant’s monthly disability assistance.

The appellant’s position in his notice of Appeal is that the \$131.36 he receives as a Canada Pension Plan payment is earned income and therefore should fall within the \$500.00 exemption under Schedule B Section 3(2) (a)(i).

At the hearing, the appellant stated that the crux of the matter was whether or not CPP is considered earned income. He said that his CPP income had been derived from deductions from his earned income when he was working and deposited into his pension account over the years, thereby making it earned income. He receives a type of T-4 slip for it at the end of the year.

He stated that since in his view CPP is earned income, it should fall within the \$500.00 income exemption allotment. If it does not consider CPP as earned income, then the appellant says the ministry and the legislation is discriminatory.

In the appellant’s case, the CPP that he receives totals \$131.36. He was looking forward to receiving these funds, which he argued would amount to a cost of living increase. The rent on his lodging, where he has resided for six and a half years and which currently costs \$700.00 per month, will be increasing shortly to \$800.00 per month due to the sale of the property. The additional \$131.36 would therefore mean that he could remain in his lodgings; without it he will be forced to move.

The Ministry stated that the legislation is clear that any part of a CPP benefit is listed under “unearned income” in the definitions of the *Regulation* and that therefore the Ministry can have no discretion.

The panel explained that its jurisdiction was limited to reviewing how the ministry applied the legislation and that it would not be commenting on any question of discrimination with regard to the ministry’s actions or the legislation.

In considering the definitions, “unearned income” includes at (f) any type or class of Canada Pension Plan benefits. This is clear and unambiguous language. Further, Canada Pension Plan benefits are not the only insurance scheme listed as unearned income: also included in that list are funds which



could be received from other insurance plans, pension plans and benefit entitlements. It is clear that the application of the language is intended to capture a broad range of payments including those that a person may have paid into at an earlier time.

Beyond the definition, the *EAPWDR* sets out specific requirements for dealing with Canada Pension Plan benefits under Section 7(2)(c)(i)(ii), Section 8 and Section 24(a) and (b). Schedule B provides exemptions from the net income calculations, including some that are payments from governments. Canada Pension Plan benefit payments, however, are not among those exemptions. Therefore the \$500.00 exemption cannot be applied because the CPP payment is unearned income and not exempt under Schedule B from the net income calculations.

The panel therefore finds that the ministry's determination to reduce the appellant's benefit by the amount equal to his CPP benefit to be a reasonable application of the *EAPWDR* in the circumstances. The panel therefore confirms the ministry's decision.