

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated October 5, 2012 which held that the appellant is not eligible for income assistance because she failed to pursue all available sources of income, pursuant to Section 14 of the Employment and Assistance Act (EAA) and Section 31 of the Employment and Assistance Regulation (EAR). The ministry found that the appellant failed to pursue income through an application for Canada Pension Plan (CPP) benefits.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 14

Employment and Assistance Regulation (EAR), Section 31

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of the Request for Reconsideration- Reasons.

In her Request for Reconsideration, the appellant stated that she is over 60 years old with no English language skills at all. Due to her old age, lack of language skills and the tough economic situation in B.C., she cannot find any job at all no matter how hard she has been trying. The appellant stated that she does not have anyone to support her because her son has limited or low income. The appellant stated that she cannot apply for early Canada Pension Plan (CPP) benefits because the amount of money that she might be entitled to get is not sufficient to provide her with basic needs for food and shelter, taking into account current prices and inflation.

In her Notice of Appeal, the appellant added that she feels very strongly that she is in great health. The appellant stated that she is going to register in school to continue her studies in the English language. The appellant stated that she will continue to apply for jobs everywhere. These are the many reasons why she does not wish to apply for CPP at this age. She is ready for work at any moment.

At the hearing, the appellant's family friend assisted with translation into English and the appellant stated that her welfare stopped and she has received nothing since August 2012. The appellant stated that if she cannot pay the rent for the next month, she will be evicted and have no place to live. The appellant stated that she lives with her 35-year-old son but he could leave at any time. The appellant stated that she does not agree that she should apply for CPP because she is capable of working, she feels healthy and she thinks she could find a job cleaning or washing dishes. The appellant stated that she has applied for jobs at restaurants for dishwashing but has not been able to get a job yet, but she believes that her age should not work against her. The appellant stated that she does not want to "close her life" yet.

The ministry relied on the reconsideration decision which stated that the appellant is currently receiving income assistance as a sole recipient and her file opened in July 2010. On September 10, 2012, the appellant was advised, with the assistance of an interpreter, that she was required to apply for CPP benefits. The appellant stated that she did not want to apply for CPP before becoming 65 years of age because it would reduce her payments. The appellant was advised that by choosing to not apply for CPP she would be failing to pursue income and would be found ineligible for income assistance. The ministry asked the appellant a yes or no question through the interpreter, that question was: "Are you willing to pursue CPPE, understanding the consequences of a denial of income assistance?" The appellant stated that she was not willing to pursue CPPE. At the hearing, the ministry added that the ministry is the payer of last resort and that when a person turns 60 years of age, they are expected to apply for early CPP benefits, even if that means that the amount to which they are entitled at the age of 65 is reduced. The ministry stated that since the appellant came to Canada in 2009, it is unlikely that she will be entitled to CPP benefits since she has not worked in Canada and has not paid into the program, but she is still expected to apply in order to receive a response from the federal government. The ministry stated that it is not known conclusively whether a person is eligible until an application is made. The ministry clarified that it will 'top up' any amount that the appellant receives from the federal government to a maximum of the rate to which the appellant was entitled for income assistance.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry reasonably concluded that the appellant was not eligible for income assistance because she failed to pursue all available sources of income, pursuant to Section 14 of the Employment and Assistance Act (EAA) and Section 31 of the Employment and Assistance Regulation (EAR), through an application for Canada Pension Plan (CPP) benefits.

Section 14 of the EAA provides:

Consequences of not accepting or disposing of property

- 14 (1) The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:
- (a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements;
 - (b) disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.
- (2) A family unit is not eligible for income assistance for the prescribed period if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:
- (a) disposed of real or personal property to reduce assets;
 - (b) [Not in force.]
- (3) In the circumstances described in subsection (1), the minister may
- (a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or
 - (b) declare the family unit of the person ineligible for income assistance or hardship assistance for the prescribed period.

Section 31 of the EAR provides in part:

Effect of failing to pursue or accept income or assets or of disposing of assets

- 31 (1) For the purposes of section 14 (3) (a) [*consequences of not accepting or disposing of property*] of the Act in relation to a failure to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the amount of a reduction is \$100 for each calendar month for each applicant or recipient in the family unit and the period of the reduction is
- (a) if the income, assets or other means of support are still available, until the failure is remedied, and
 - (b) if the income, assets or other means of support are no longer available, for one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.
- (2) For a family unit that is declared ineligible under section 14 (3) (b) of the Act for income assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the period of ineligibility is,
- (a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied, and
 - (b) if the income, assets or other means of support are no longer available when the declaration is made, one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support. ...

The ministry's position is that the CPP income would enable the appellant to be at least partly independent of income assistance and that by failing to apply for CPP, she is failing to pursue available income under Section 14 of the EAA. The ministry argues that Section 31 of the EAR specifies that the period of ineligibility lasts for as long as the person continues to fail to pursue the income.

The appellant's position is that there are many reasons for her decision not to apply for CPP benefits, including that she is healthy and believes that she can work, that she is ready to work and she has been applying for jobs. The appellant argues that her age should not work against her, and she does not want to "close her life" yet. The appellant argues that she cannot apply for early CPP benefits because the amount of money that she might be entitled to get is not sufficient to provide her with basic needs for food and shelter. The appellant argues that since her income assistance payments stopped she has not been able to pay her rent and she could be evicted and she will have no place to live.

The panel finds that the appellant is over the age of 60 and that she may be entitled to early CPP benefits from the federal government and the appellant admits that she has, to date, refused to apply for these benefits. It became apparent at the hearing that the appellant did not realize that the ministry would top up any amounts that she might receive from the federal government to a maximum of the rate of the income assistance to which she is entitled. The panel finds that the ministry reasonably concluded that CPP income would enable the appellant to be at least partly independent of income assistance and that by failing to apply for CPP, she is failing to pursue available income under Section 14(1)(a) of the EAA. With her new understanding, the appellant indicated that she would apply for CPP benefits at the earliest opportunity. The panel finds that the ministry reasonably determined that the period of ineligibility for income assistance lasts for as long as the appellant continues to fail to pursue the income, or until she makes an application for CPP benefits, pursuant to Section 31(2)(a) of the EAR.

The panel finds that the ministry decision that the appellant is not eligible for income assistance because she failed to pursue all available sources of income, pursuant to Section 14 of the EAA and Section 31 of the EAR, was reasonably supported by the evidence and confirms the decision.