

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") September 12, 2012 reconsideration decision denying the Appellant disability assistance for the month of September 2012 because in July 2012 the Appellant received Canada Pension Plan income in excess of the monthly disability assistance allowance he was eligible for, in accordance with section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1, 9, and 24, Schedule A Sections 2 and 4, and Schedule B Sections 7 and 11.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from the Ministry's files that:

- The Appellant is a Person with Disabilities ("PWD") recipient with no dependents and is eligible for \$906.42 a month in disability assistance.
- Canada Pension Plan ("CPP") data confirming that in July 2012 the Appellant received his regular \$570.48 CPP disability amount plus an additional \$789.28 for a total of \$1359.76.

2. Appellant's August 31, 2012 request for reconsideration in which he stated that because he received money from the CPP he was under the understanding that the money was his.

In his September 19, 2012, notice of appeal, the Appellant wrote that he would like to have the opportunity to make payments on this decision. If he is cut off from his benefits, he will lose his apartment. The Appellant stated that he is likely not the first person to be in this situation and why didn't the Ministry or someone from CPP inform him about this. The Appellant wrote that he is very upset over this and feels almost like he was deceived into thinking the money was his. Now he faces eviction. The Appellant also wrote that he needs to get a payment plan in place.

At the hearing, the Appellant submitted oral arguments in support of his appeal. These are set out in Section F of this decision.

At the hearing, the Ministry reviewed the amounts the Appellant received and explained that CPP benefits are deducted dollar for dollar from the disability allowance the Appellant would be eligible for. The Ministry also pointed out that the CPP payment in July 2012 affected the Appellant's September 2012 disability assistance and he should receive his regular amounts for later months.

The Panel makes the following findings of fact:

1. As a PWD, the Appellant is eligible for \$906.42 a month in disability income assistance.
2. In July 2012, the Appellant received a regular CPP payment of \$570.48 plus \$789.28 for a total of \$1359.76.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for disability assistance for the month of September 2012 because in July 2012 he received Canada Pension Plan income in excess of the monthly disability assistance he was eligible for, in accordance with section 9(2) of the EAPWDR.

The following sections of the EAPWDR apply to this appeal.

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.

9 (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.

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

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.

Monthly support allowance

2 (1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(b) the amount calculated in accordance with subsections (2) to (5) for each dependent child in the family unit.

Family unit composition or recipient	Age or status of applicant	Amount of support
Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	\$531.42

4(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of (a) the family unit’s actual shelter costs, and (b) the maximum set out in the following table for the applicable family size;

Family unit composition	Maximum monthly shelter
1 person	\$375

Schedule B

7(1) The following unearned income is exempt:

(e) the portion of the 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 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;

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) of the *Income Tax Act*.

11(1) In this section, "pension benefit" means a pension or other payment under the *Canada Pension Plan* (Canada).

(2) If (a) disability assistance is provided to a family unit for a calendar month or any portion of a calendar month that would not have been provided if a pension benefit had been paid for that calendar month, and

(b) subsequently a pension benefit becomes payable or payment of a pension benefit may be made under the *Canada Pension Plan* (Canada) to a recipient in the family unit for that calendar month or any portion of that calendar month

the amount of the pension benefit that becomes payable for that month or portion of that month must be treated as unearned income and is considered to have been received by the recipient in that month.

In its reconsideration decision, the Ministry stated that it fully reviewed the information it had. It determined that as a PWD, the Appellant is eligible for \$906.42 in disability income assistance as provided for in EAPWDR Schedule A. The Ministry received confirmation from CPP that in July 2012 the Appellant received his regular \$570.48 CPP benefit plus an additional \$789.28 for a total of \$1359.72. The Ministry considered section 1 of the EAPWDR and determined that any type or class of CPP benefits is defined as "unearned income". Also, backdated CPP is treated as unearned income as provided in EAPWDR Schedule B section 11.

The Ministry pointed out that CPP is deducted fully from disability assistance except for an amount calculated under Schedule B section 7(1)(e) which refers to the tax portion of a CPP check. The Ministry wrote that CPP is derived from pre-tax dollars and therefore it is taxable when paid out. Because some individuals may have to pay income tax on their CPP payments, the province has established a calculation to exempt that each month. The calculation is based on the basic tax amount (divided equally by twelve months) and the corresponding tax rate. The Ministry wrote that this is an automatic calculation; however, the Appellant has no tax portion and therefore the full CPP amount received was deducted from his assistance. The Ministry also pointed out that the income and charges are reported by the 5th of the following month affecting the next months' assistance. Therefore, according to the Ministry, income received in July is reported in August and then affects September's assistance.

The Ministry determined that because the Appellant's CPP income for July 2012 was \$1359.76 and his disability assistance rate is \$906.42, the Appellant's income for July 2012 exceeded his disability assistance for that month. Therefore, the Ministry also determined that the Appellant was ineligible for income assistance for September 2012.

The Appellant's position is that he was given no notice by the Ministry or the CPP about how his CPP income would affect his disability assistance. He submitted that he does not understand why one month he gets a windfall and then the next month he is penalized. The Appellant said he was not told there would be a claw back by the province. He also stated that he received no notice from the CPP about the additional amount he received in July 2012. The Appellant submitted that he assumed that the money put in his bank account was his and if it is his, the provincial government should not take it away. He pointed out that when \$500 a month is suddenly taken away from him he cannot pay his rent. The unexpected claw back put him in a difficult financial position.

The Panel finds that the Ministry considered the monthly disability assistance the Appellant is eligible for and the amount of CPP the Appellant received in July 2012. The Ministry reasonably determined that CPP is defined as unearned income in the EAPWDR and the only exceptions are in the tax provisions in Schedule B section 7, which did not apply in the Appellant's case. Therefore, the Panel finds that based on the evidence the Ministry reasonably determined that the Appellant's unearned income in July 2012 consisting of a CPP payment of \$1359.72 was more than the \$906.42 a month he was eligible for in disability assistance, and that therefore the Appellant was not eligible for assistance for September 2012.

The Panel confirms the Ministry's decision because it finds that the Ministry's decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances.