

PART C – Decision under Appeal

The Decision under Appeal is the Ministry's Reconsideration Decision, dated Jan. 24 2013, which denied the Appellant's request not to deduct monthly Canada Pension Plan (CPP) benefits from the monthly Persons with Disability (PWD) assistance he received. The Ministry required the Appellant to apply for CPP and once he was in receipt of CPP, the amount he received was deducted as unearned income as under sec. 1 of the Employment and Assistance for Persons with Disabilities Regulation, (EAPWDR). Pursuant to sec. 24 of the EAPWDR the ministry found that the CPP had to be deducted from the monthly disability the Appellant was receiving.

PART D – Relevant Legislation

EAPWDR - Employment and Assistance for Persons with Disabilities Regulation,
Sec. 1-Definitions, Sec. 24, Schedule A and Schedule B.

EAPWDA - Employment and Assistance for Persons with Disabilities Act – Sec. 13

PART E – Summary of Facts

The evidence before the Ministry was that the Appellant was a single recipient of PWD, and, that he was required by the ministry to apply for and was in now receipt of monthly CPP benefits. The Ministry determined that the monthly pension benefit was "unearned income" and must be deducted from the appellants monthly PWD under the provisions of Schedule A and B of the EAPWDR.

The Appellant requested reconsideration and relied on an Advocate's Submission, dated Jan. 18 2013. The submission pointed out that the appellant had contributed to CPP, and federal and provincial taxes to assist in funding CPP and funding Income Assistance/Persons with Disabilities Benefits. The appellant had worked for a number of years and contributed to CPP as required. The appellant "earned income" thru employment from which deductions were made for CPP benefits. The appellant was only eligible for CPP-Disability benefits by fulfilling the requirement that he had contributed through his earned income over the years. He was instructed by the ministry to apply for CPP benefits or be cut off from his PWD. The Employment and Assistance Regulation, Sched. B, Net Income Calculation, sec. 2(a)(iv), acknowledges that CPP is deducted from "earned income." As such, CPP benefits, (including Disability benefits), should be treated as earned income by the ministry and exempt from deduction from the appellant's PWD benefits.

The ministry reconsideration decision determined that the EAPWDR, sec. 1 defined "unearned income," under subsection (f), as any income that is not earned income and includes without limitation any type or class of Canada Pension Plan benefits. As such, they found Appellant was in receipt of ongoing monthly unearned income from the CPP he was receiving. The decision noted there was no income exemption available under Sched. B of the regulation to reduce the amount of income applied against total eligible allowances. As such, the Appellant's unearned income from CPP was deducted and the Appellant's monthly PWD was reduced. The Reconsideration Decision also noted that under sec. 13 of the EAPWDA that a person who fails to pursue income may be found ineligible for disability assistance and as such the appellant was required to pursue the CPP application to remain eligible for PWD benefits.

The Appellant appealed and stated in his appeal notice that he was relying on the previous advocate's submission. The Appellant attended at the hearing with his advocate and the appellant made submission on his own behalf. The Advocate clarified that the appellant was receiving straight CPP benefits, not CPP disability benefits.

In his submission to the panel the appellant advised that he is a valued member of the community he lives in, the province and Canada. He volunteers locally and spends his time on the board of a valued community society. He has family, community, health and social interests as a member of the community and he does not feel the ministry decision is right and the decision and/or the legislation needs to be changed. The appellant was informed by mail that he must apply for CPP or he could be cut off PWD. This was then deducted from his PWD and it has caused him great stress and added to his difficulties. He had to see the Dr. because of the extra stress this has caused him. He is concerned that it is not just him that is being "picked on" but also others in the community and he is very concerned of the effect this has on others in the community. He has paid taxes thru his working life and is concerned that the CPP he is entitled to at age 65 is now being depleted as he has been required to apply for and is now receiving these benefits earlier than age 65. He believes this will result in him receiving fewer funds from CPP than he was entitled to at age 65. He believes he paid into CPP separately than into the provincial welfare system and these should be treated separately. He believes he is being unfairly penalized as the money he initially received from CPP was used for

other things and then it was later deducted from his cheque. If he had known about this he would not have spent the money. He believes this is not unearned income as the money he paid into CPP came from money he earned while working. The money he currently receives from PWD is already inadequate. He believes that this is wrong and that responsible members of the community, like the tribunal members, should stand up and do the right thing. He would like to see the legislation fixed to help all those people who have to deal with this issue.

The ministry stated that in its view this was pension income under the Canada Pension Plan and as such unearned income. The ministry must follow the legislation and this legislation states that CPP benefits of any type or class are unearned income which must be deducted from PWD assistance received. The ministry position is that basically only money earned from a job is earned income. The legislation requires all other sources of income to be pursued first by the recipient of assistance and that the ministry is the payor of last resort. Sec. 24, as written is imperative; it did not allow the ministry any discretion to arrive at any other conclusion.

PART F – Reasons for Panel Decision

The issue to be determined is whether the Ministry reasonably determined the Appellant's benefits received through the Canadian Pension Plan is properly deductible as unearned income under the EAPWDR.

The Legislation states the following;

Employment and Assistance for Persons with Disabilities Regulation

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) Repealed.

(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;

...

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,

...

(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

...

(iv) Canada Pension Plan,

...

Employment and Assistance for Persons with Disabilities Act

Consequences of not accepting or disposing of property

13 (1) The minister may take action under subsection (3) if, within 2 years before the date of application for disability assistance or hardship assistance or at any time while disability 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 disability

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 disability assistance for the prescribed period if, within 2 years before the date of application for disability assistance or hardship assistance or at any time while disability assistance or hardship assistance is being provided, an applicant or a recipient has disposed of real or personal property to reduce assets.

(3) In circumstances described in subsection (1), the minister may

(a) reduce the amount of disability 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 disability assistance or hardship assistance for the prescribed period.

The issue in this matter is whether the Appellant's receipt of CPP is properly assessed as unearned income under the EAPWDR. The Appellant argues the CPP benefit is derived from his earned income; it is not unearned income and as such not deductible from his PWD. Further, the legislation is improper and the tribunal should allow the CPP benefits to be deducted from his PWD assistance. The Ministry argues this is unearned income and must be deducted from his PWD as sec. 24 is imperative. CPP benefits, without limitation, are deemed unearned income and as such must be deducted

It is undisputed, and the panel finds, that the Appellant is eligible for PWD as a single recipient. It is also undisputed that the Appellant is receiving CPP benefits on a monthly basis. The question is whether those benefits have to be deducted from the appellant's PWD?

Under the EAPWDR, "earned income" means any money or value received in exchange for work or the provision of a service. "[U]nearned income" means any income that is not earned income, and includes, without limitation, money or value received from any type or class of Canada Pension Plan benefits. The tribunal finds that the Appellant is receiving "Canada Pension Plan benefits."

The appellant, in his advocate's submission, says the EAPWDR recognizes that CPP contributions come from earned income as sec. 2(a)(iv) of Sched. B allows CPP deductions from earned income calculations. One could argue the opposite that as they are excluded from earned income calculations that they are not then earned income. One could also argue that that they are not money or value received in exchange for work or the provision of a service as defined in the legislation. However, the panel does not need to determine this issue. The panel is a creature of statute and is bound to apply the legislation. The legislation states that CPP benefits are unearned income and this is without limitation. The panel finds that the Ministry was correct in categorizing the CPP benefits as unearned income. The legislation is clear and there is no wriggle room to categorize the CPP benefits as being anything other than unearned income. As such, the panel finds the ministry decision is reasonable in defining the CPP benefits as unearned income.

The appellant also argues that this legislation is unfair and should not be upheld by the panel members. As a person concerned about the greater good of the community and a valued member of

the community the appellant believes that the right thing should be done here and the legislation changed. The panel has no doubt that the appellant is a valued member of and actively involved in his community. However, the personal views of the panel about whether this legislation is unfair and should be changed are not relevant to the panel's consideration. As stated above the panel is a creature of statute and must follow its governing legislation. After holding a hearing, the panel must determine whether the decision being appealed is, as applicable, (a) reasonably supported by the evidence, or (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. The panel must confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. The panel has no ability to override legislation because the panel simply believes it is unfair. The panel must follow the legislation.

As pointed out by the ministry the legislation requires that the CPP benefits are to be categorized as unearned income as defined by the legislation. As found above, this decision by the ministry was reasonable. The panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and is a reasonable application of the legislation based on the circumstances of the Appellant and confirms the Decision.