

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated 8 July 2013 in which the Ministry of Social Development and Social Innovation (the ministry) determined that the appellant's disability assistance had to be reduced by the same amount of unearned income she was receiving from the Canada Pension Plan (CPP) under section 24 of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1 and 24.
EAPWDR, Schedule A, s. 1, 2, 4 and 5.
EAPWDR, Schedule B, s. 1, 6 and 7.
Employment and Assistance Act (EAA), s. 24(1).
Employment and Assistance for Persons with Disabilities Act (EAPWDA), s. 13.

PART E – Summary of Facts

At the hearing, the appellant asked for an adjournment by telephone, stating she was not feeling well and because of the recent loss of her animal companion. The ministry objected to the adjournment. The panel did not grant the adjournment for a number of reasons:

- There had been one previous adjournment at the appellant's request in this matter in August 2013 and the objective of the legislation is to have these matters dealt with promptly;
- The appellant was able to attend the hearing by telephone and acknowledged the issues before the Tribunal and that her case had been adequately presented in writing;
- The appellant indicated she had no new evidence or argument to present.

The hearing thus proceeded, the appellant participating by telephone.

The evidence before the Ministry at reconsideration included the following:

- The appellant has been designated as a Person with Disabilities (PWD) since June 2003.
- On 4 June 2013, the appellant contacted the ministry requesting reimbursement for the CPP income she received that was deducted from her disability assistance.
- In her request for reconsideration dated 22 June 2013, the appellant indicated that she was forced by the ministry to take early retirement CPP payments at 60 years of age, instead of the normal 65 years, losing 20% of said payments. She indicated that her costs of living were higher and that she was deprived of the CPP earnings she contributed over the years, not being able to benefit from her efforts. She wanted those deductions to be returned to her and asked the ministry to change the legislation.

In her Notice of Appeal dated 23 July 2013, the appellant indicated that CPP payments are earned since they derive from her wages and contributions. She stated she was forced by the ministry to apply for CPP benefit at 60 years of age instead of 65 because if she did not, her disability assistance would be suspended. She finally indicated she had no faith in the appeal process since she was told her appeal had been dismissed even though she had not yet filed her appeal documents.

At the hearing, the appellant acknowledged that the legislation did not provide any latitude to the ministry and that the ministry had acted within the law and regulation. What she is asking is a change in the legislation to address this matter. No new evidence was presented by either party.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision that the appellant's disability assistance had to be reduced by the same amount of unearned income she was receiving from the CPP under s. 24 of the EAPWDR was either a reasonable application of the legislation or reasonably supported by the evidence.

S. 1 of the EAPWDR defines unearned income:

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:...

(f) any type or class of Canada Pension Plan benefits;

S. 24 of the EAPWDR sets the basis for disability assistance calculation:

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.

S. 1, Schedule B of the EAPWDR determines the deduction and exemption rules and applicable is subsection (d):

1 When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation,...

(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.

None of the deductions provided for at s. 6 or unearned income exemptions under s. 7, 7.1, 7.2 and 8 of Schedule B of the EAPWDR apply to CPP payments.

The ministry argued that since the appellant received CPP payments, it had to be considered as unearned income and had to be deducted from her disability assistance. Further, it argued that there are no legislative dispositions that would allow the ministry to waive that requirement.

The appellant argued that she earned that income through her contributions by working most of her life and it should not be considered as unearned income but rather as earned income. She argued that the ministry had no right to force her to receive reduced CPP payments at 60 years of age, that she should have had the right to wait until she would turn 65 so that she could access her full pension and that the ministry should not use intimidation, i.e. threatening to suspend her disability assistance if she was not claiming her CPP benefits early, forcing her into doing this and losing 20% of her pension. She finally argued that it was inappropriate and unreasonable for a provincial ministry to take advantage of her federal CPP benefits and reduce her disability payments by the same amount and that legislation allowing this should be changed immediately.

The panel's jurisdiction is established by s. 24 (1) of the Employment and Assistance Act that states:

24 (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], 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 finds it has no jurisdiction to deal with the fairness or reasonableness of legislation as argued by the appellant but must look at whether the ministry's decision was reasonably supported by the evidence or a reasonable application of the legislation in her circumstances. In this matter, the legislation is specific that CPP payments are considered 'unearned income' under s. 1(1)(f) of the EAPWDR and it was therefore reasonable for the ministry to determine the appellant's CPP payments were unearned income.

Under s. 1, Schedule B of the EAPWDR, all unearned income must be included in the net income of a family unit, except for the deductions and exemptions provided by the legislation. The panel finds that in the circumstances of the appellant the ministry correctly determined that none of the deductions and exemptions provided at s. 6, 7, 7.1, 7.2 and 8 of said Schedule B applied and therefore reasonably interpreted the legislation in determining that the appellant's CPP payments had to be included in her net income for the purpose of calculating her disability assistance.

With respect to the appellant's argument that the ministry unreasonably forced her to claim CPP benefits early as it was prejudicial to her interests, the panel must refer to s. 13 of the EAPWDA that states:

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...

(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 panel notes the legislation supports the pursuit of income (the CPP early payments) that would enable complete or partial independence from disability assistance and notes that the disability assistance could be suspended if this avenue was not pursued under s. 13(3) of the EAPWDA.

The panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.