

PART C – DECISION UNDER APPEAL

The decision under appeal is the ministry's reconsideration decision dated December 11, 2012 to deduct CPP which is non-exempt unearned income under the Employment and Assistance for Persons with Disabilities Regulation, Section 1 and Schedule B.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA)
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR),
Section 1, Definitions "unearned income"
Section 8, Requirement to apply for CPP benefits
Section 9, Limits on income
Section 24, Amount of Disability Assistance
Schedule A, Disability Assistance Rates
Schedule B, Deduction and Exemption Rules

PART E – SUMMARY OF FACTS

This hearing had been adjourned and rescheduled at the request of the appellant. After waiting 10 minutes past the scheduled start time, the panel confirmed the Rescheduled Notice of Hearing had been delivered to the appellant on January 25, 2013. The hearing then proceeded under Section 86(b) of the Employment and Assistance Regulation.

The records before the ministry at reconsideration included the following.

- The statement that the appellant is in receipt of disability assistance as a Person with Disabilities.
- A copy of a letter from a housing society dated July 15, 2010 confirming the appellant's address and rental rate at \$320.00/month.
- The statement that the appellant qualifies as a sole applicant for \$531.42 in monthly support and as 1 person \$320.00 in shelter assistance (his actual rent) for a total amount of \$851.42 under Schedule A of the *EAPWD Regulation*.
- The statement that in addition to monthly support and shelter allowance the appellant receives a nutritional supplement from the ministry of \$165.00/month and that he is required to repay \$20.00/month from his assistance.
- The statement that the appellant began receiving a monthly CPP Disability payment of \$766.73 in July 2012, from which another province's Family Services garnishees \$383.37.
- A Crisis Supplement Request form dated November 14, 2012 requesting funds for a food supplement because \$383.00 had been seized by the Federal Government resulting in the appellant having a short fall of \$90.00 towards his rent leaving and insufficient funds for food and his nutritional supplement.
- The appellant's Request for Reconsideration dated December 5, 2012 with an attached Annex to Section 3 setting out the appellant's reasons for seeking a reconsideration:
 - after applying for CPP disability the appellant believed he would be earning a higher income;
 - the appellant was not informed that the ministry would be taking deductions;
 - another province's Family Services is garnisheeing \$383.00 from the appellant's CPP monthly payments resulting in the appellant having \$293.00/month to live; and
 - requesting the province to hold off deductions for a couple of months so the appellant could travel in order settle his legal problems with another province's Family Services.

The appellant's Notice of Appeal set out the appellant's calculations of his total benefits from CPP Disability and the ministry and the deductions that he says have resulted in a shortfall of \$90.00 towards his rent each month. Because he pays his rent, this shortfall then leaves insufficient funds available for food and prevents him from taking care of his legal issues with another province's Family Services.

The appellant provided reasons in the notice of appeal which the panel addressed in our decision.

There was no additional evidence provided at the hearing.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the ministry's whether decision to deduct CPP, which is non-exempt unearned income under the Employment and Assistance for Persons with Disabilities Regulation, Section 1 and Schedule B, was reasonable.

The relevant legislation is set out in the Employment and Assistance for Persons with Disabilities Act (EAPWDA),

Part 2 - Assistance

Section 5 - Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

and in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), and Schedules as follows:

PART 1 - INTERPRETATION

Definitions

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:

- (a)...(e);
- (f) any type or class of Canada Pension Plan benefits;
- (g)...

Division 2 - Income and Asset Restrictions

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)

Limits on income

9 (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 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.

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

Section 1 - Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and 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 (B.C. Reg. 197/2012)

- (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.

Section 2 - Monthly support allowance

(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 (4) for each dependent child in the family unit.
- (B.C. Reg. 197/2012)

Table 1

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 a person with disabilities	\$531.42

Section 4 - Monthly shelter allowance

- (1) For the purposes of this section:
- (2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of (B.C. Reg. 73/2010)
 - (a) the family unit's actual shelter costs, and
 - (b) the maximum set out in the following table for the applicable family size:

Table

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

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)... (xlii)

- (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.

Deductions from earned income

2 The only deductions permitted from earned income are the following:

- (a) any amount deducted at source for
 - (i) income tax,
 - (ii) employment insurance,
 - (iii) medical insurance,
 - (iv) Canada Pension Plan,
 - (v) superannuation,
 - (vi) company pension plan, and
 - (vii) union dues;
- (b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;
- (c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

Section 6 - 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.

Section 7 - Exemptions - unearned income

The following unearned income is exempt: (B.C. Reg. 83/2012)

- (a)...(d.3)
- (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)
- (f) a tax refund. (B.C. Reg. 197/2012)

The ministry argues that the EAPWDR and Schedules are very specific in how benefits are calculated. There is no room for discretion regarding what can be included or excluded from the calculation. The ministry argues the CPP Disability funds are unearned income and are deducted on a dollar for dollar basis up to the level of assistance for which the appellant qualifies. The issue of the garnishee by another province's Family Services cannot be deducted from the amount of the CPP in the calculation; if it were then the ministry would in fact be paying the garnishee order. The ministry argues that the calculations found in the Reconsideration Decision are correct as set out.

The Notice of Appeal sets out the appellant's argument through alternate calculations which are made in a very different way than those of the ministry. The appellant's calculations do not follow the format of the legislation and therefore it is not clear as to the origin of some of the numbers or how they are used to make a calculation to support his position. It is unfortunate that the appellant was not at the hearing to take the panel through his calculations and also to be present to have the ministry's calculations reviewed.

It appears the appellant's calculations would result in \$74.27 less in deductions being made by the ministry. The appellant's calculations are made in a way that is very different that those set out in the legislation.

The appellant finds himself in a situation where three levels of government have direct involvement in what he receives as monthly income.

The panel has reviewed the ministry's calculations as set out in the Regulations:

Support	\$531.42	
Shelter	+\$320.00	\$851.42
Nutritional Supplement	+\$165.00	\$1016.42
Less \$20.00 monthly repayment	-\$20.00	\$996.42
Less CPP Disability Allowance	-\$766.73	\$229.69

Looking at the above table, there is no dispute that the appellant's support & shelter allowance is \$851.42. Additionally, there is no dispute about the appellant's nutritional supplement and requirement to repay \$20.00. This leaves only the CPP Disability payment outstanding.

The appellant has applied for and is in receipt of CPP disability benefits in accordance with the legislation. All Canada Pension Plan benefits are defined as unearned income under the Regulation. Section 9 of the Regulation sets out income as including an amount that is garnisheed. In calculating net income Schedule B specifies that any amount garnisheed from income is considered to be income. Therefore the ministry was reasonable in

considering the whole of the appellant's CPP disability benefit, including the garnisheed amount of \$383.00. The panel therefore finds the ministry's determination in calculating the CPP deductions to the appellant's provincial benefits to be a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.