

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry's) reconsideration decision dated May 24, 2013 denying the appellant disability assistance for the month of May 2013 because in March 2013 the appellant received Canada Pension Plan (CPP) income in excess of the monthly disability assistance he was eligible for, in accordance with section 9(2) 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, 9, Schedule A(1)(2)(4) and Schedule B (1)(6)(7)(11)

PART E – Summary of Facts

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

- 1) The appellant's Request for Reconsideration dated May 9, 2013 which states that the appellant is suffering from mental health and addiction issues, has lived in poverty for many years and that when he received his CPP benefits he used them to pay a family law lawyer, his credit card balance and other people he owed money to in relation to his substance abuse;
- 2) Printout dated March 20, 2013 indicating that the appellant received CPP disability benefits of \$17,619.61;
- 3) Letter from the appellant to the ministry dated May 2, 2013 asking why he has not received his disability assistance;
- 4) Printout of the appellant's bank account from February 28, 2013 to May 1, 2013;
- 5) British Columbia Family Maintenance Enforcement Program (FMEP) statement dated January 1, 2012 to May 9, 2013 showing a payment of \$3,831.32 made from Federal Government on March 28, 2013; and
- 6) Letter from the appellant's physician dated May 7, 2013 stating that he sees the appellant on a regular basis and is working with him regarding his mental health and substance use problems.

In his Notice of Appeal the appellant states that the ministry's decision is not reasonable because he used the CPP money to pay off debts to FMEP, his credit card, and other personal loans, and now he gets even less than the disability assistance determined under EAPWDR Schedule A.

At the hearing the appellant stated that he has struggled and suffered financially and due to his disabilities for many years, and when he received his CPP retroactive benefits, he used them to pay his family law lawyer, FMEP, credit card and other personal loans. The appellant stated that he has spent the CPP benefits and cannot get them back and needs his disability assistance. The appellant stated that he does not know what to do if he does not receive his disability assistance and is fearful of having to return to living on the street.

The ministry relied on the reconsideration decision and submitted no new information.

The panel makes the following findings of fact:

1. As PWD, the appellant is eligible for \$906.42 per month in disability assistance, provided that he meets the eligibility requirements; and
2. In March 2013, the appellant received CPP disability benefits of \$17,619.61.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was not eligible for disability assistance for the month of May 2013 because in March 2013 he received CPP income in excess of the monthly disability assistance he was eligible for, in accordance with section 9(2) of the EAPWDR.

The relevant sections of the EAPWDR are 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:

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

Limits on income

9 (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

SCHEDULE A Disability Assistance Rates

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.

2 (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.

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

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

Schedule B

Exemptions - unearned income

7(1) The following unearned income is exempt:

(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)

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.

The position of the ministry, as set out in the reconsideration decision, is that in March 2013 the appellant received a retroactive CPP lump sum of \$17,619.91 and as per section 1 of the EAPWDR; all types of CPP income are unearned income. Pursuant to the EAPWDR Schedule section 11, CPP is considered unearned income in the month that it is received. The ministry explained that section 9 of the EAPWDR states that if the appellant's net income (as calculated under Schedule B) exceeds their assistance rate (calculated under Schedule A) he would be ineligible for income assistance. Schedule B requires that all of the appellant's unearned CPP income must be included in the calculation of his net income and that there are no exemptions or deductions that apply to the appellant's income. Therefore, his net income in March 2013 was \$17,619.91. The ministry states that as the appellant's net income exceeds his disability assistance rate of \$906.42; he is ineligible for disability assistance for the month of May.

The ministry also states that section 29 of the EAPWDR requires that income is to be reported by the 5th day of the month following the month in which the income is received. Income is calculated at the earliest opportunity: the month following the month in which the income is reported. The ministry states that in the appellant's case, the CPP income received in March was to be reported in April and affects his May assistance.

The reconsideration decision also states that while the ministry acknowledges that the appellant has spent the CPP income and did not realize that it would affect his disability assistance, the ministry does not have any discretion in this matter and is unable to make an exception in his case.

In particular, the ministry found that the appellant received \$17,619.91 from Canada Pension Plan (CPP) in March 2013, which was to be reported by April 5, 2013 and affected the appellant's May assistance. Pursuant to section 9 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) the appellant's net income for the month of March was more than \$906.42, the assistance rate for a sole recipient with Persons with Disability (PWD) designation. Therefore, his net income exceeded his assistance rate, and he was ineligible for disability assistance for the month of May.

The appellant's position is that he did not realize that his CPP benefits would impact his disability assistance, that he has spent the CPP income to pay a family law lawyer, FMEP, his credit card, and personal loans and has no money. This has put him in a very difficult financial position that may result in him having to return to living on the street.

The panel finds that the ministry considered the monthly disability assistance the appellant is eligible for and the amount of CPP the appellant received in March 2013. The ministry reasonably determined that CPP is defined as unearned income in the EAPWDR and the only exceptions are in the tax provisions in Schedule B section 7, which did not apply in the appellant's case.

Accordingly, the panel finds that based on the evidence the ministry reasonably determined that the appellant's unearned income in March 2013 consisting of a CPP payment of \$17,619.61 was more than the \$906.42 a month he was eligible for in disability assistance. Therefore, the appellant was not eligible for disability assistance for May 2013.

The panel confirms the ministry's reconsideration decision because it finds that the ministry's decision was reasonably supported by the evidence and was a reasonable application of the applicable legislation in the appellant's circumstances.