

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated December 10, 2013 which found that the Canada Pension Plan Child of Disabled Contributor benefits (CPP Childrens Benefits) of \$914.64 that the appellant received in October 2013 is not exempt income pursuant to Schedule B of the *Employment and Assistance Regulation* (EAR) and was deducted from her December income assistance.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 1, 28 and Schedule B

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 November 25, 2013 (RFR) which states that she was told in April 2013 that the CPP Childrens Benefits she was receiving from her ex-husband's disability was exempt. The appellant states that in October she received a retro payment of \$685 plus her monthly amount of \$228.66 for her dependant. In November, she received a call from the ministry representative advising her that the CPP Childrens Benefits was not exempt but advised that it was just the three months, about \$900 and that she could pay \$20 per month so that it would not be deducted all at once. The appellant states that she received her income assistance in December of \$138.94 and she was shocked. The appellant states that she has no money left prior to being told it was no longer exempt and the deduction will cause undue financial hardship as she does not have shelter or food money. The appellant states that she understood that the monthly amount of \$228.66 would be deducted from now on;
- 2) Account Statement of the appellant's bank account dated October 30, 2013 listing transactions from September 28, 2013 through October 30, 2013. The Account Statement indicates that the appellant received CPP Childrens Benefits of \$228.66 and \$685.98 in October 2013;
- 3) Statement from CPP dated March 22, 2013 indicating that the appellant's application for CPP has been approved;

In her Notice of Appeal the appellant states that the ministry did not tell her that the CPP Childrens Benefits was not exempt until after she received the retroactive payment. She was also told that she would not have to pay it back all at once and that it would be deducted at \$20 per month.

Prior to the hearing the appellant provided a written submission dated January 2, 2014 (the Submission) stating that when she started receiving CPP Childrens Benefits she was told by a ministry representative that the CPP Childrens Benefits was coming from her ex-husband's CPP and she would clarify whether it was exempt or not. The appellant states that the ministry representative advised her that the CPP Childrens Benefits would be treated like the Child Tax Benefit and would be exempt but when she received the retroactive payment six months later, she was then told by a different ministry representative that the CPP Childrens Benefits were not exempt.

The appellant also states that she was told by the second ministry representative that because the information provided to her was incorrect and a ministry error she would only have to pay back \$20 per month. The appellant states that she is asking for reconsideration because it was the ministry's mistake. In addition, the appellant states that she is in an unforeseen situation and living well below the poverty line trying to support her daughter so it is so it is unreasonable to deduct the CPP Childrens Benefits all at once.

As the Submission did not contain any new evidence it was accepted as a written submission detailing the appellant's position.

The ministry relied on the reconsideration decision and submitted no new information. The ministry's reconsideration decision states that the appellant has been in receipt of income assistance since March 2011 and her dependant was added to her file in March 2013. The appellant receives assistance as a Person With Persistent Multiple Barriers (PPMB) so her monthly assistance before

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deductions is \$993.58 based on \$570 for shelter and \$423.58 for support. The appellant also receives family bonus and as of March 2013 was approved for the CPP Childrens Benefits of \$228.66 per month. The reconsideration decision states that the appellant reported receiving \$914.64 CPP Childrens Benefits in October which were fully deducted from her December assistance.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision which found that the CPP Childrens Benefits of \$914.64 that the appellant received in October 2013 must be deducted from her December 2013 income assistance as it is not exempt income pursuant to Schedule B of the *Employment and Assistance Regulation* (EAR) was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

The relevant sections of the legislation are as follows:

EAR

Definitions

1 (1) In this regulation:

"Act" means the *Employment and Assistance Act*;

"assistance" means income assistance, hardship assistance or a supplement;

"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;
- (p) maintenance under a court order, a separation agreement or other agreement;

Amount of income assistance

28 Income 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.

EAR Schedule B

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 28 (b) [*amount of income assistance*] of this regulation,

a) the following are exempt from income:

- (iv) a family bonus, except the portion treated as unearned income under section 10(1) of this Schedule;
- (v) the basic child tax benefits;
- (vi) a goods and services tax credit under the *Income Tax Act (Canada)*

Exemptions — unearned income

7 (0.1) In this section:

"disability-related cost" means a disability-related cost referred to in paragraph (a), (b) or (c) of the definition of disability-related cost in section 13 (1) [*assets held in trust for person receiving special care*] of this regulation;

"disability-related cost to promote independence" means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 13 (1) of this regulation;

"intended registered disability savings plan or trust", in relation to a person referred to in section 13.1 (2) [temporary exemption of assets for person applying for disability designation or receiving special care] of this regulation, means an asset, received by the person, to which the exemption under that section applies;

"structured settlement annuity payment" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(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 that 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*;

Application of deductions and exemptions

9 (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

- (a) the date the income is payable;
- (b) the period for which the income is payable;
- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

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) income 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.

Position of the Parties

The ministry's position, as set out in the reconsideration decision, is that the monthly CPP Childrens Benefits, including the extra backdated amount received in October, must be deducted from the appellant's income assistance.

The ministry states that income assistance may be provided to or for a family unit in an amount not more than the amount determined under Schedule A, minus the family unit's net income determined under Schedule B. The ministry states that the appellant's net income in October 2013 as determined by Schedule was \$914.84. The ministry states that the appellant's GST, family bonus and child tax benefit are exempt and did not affect her assistance, but that "unearned income" includes any type or class of CPP benefits with the exception of the tax portion of CPP cheque as per EAR Schedule B, section 7(1)(e) or backdated CPP received for a period that assistance would have otherwise not been provided as per EAR Schedule B, section 11.

The ministry states that there was no information provided to indicate that there was a tax portion of the appellant's CPP Childrens Benefits and as the backdated amount she received is for a period where she was in receipt of full assistance, she does not qualify for either of the legislated exemptions. The ministry also states that CPP Childrens benefits are treated much like maintenance within the legislation as it is also defined as "unearned" income and fully deducted from assistance.

The ministry's reconsideration decision also states that the deductions and exemptions in EAR Schedule B apply only in the calendar month in which the income is actually received, despite the date the income is payable or period for which the income is payable. As per the ministry's reporting cycle, income is reported by the 5th of the following month and affects the next month's assistance such as October income is reported in November and affects the December month's assistance.

The appellant's position is that the ministry's reconsideration decision is unfair and that as the CPP Childrens Benefits are child benefits it is unreasonable to deduct them all at once. She states that the circumstances were unforeseen and as she is living well below the poverty line, the deductions caused her undue hardship. The appellant also states that the ministry representative initially told her that the CPP Childrens Benefits would not be deducted and then another ministry representative later told her that only three months of retroactive benefits would be deductible at \$20 per month. The appellant states that as the ministry made a mistake in what they told her the benefits should not be deducted.

Panel Decision

As legislated in EAR section 28, the appellant's income assistance is determined by the amount set out in Schedule A minus the family unit's net income determined under Schedule B. Schedule B section 7(1)(e) states that a tax portion of CPP benefits are considered unearned income and exempt. As there was no information provided to indicate that there was a tax portion of the appellant's CPP Childrens Benefits the panel finds that the ministry reasonably concluded that Schedule B, section 7(1)(e) did not apply.

Schedule B, section 11 states that backdated CPP is treated as "unearned income" and is exempt

from income only if it is received for a period that assistance would have otherwise not been provided. The panel finds that the ministry reasonably determined that as the backdated CPP Childrens Benefits were received for a period while she was in receipt of full assistance, it is not exempt income and therefore, must be deducted.

Although the appellant states that she initially advised by the ministry representative that the CPP Childrens Benefits were exempt from income like the child tax benefit, the legislation clearly differentiates between the child tax benefit and CPP Childrens Benefits. There is no other information to indicate that the ministry provided incorrect information to the appellant about the deductibility of the CPP Childrens Benefits, but even if the ministry had provided incorrect information, the legislation requires that the CPP Childrens Benefits be deducted.

The panel appreciates that the deduction of the full CPP Childrens Benefits in the month of December 2013 may have been difficult for the appellant, but the panel finds that the ministry reasonably deducted the amount that month based on the reporting cycle.

The CPP provided to the appellant in October is not exempt income pursuant to EAR section 1, 28 and Schedule B. Accordingly, the panel finds the ministry decision that the CPP provided to the appellant in October 2013 must be deducted from her December 2013 income assistance was a reasonable application of the legislation. The panel therefore confirms the ministry's reconsideration decision.