

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated January 13, 2015 which held that the ministry was not able to approve the appellant’s request for reimbursement of previous CPP benefits that were deducted from his disability assistance because the appellant did not meet the eligibility requirements set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDA) Schedule B sections 1, 6, 7 and 9. Specifically, the ministry found that the appellant’s monthly CPP retirement pension had been reduced due to his earnings having been lower than originally indicated and this has resulted in the appellant having received an overpayment that now must be refunded by him. The appellant has requested that the ministry reimburse him for the overpayment amount that he must refund but the ministry determined that according to the legislation, the deductions of his CPP income were correctly applied and the minister cannot reimburse the CPP benefits that were previously deducted.

PART D – Relevant Legislation

EAPWDA section 1
EAPWDA Schedule B sections 1, 6, 7, 9

PART E – Summary of Facts

The ministry was not in attendance at the hearing. After confirming that the ministry was properly notified, the hearing proceeded pursuant to Section 86(b) of the Employment and Assistance Regulation.

The documentary evidence before the ministry at reconsideration included the following:

1. A letter dated October 6, 2014 from Service Canada to the appellant advising him that his CPP benefit has been recalculated. As a result, the appellant has received an accumulated overpayment of \$408.55 and is required to repay this amount.
2. A follow-up letter from Service Canada to the appellant dated October 28, 2014 advising him that as a result of the recalculation his monthly CPP retirement pension will be reduced from \$303.96 to \$295.05.
3. The appellant's *Request for Reconsideration* signed and dated January 4, 2015 in which he states the following reason for requesting reconsideration: "*C.P.P. has as(s)essed me 408.55 as an overpayment and reduced my C.P.P. amount. As I was as(s)essed this amount as income and it was deducted from my P.W.D. in fairness I feel it should be paid back to me as I have to pay back C.P.P. for it and I don't have it! I(t) sounds like the govt. is double dipping me.*"

The appellant's *Notice of Appeal* was dated January 20, 2015 and lists the reasons for his appeal as follows: "*I was demanded to file for early CPP as you considered it to be "double dipping". You deducted my CPP payment as income when it was reassessed. I technically did not receive that income as it has to be repaid. I therefore didn't actually receive that amount in the months reported. I will be turning (an age this year) in Aug and will soon not be on P.W.D. It is very difficult to even eat at this time!*"

At the hearing, the appellant's testimony consisted of argument which is presented in Part F.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request to receive reimbursement for the CPP overpayment was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant was not eligible for reimbursement for his CPP repayment because the ministry determined that deductions and exemptions on unearned income apply only in the calendar month for which the income is actually received.

The relevant legislation is as follows:

From the EAPWDR:

Part 1 — Interpretation

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.

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,
- (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;
- (xl) 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;
- (xlili) money paid or payable from a fund that is established by the government of British Columbia,

the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;

(xlv) payments granted by the government of British Columbia under the Temporary Education Support for Parents 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.

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

(a) any income tax deducted at source from employment insurance benefits;

(b) essential operating costs of renting self-contained suites.

Exemptions — unearned income

7 (0.1) In this section:

"disability-related cost" means a disability-related cost referred to in paragraph (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for person with disabilities*] 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 12 (1) of this regulation;

"intended registered disability savings plan or trust", in relation to a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person 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:

(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;

(c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [*asset limits*] of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation if the payment is applied exclusively to or used exclusively for

(i) disability-related costs,

(ii) the acquisition of a family unit's place of residence,

(iii) a registered education savings plan, or

(iv) a registered disability savings plan;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used

exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) subject to subsection (2.1),

(i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation,

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation, or

(iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust

if the payment, structured settlement annuity payment or money is applied exclusively to or used exclusively for disability-related costs to promote independence;

(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) © 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 (1), plus 1/12 of the amount resulting from the calculation under section 118 (1) of the *Income Tax Act* (Canada) and section 4.1 (a) of the *Income Tax 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*;

(f) a tax refund.

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.

Appellant's Position

The appellant explained that the repayment of \$408.55 was causing him extreme financial difficulty because he is in debt, and unable to pay his bills and cover his living costs. He argues that it is unfair of the ministry to refuse to reimburse him for this amount because he “technically” did not receive the money since it has to be repaid. If Service Canada had correctly calculated his monthly payment in the first place then he would have received a correspondingly higher monthly P.W.D. payment and would not have to pay anything back. He feels that the ministry is “going by the book” and that there should be some flexibility in how the rules are applied since this problem was not something he caused or could have avoided. He feels caught in a “Catch 22” since he is being penalized through no fault of his own and feels the ministry is not being reasonable or helpful in refusing to reimburse him.

Ministry's Position

The ministry's position is outlined in the reconsideration decision. The ministry notes that section 1 of the EAPWDR defines “unearned income” as any income that is not earned income, and includes, without limitation, any type or class of Canada Pension Plan (CPP) benefits.

Sections 1, 6 and 7 of Schedule B of the EAPWDR set out types of unearned income that may be deducted or exempted from the calculation of the appellant's monthly income. CPP benefits are not listed as a type of unearned income that may be excluded from the calculation minus a monthly tax exemption to be applied on gross CPP income for eligible clients.

Section 9 of Schedule B of the EAPWDR stipulates that the deductions and exemptions under Schedule B apply only in the calendar month in which the income is actually received, despite any of the following: the date the income is payable, the period for which the income is payable, the date the income is reported to the minister and the date the ministry receives notice of the income.

The ministry concludes that while it is sympathetic with the circumstances of the appellant's case, the relevant legislation must be applied. Since section 9 of Schedule B of the EAPWDR specifies that the deductions and exemptions under Schedule B apply only in the calendar month for which the income is actually received, the ministry concluded that the deductions of the appellant's CPP income were applied correctly in the calendar month for which they were received and the minister cannot reimburse the CPP benefits that were previously deducted.

Panel Decision

The panel notes there is a type of asymmetry in the legislation. In the event of a person in the appellant's circumstances receiving notification of an adjustment in the CPP benefits which results in a higher monthly CPP benefit then section 11 of Schedule B of the EAPWDR stipulates that the additional monthly payments received by the recipient “. . . must be treated as unearned income and is considered to have been received by the recipient in that month.” So the recipient in these circumstances is subject to a corresponding payback of PWD benefits to the minister. But according to the ministry, a person in the appellant's circumstances who receives notification of an adjustment in CPP benefits which results in a lower monthly CPP benefit must reimburse the federal government for the difference between CPP payments made and CPP payments for which the individual was eligible. The panel understands why the appellant feels there is a kind of “Catch 22” in this context. But the mandate of the panel does not extend to assessing whether the legislation itself is reasonable. Rather, the panel must restrict its attention to whether the ministry reasonably applied

the relevant legislation in the circumstances of the appellant.

The panel also notes that events in the appellant's situation were entirely beyond his control. He could not have known that his CPP monthly benefits had been incorrectly calculated and that he was actually receiving a higher monthly benefit than he was eligible to receive. Further, had the monthly CPP benefit been correctly calculated by Service Canada, the appellant would have received a correspondingly higher PWD assistance level. In that event he would have received the same (total) monthly level of assistance as he has been receiving and would not have had a requirement to pay back the \$\$408.55.

Nonetheless, the panel recognizes that the relevant legislation detailed by the ministry in the reconsideration decision provides for no measure of discretion or interpretation by the ministry. Accordingly, the panel concludes that the ministry reasonably determined that the appellant was not eligible for reimbursement for the CPP benefits that were previously deducted.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for reimbursement for the CPP benefits that were previously deducted was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry decision.