

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision of April 29, 2013 wherein the ministry determined that the appellant incurred an overpayment as defined in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1,24, 29, Schedule A (1)(2)(4) and Schedule B (1)(6)(7)(11) and that the appellant is obligated to repay the overpaid funds.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1,24, 29, Schedule A (1)(2)(4) and Schedule B(1)(6)(7)(11)

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A letter from the appellant to HRSD Canada dated September 25, 2008 stating that although she qualifies for CPP she is opting not to begin receiving her CPP because it is lower than she expected.
- A letter written by the appellant dated March 20, 2013. The letter reads that the appellant understands she received a CPP cheque in February 2013 for \$210.14 that she was not entitled to. She writes that due to her receiving the \$201.14 CPP cheque the ministry has reduced her March benefit cheque by the same amount. The appellant goes on to write that with the reduced amount from the ministry that she wont be able to pay her rent and utilities.
- A notice of deposit for the appellant's April benefit cheque dated March 20, 2013. The notice shows the deduction of the \$210.14 overpayment for a reduced benefit of \$399.86.
- A letter dated February 27, 2013 from HRSD Canada addressed to the appellant. The letter informs the appellant that she received a cheque in February that she was not entitled to and that her next 4 pension cheques would be reduced by 25% until the overpayment is made up.
- Two Service Canada forms both titled "Consent to Deduction and Payment" signed by the appellant. One was dated Oct 23, 2012 and the other dated Dec 20, 2012. The form gives Service Canada the authority to deduct funds from her CPP benefit and forward the money to a provincial ministry to repay any social assistance overpayment.
- A promise to pay form dated Dec 19, 2012 signed by the appellant agreeing to repay the ministry \$460.00 in hardship benefits.
- A letter to the appellant from the ministry dated Nov 26, 2012 requesting that she provide confirmation that she has submitted her application for early CPP benefits.
- A CPP Statement of Contributions for the appellant dated Nov 11, 2012 showing the amount of CPP benefit she is entitled to.
- A letter from Service Canada to the appellant dated Jan 23, 2013 stating that she has been approved for CPP and will receive \$210.14 per month beginning Jan 2013.
- A letter dated April 12, 2013 written by the appellant in that she outlines her argument of why she feels that she should be able to keep the \$210.14 per month she receives from her CPP. In the letter she details her interactions with the ministry during her application for benefits. She argues that since she worked for many years to earn her Canadian Pension, the benefit she receives each month should be considered earned income vs. unearned income and therefore would not be deducted from her social assistance benefit.

The appellant submitted two documents with her notice of appeal. These are:

- A notice of deposit in the name of the appellant dated April 24, 2013 showing a deposit of \$748.82 into her account. The statement calculates a total allowance of \$906.42 less \$157.60 as declared income for a final deposit of \$748.82.
- A letter dated May 10, 2013 written by the appellant addressed to The Employment and Assistance Appeal Tribunal. In this letter the appellant argues that she earned her CPP benefits and that the legislation that classifies CPP benefits as unearned income is discriminatory. She includes a monthly budget of her household expenses.

At the hearing the appellant submitted documents for the panel to consider. She submitted:

- A letter from the ministry dated March 27, 2013 stating that she has been approved for status

as a person with disabilities.

- An updated monthly household budget.
- Four pharmacy receipts for medication purchases.

The panel reviewed these documents and found that they could not be accepted as evidence as per the Employment and Assistance Act section 22 (4). The panel found that the documents provided were not in support or related to the evidence that was before the ministry at the time of the reconsideration and were not relevant to the decision under appeal.

At the hearing the appellant told the panel that she was thought that there was a \$200 earning exemption for recipients of social assistance beginning November 2012. When she applied for her early CPP benefits she thought that she would be allowed to keep \$200 of the \$210.14 she was going to receive. She added that it wasn't until March 20, 2013 that she was informed by the ministry that CPP benefits are classified as unearned income. She told the panel that she requested an appeal of the reconsideration decision because she feels that the legislation that treats her CPP pension as unearned income is discriminatory. She told the panel that she worked for many years and contributed a portion of her earnings to the CPP and the monthly \$210.14 benefit that she now receives represents her earnings in the past. She explained to the panel that she needs the extra \$200 to survive since the disability benefits she receives from the ministry are not enough to cover her monthly expenses.

At the hearing the ministry stood by its reconsideration decision and explained that the appellant was approved for hardship benefits in October 2012 and was required to sign a promise to pay form and consent to deduction and payment form. The ministry told the panel that it was explained to the appellant on at least two occasions that the consent to deduction and payment form allows Service Canada to forward her CPP to the ministry to be applied against her benefits from the ministry and that her hardship payment in October 2012 was given to her pending the receipt of her first CPP cheque. The ministry added that the changes in November 2012 allow for an employable recipient to earn \$200 per month and a PWD recipient to earn \$800 per month, however, the money that the recipient earns must be classified as earned by the legislation. The ministry added that the appellant earned \$150 in 2013 and was allowed to keep the money because it was earned by babysitting and therefore was treated as earned income. The ministry stated that the appellant was approved for PWD status in April 2013.

The panel finds that the appellant:

- Was approved for hardship assistance in October 2012 pending the processing of her application for CPP.
- Was approved for a monthly CPP benefit of \$210.14 effective January 2013.
- Signed a promise to repay form with the ministry on December 20, 2012 agreeing to repay \$460 to the ministry.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in finding the appellant's CPP benefits should be classified as unearned income and therefore be deducted from her PWD benefit.

The relevant legislation is as follows:

### 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) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada);
- (w) tax refunds.

### 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.

### Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

- (a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:
  - (i) a change that is listed in paragraph (b) (i) to (v);
  - (ii) a family unit receives earned income as set out in paragraph (b) (vi);
  - (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and
- (b) the information required is all of the following, as requested in the monthly report form

prescribed under the Forms Regulation, B.C. Reg. 95/2012:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient.
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) if the calendar month is within the calendar year in respect of which the family unit qualifies for an exemption under section 3.1 of Schedule B, the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) if the calendar month is within the calendar year in respect of which the family unit qualifies for an exemption under section 7.1 of Schedule B, the amount of unearned income that is compensation paid under sections 29 and 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

#### Backdated CPP treated as unearned income

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.

#### 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) any income earned by a dependent child attending school on a full-time basis;
- (ii) the basic family care rate paid for foster homes;
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
- (vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*low income climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia);
- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
  - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the

- Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
- (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xiii) the BC earned income benefit;
  - (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
  - (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
  - (xvi) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]
  - (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
  - (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
  - (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
  - (xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;
  - (xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
  - (xxii) payments granted by the government of British Columbia under section 8 [agreement with child's kin and others] of the *Child, Family and Community Service Act*;
  - (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
  - (xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
  - (xxv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;
  - (xxvi) a loan that is
    - (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
    - (B) received and used for the purposes set out in the business plan;
  - (xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
    - (A) Autism Funding: Under Age 6 Program, or
    - (B) Autism Funding: Ages 6 — 18 Program;
  - (xxviii) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;
  - (xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;
  - (xxx) a refund provided under Plan I, "Fair PharmaCare", of the PharmaCare program established under the Continuing Care Programs Regulation, B.C. Reg. 146/95;
  - (xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
  - (xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act (Canada)*;
  - (xxxiii) money paid by the government of Canada, under a settlement agreement, to

- persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (xxxiv) money withdrawn from a registered disability savings plan;
  - (xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada);
  - (xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]
  - (xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;
  - (xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;
  - (xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
  - (xi) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
  - (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
  - (xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program,
- (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, 3.1 and 4, and
  - (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7, 7.1, 7.2 and 8.

The appellant argues that her CPP benefits should not be deducted from the disability benefits she receives from the ministry because her CPP should be classified as earned income.

It is the ministry's position that the appellant's CPP must be deducted from the disability benefits she receives from the ministry because CPP benefits are clearly considered unearned income according to the legislation.

The panel considered the arguments and the evidence provided by both parties. While the panel can appreciate the appellant's argument that in order for her to meet the requirements of her household budget the appellant requires the additional \$200 of income however the panel cannot consider an appellant's budget when making its decision. The panel considered the argument of the appellant that the legislation is discriminatory by classifying her CPP benefit as unearned income, however, the panel is not able to make a determination of the fairness of the legislation. The panel's purpose is to determine whether the ministry's reconsideration decision was reasonably supported by the evidence or a reasonable application of the enactment in the appellant's circumstances. The panel reviewed the legislation and finds that it is unambiguous on how CPP benefits are to be classified by the ministry. The panel refers to the EAPWDR section 1(1)(f) that states that any type of CPP benefit is to be considered unearned income and that EAPWDR also states that any amount of unearned income is to be deducted from the recipient's benefits.

The panel finds that the ministry's decision was a reasonable application of the legislation in the appellant's circumstance and therefore confirms the ministry's decision.