

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry) reconsideration decision of October 04, 2012 in which the appellant was denied Income Assistance (IA) due to having income from the Canada Pension Plan (CPP) Disability program that is in excess of the rate of income assistance for which the appellant would be eligible. The appellant currently receives a monthly disability benefit from CPP in the amount of \$1021.44, which is considered unearned income under Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 1.

PART D – Relevant Legislation

Employment and Assistance Regulation(EAR) Sections 1 and 10
Employment and Assistance Regulation Schedule A sections 1,2 and 4
Employment and Assistance Regulation, Schedule B section 7 (a),(b)(c),(d),(e)

PART E – Summary of Facts

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

- An Employment and Assistance Request for Reconsideration dated September 14, 2012 which includes a handwritten explanation of the appellant's position and the reasons she needs to have Income Assistance.
- An undated handwritten note from the physician stating the appellant has an imminently life threatening condition and is waiting for a kidney transplant.
- A 2 page patient medical expense report from a pharmacy the appellant uses, documenting the medications she is receiving and the subsequent cost of these medications.
- An application for Income Assistance completed by the appellant and dated September 13, 2012.
- CPP data match form

In the hearing file the appellant states that for the past 2 years she has been suffering with a failing transplanted graft which she describes as an imminent life threatening condition. She states that she is receiving a CPP disability benefit of \$1021.44 per month but she has not been able to work since August 2011 in order to supplement her income and provide her with the income she requires on a monthly basis. The appellant states that she requires up to an additional \$800.00 a month to help her live. She states she has had to resort to using her credit card for basics such as food, a roof over her head, hydro, phone and taxes. The appellant states that she is asking the ministry for an additional \$500.00 per month for basic living expenses. The appellant states that she has 2 mortgages on her home one for \$1252.61 a month and a second mortgage of \$194.00 per month plus \$1777.04 a year taxes, hydro of approximately \$250.00 a month, phone and internet of \$69.00 a month and food expenses.

The appellant states that she has had to bear all prescription costs since August of 2011 until August of 2012 when she reached her deductible. The appellant is asking for reimbursement of her medication costs of \$768.71 plus coverage of medication costs starting in January 2013 until she receives her kidney transplant and can work again.

The ministry relied on the information which it submitted in the file. The ministry states in its submission that the appellant has not previously received income assistance in British Columbia but the appellant intends to apply for Person With Disability (PWD) designation.

Schedule A of EAR states the income assistance rate for a single recipient with no dependents is \$610.00 per month. (\$235 for support and \$375 for shelter). The ministry states it has no discretion to increase the assistance rate as the amounts are set by legislation.

The ministry states that EAR Section 1 defines any type of CPP benefits as unearned income. CPP benefits would be deducted fully from income assistance and disability assistance, except an amount calculated under Schedule B section 7(1) (e). This section refers to a tax portion of a CPP benefit. CPP is derived from pre tax dollars and therefore it is taxable when paid out. The province has established a calculation to exempt that income tax each month. As per the CPP Data Match, the appellant's gross income is \$1021.44, and the CPP tax exempt amount is \$24.00, therefore \$997.44 would be required to be deducted from the appellant's income assistance. This amount is above the \$610.00 income assistance rate the appellant would be eligible for.

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The ministry states that the appellant's request for reimbursement for medication expenses was not part of the original appeal and will be dealt with separately.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision to deny the appellant income assistance because she receives a monthly CPP disability pension in the amount of \$1021.44 which is in excess of the rate of assistance for which she would be eligible, is reasonably supported by the evidence and by the legislation, Employment and Assistance Regulation(EAR) Sections 1 and 10
 Employment and Assistance Regulation Schedule A sections 1,2 and 4
 Employment and Assistance Regulation, Schedule B section 7 (a),(b)(c),(d),(e).

Employment and Assistance Regulation section 1

"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;

Limits on income

10 (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 income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

Employment and Assistance Regulation, Schedule A

Maximum amount of income assistance before deduction of net income

1 Subject to sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income 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.

2 (0.1) For the purposes of this section, **"warrant"** has the meaning of a warrant in section 15.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"warrant" has the meaning of a warrant in section 15.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) The monthly shelter allowance for a family unit to which section 15.2 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:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

Employment as Assistance Regulation , Schedule B

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"warrant" has the meaning of a warrant in section 15.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) The monthly shelter allowance for a family unit to which section 15.2 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:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

Employment and Assistance Regulation, Schedule B

Exemptions — unearned income

7 (1) The following unearned income is exempt:

- (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 11 [*asset limits*] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [*assets held in trust for person receiving special care*] of this regulation if
- (i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 13 (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 13 (2) (a) of this regulation if
- (i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 13 (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;
- (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 panel finds that the appellant confirms she is receiving a monthly CPP disability pension in the amount of \$1021.44. The panel finds that the appellant has serious medical issues and has expenses to cover each month which are above her income level.

The panel finds that Employment and Assistance Regulation Section 1 (f) defines unearned income as "any type or class of Canada Pension Plan benefits".

The panel finds that Employment and Assistance Regulation section 10 (2) states:

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

The panel finds that the ministry decision to deny the appellant income assistance is reasonably supported by the legislation and the evidence provided by the appellant.

The panel confirms the ministry decision.