

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated December 18, 2014 which held that the Canadian Pension Plan (CPP) Survivor Pension that the appellant received in October 2014 is not exempt income pursuant to Schedule B of the Employment and Assistance for Person With Disabilities Regulation and therefore was deducted from her December disability assistance. As the unearned income (CPP) exceeded the appellant's disability assistance rate, pursuant to section 24 of the EPWDR, the appellant was ineligible for disability assistance for December.

PART D – Relevant Legislation

Employment And Assistance For Persons With Disabilities Regulation (EAPWDR), Sections 1,9,24, and Schedule B Sections 1, 7, 9, and 11.

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of:

The appellant is the sole recipient of disability assistance in the amount of \$906.42 (\$531.42 support and \$375 shelter) and in October 2014 received CPP widow's pension of \$1394.95 (\$1115.96 backdated and \$278.99 scheduled monthly amount).

A Request For Reconsideration dated November 26, 2014 in which the appellant noted that she thought that the government was aware of her widow's pension and that she was of the understanding that she is entitled to make \$800 extra a month.

In her Notice of Appeal dated January 8, 2015, the appellant indicated that she believes her earnings exemption should apply.

The ministry's submission was the reconsideration summary provided in the appeal record.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision which held that the Canadian Pension Plan - Survivor Pension that the appellant received in October 2014 is not exempt income pursuant to Schedule B of the Employment and Assistance for Person With Disabilities Regulation and was deducted from her December disability assistance resulting in ineligibility for December's disability assistance was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Relevant Legislation

EAPWDR

1. Definition: "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; (B.C. Reg. 518/2004)
- (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) widows' or orphans' allowances.....

9. Limits on income

9 (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(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 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: 1(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

Exemptions - unearned income

7 (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; (B.C. Reg. 197/2012)(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) (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)(f) a tax refund.

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if (B.C. Reg. 197/2012) (a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and (b) the settlement agreement requires the defendant to i) make periodic payments to the person for a fixed term or the life of the person, (ii) purchase a single premium annuity contract that (A) is not assignable, commutable or transferable, and (B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement, (iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and (iv) remain liable to make the payments required by the settlement agreement.(2.1) The maximum amount of the exemption under subsection (1) (d.3) is \$8 000 in a calendar year, calculated as the sum of all payments, structured settlement annuity payments and money that, during the calendar year, are applied exclusively to or used exclusively for disability-related costs to promote independence.

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) 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 ministry's position is that the appellant's CPP income must be deducted from her disability assistance; therefore, she is ineligible for December assistance. As per section 24 of the EAPWDR, disability assistance may be provided to a family unit for a calendar month, in an amount that is not more than the amount determined in Schedule A minus the family unit's net income determined under Schedule B. As per Schedule A, the appellant is eligible for \$906.42 (\$531.42 support and \$375 shelter). As per Schedule B, section 1(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8. As per section 7, the full monthly amount of CPP must be deducted except a tax exempt amount which does not apply to the appellant's CPP; therefore, the amount of \$278.99 must be fully deducted. As per section 11, backdated CPP must be deducted if received for a period while the appellant was in receipt of assistance which wouldn't have been provided if a pension benefit had been paid. The appellant's backdated amount is for the period of June through September 2014 while she was a recipient of assistance; and therefore, she received the full amount of \$1115.96 in October which must be fully deducted from her December assistance. As the appellant's net income was \$1394.95 for October and in excess of her disability assistance rate of \$906.42, she was not eligible for December assistance. The ministry further states that they have no ability to apply the \$800 earnings exemption as CPP is defined as unearned income; therefore, they follow the rules associated to CPP as per sections 7 and 11 of the EAPWDR.

The appellant's position is that she thought her widow's monthly pension of \$278.99 was exempt because she was entitled to make an extra \$800 per month.

Panel's Findings

As legislated in the EAPWDR section 24, the appellant's disability 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 widow's pension, the panel finds that the ministry reasonably concluded that Schedule B, section 7(1)(e) did not apply and that the monthly amount of CPP widow's pension must be deducted from her December disability assistance.

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 widow's pension was received for a period while she was in receipt of full assistance, it is not exempt income and therefore, must be deducted.

The CPP provided to the appellant in October is unearned income pursuant to EAPWDR section 1, not exempt or deductible under Schedule B and must be deducted from her December disability assistance pursuant to section 24. Accordingly, the panel finds the ministry's reconsideration decision that the CPP provided to the appellant in October 2014 made her ineligible for her December 2014 disability assistance was a reasonable application of the legislation.

The panel therefore confirms the ministry's reconsideration decision.