

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Innovation (the “Ministry”) reconsideration decision dated January 15, 2015 in which the Ministry determined that the Canada Pension Plan (CPP) of the Appellant is unearned income which must be deducted from the monthly disability assistance that the family unit is eligible for under sections 1,10, 24 and schedule B of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The Ministry also determined that it must include as total unearned income the whole amount of CPP benefits that the Appellant is eligible for, even though an amount is garnished every month by the Family Maintenance Enforcement Program (FMEP).

PART D – Relevant Legislation

Employment and Assistance for persons with Disabilities Regulation (EAPWDR), section 1,10 and 24 and Schedule B.

PART E – Summary of Facts

The evidence before the Ministry at reconsideration was:

- The Appellant and his spouse receive the maximum rate of disability assistance as a couple. He was added to his partner's file as a dependent spouse in September 2008,
- The Ministry required the Appellant to apply for CPP at age 60. He began receiving \$624.65/month in CPP benefits in August 2014.
- \$308.16 was garnished by FMEP in October 2014.
- The FMEP payments have since been reduced to \$166.16 for September 2014 and \$156.16 for October, November and December 2014.
- A reply from the Ombudsperson concerning the Appellant's complaint that CPP was being deducted from the assistance payment confirmed that the Ministry is required to deduct CPP income under the applicable legislation and also stated that the Ministry had provided a crisis supplement of \$341.18 to assist with the November rent.
- Appellant's receipts showing rent of \$800/m, Shaw cable \$43.94, London Drugs \$454.42 and video cost that is illegible.
- In the Request for Reconsideration dated December 15, 2014, the Appellant listed expenses of \$50-60/ month for laundry, \$20-30/weekly for transportation, \$80 for vitamins, \$454/m for medication, "\$ for food".
- The Appellant writes that he thought that "we might have some quality of life + not feel like bums once CPP started but now we have to survive on approx. \$1000/month. We worked for 37 years to get CPP now ½ to ex and ½ of ministry cheque gone too. Please help us."

In the Notice of Appeal dated January 19, 2015, the Appellant stated that he disagrees with the reconsideration decision because the family cannot survive on approx. \$1000/m, listing bare needs necessary for health. The costs are: \$800/m rent, \$454/m for prescription medication, \$80/month for vitamins, \$120/m minimum for transportation, \$60/m for laundry, "\$ for food" as the doctor has ordered a high protein, high fiber and calcium diet due to several health problems.

A Release of Information form dated February 2, 2015 was signed to allow the Appellant's spouse to participate in the hearing.

At the hearing:

The Appellant stated:

- that he is paying FMEP of \$156.16/month, an ongoing monthly cost and that will not be paid off for many years

The Appellant's spouse stated :

- With deductions for CPP of \$635.89 the family is left with approximately \$1100/month; they cannot live on \$1100/month. They use the food bank regularly, cannot afford to go to the coffee shop, and have no quality of life. They are \$250.00 short to cover their monthly expenses.
- Costly drugs are needed and are not covered by PharmaCare though their physician has applied for coverage which has been denied.
- She was told by a Ministry representative that applying for and receiving CPP would not reduce their monthly disability assistance amount.

The panel finds that the Appellant's written statements in the Notice of Appeal and the testimony at the hearing are consistent with and in support of evidence that was before the Ministry at reconsideration.

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The panel therefore admits the statements as evidence under section 22(4) (b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision is reasonably supported by the evidence and/or is a reasonable application of the applicable legislation in the circumstances of the Appellant. The Ministry determined that there was no exception available under Schedule B of the EAPWDR for CPP benefits; the FMEP garnished is considered to be income and does not qualify for any exemptions. Therefore the full amount of CPP must be deducted from disability assistance under section 24 and Schedule B of the EAPWDR.

Applicable Legislation

The following legislation applies to the Appellant's circumstances in this appeal.

Relevant Legislation under the EAPWD

1 (1) (f).

Definition of **"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

10. (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 income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income 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-

Net income calculations 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 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)*;

(xxvi) 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; income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3, 3.1 and 4, and (B.C. Reg 332/2012) and Family Development's Family Support Services program;

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's family Supported Services program 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;

(xliii) 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;

(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 (B.C. Reg 332/2012)

(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(B.C. Reg 322/2012) (B.C.Reg 123/2013).

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 (1) the following unearned income is exempt: (B.C. Reg 83/2012)

- (e) the portion of Canada Pension Plan Benefits that is calculated by the formula $(A-B) \times C$, where
 2. The only deductions permitted from earned income are the following:

A= the gross monthly amount Canada Pension Plan Benefits received by an applicant or recipient;

B= (i) in respect of a family unit comprised of a sole applicant or as 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) 9ii) of the Income tax Act (Canada) as adjusted under section 117.1of 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) 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.

Appellant's Position

The Appellant argues that one of them worked for 37 years for CPP and he does not agree that CPP should be deducted from disability assistance payments. He and his spouse have no way to get ahead financially and are short \$250/month after paying all their expenses. They have no quality of life, cannot even afford to go to the coffee shop. The FMEP amount of \$156.16 takes money away from their disability benefits and will continue to be deducted for a long time. Their health care costs are increasing as their health is getting worse.

They were told by the Ministry that after applying for CPP their income would not be reduced. The Appellant questioned whether there was a way to stop CPP being deducted from disability payments by paying off all the arrears. The Ministry confirmed that the amount still would be deductible.

The Appellant calculates he receives \$1100/month after deductions, an amount that is impossible for his family to live on.

Ministry Position

At the hearing, the Ministry relied on and reaffirmed its reconsideration decision.

The Ministry stated that the monthly disability amount for the Appellant has been increased to \$1475.56/month before deductions. In making its decision, the Ministry considered EAPWDR sections 1,9,24 and Schedule B sections 1,7,9,11 as it applied to the Appellant's circumstances and concluded the full amount of CPP must be deducted dollar for dollar from the monthly disability assistance payment. The Ministry is unable to exempt either the CPP payments or the amount garnished by FMEP for maintenance. At the hearing, the ministry argued that the Appellant's monthly disability payment has not been significantly reduced due to the CPP deduction.

The Panel Decision

Under EAPWRD section 10 "unearned income" includes any type or class of Canada Pension Plan Benefits and under section 24 disability assistance is paid to a family unit monthly according to an amount that is not more than the amount stipulated under Schedule A, minus the family unit's net income consistent with EAPWDR Schedule B. In this case, consistent with EAPWDR Schedule B, the Ministry deducted CPP, as unearned income as it is not exempt and must be deducted from disability assistance payments. Under section 7 the only exception for CPP deduction does not apply in the Appellant's circumstances. The Appellant argues that he is receiving approximately \$1100/month and cannot live on that amount.

The panel acknowledges that the Appellant disagrees with the net amount he receives as disability assistance and that he feels the assistance is insufficient to make ends meet. However, under section 24 of the Employment and Assistance Act, the panel can only review the decision and determine whether the Ministry's reconsideration decision that it must deduct CPP dollar for

dollar was reasonable in the circumstances of the Appellant.

In summary, the panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable legislation in the Appellant's circumstances.

The Panel confirms the Ministry's reconsideration decision.