

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 30, 2015 which found that the appellant is not eligible for income assistance for the month of July 2015 pursuant to Section 10 of the *Employment and Assistance Regulation* (EAR) as the net monthly income of the family unit exceeded the amount of income assistance payable.

### PART D – Relevant Legislation

*Employment and Assistance Regulation* (EAR), Sections 1, 10, 28, and Schedules A and B

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Statement dated April 18, 2015 in the appellant's name for Canada Pension Plan (CPP) benefits of \$3,191.52 as the retroactive amount and \$230.88 as the total monthly amount effective March 2014; and,
- 2) Request for Reconsideration- Reasons dated July 21, 2015, with handwritten letter dated July 20, 2015 and a receipt dated May 15, 2015 attached.

In her Request for Reconsideration and letter, the appellant wrote that:

- The last year has been very difficult for her, with her husband passing away.
- Since August 2014, she had only \$60 per month for support and paid \$600 a month for rent. A friend helped her survive.
- When she received the retroactive amount of \$3,422.40, she paid her friend the sum of \$2,300 for all the help that she gave. She was left with \$1,122.40, of which she paid \$1,000 for her deceased husband's health debts.
- The receipt dated May 15, 2015 acknowledged receipt by a third party of \$2,300 from the appellant.

In her Notice of Appeal dated August 6, 2015, the appellant expressed her disagreement with the ministry reconsideration decision and wrote that she feels that she needs to explain her case as the information that the ministry explained is not what happened.

At the hearing, the appellant stated that:

- Her husband passed away in February 2014 and she was told she had to apply for survivor benefits. She also had to move and had a lot on her plate.
- She thought the money from CPP was for the previous year so she used it to pay her neighbor who helped her over the previous year. She reported to the ministry that she received the CPP benefits. She paid \$2,300 to her neighbor and her neighbor signed a receipt dated May 15, 2015 for the money received. This amount was not "withheld by CPP" as stated by the ministry in the decision.
- She also paid \$1,000 for her husband's debts and the rest of the money went to her landlady since she owed her money from when they first moved in.
- She did not know that the money from CPP was supposed to be used for rent.
- She and her husband had separated for a period of time and then they shared an apartment after that just as friends. He supported himself and she did not know that he put her down as next-of-kin and that is how this all came about.
- She does not know what the ministry means by the "\$5,500 loan" as referred to in the decision.
- She received an eviction notice so the ministry paid her benefits for July 2015 that must be repaid if she loses the appeal. She is still receiving monthly assistance, less the \$230 CPP pension that she receives each month.
- She signed a paper for the overpayment as a result of living with her spouse, even though they were not living as a married couple, and she must repay this amount to the ministry.
- She applied for Persons With Disabilities (PWD) designation in December 2014 and she was told by the local ministry office that she defrauded the government so now she is "exempt", or not eligible.

The ministry relied on its reconsideration decision, which included information that:

- The appellant is a sole recipient of income assistance with Persons with Persistent Multiple Barriers (PPMB) designation.
- Her monthly assistance is a total of \$739.58, consisting of \$282.92 for support, \$375 for shelter, \$41.66 for drug/alcohol treatment supplement and \$40 for a diet allowance.
- The CPP data match indicated that the appellant received \$3,422.40 in CPP survivor benefits in May 2015.

At the hearing, the ministry clarified that:

- Lump sum survivor benefits are unearned income with no exemption and the income received is considered income in the month it is received. It was received in May, declared in June and then affects assistance paid for July.
- The appellant was paying \$375 per month for rent and she moved to a new place where her rent is \$600 per month while there are many subsidized housing units available in the appellant's community that offer lower rent options.
- The appellant was living with her spouse since 2007 and this resulted in an overpayment by the ministry of close to \$56,000.
- There are advocates available to the appellant to assist with her dealings with the ministry if she feels that she is being misunderstood or that she is not being treated appropriately.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry decision, which found that the appellant is not eligible for income assistance for the month of July 2015 pursuant to Section 10 of the *Employment and Assistance Regulation* (EAR) as the net monthly income of the family unit exceeded the amount of income assistance payable, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 10 of the Employment and Assistance Regulation (EAR) provides that:

- 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.

Section 28 of the EAR provides that:

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.

Schedule A of the EAR sets out the total amount of income assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance.

Section 1 of the EAR defines "unearned income" to mean "...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; ..."

In calculating the net income of a family unit under Schedule B, specific exemptions and deductions from unearned income are provided for as follows:

### **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, . . .
- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 [deductions from earned income] and 6 of this Schedule,
  - (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and
  - (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 [*education-related*] of this Schedule.

**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 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*.

***Ministry's position***

The ministry's position is that the appellant is a single recipient with PPMB designation and is therefore eligible for of assistance of \$657.92 per month under Schedule A of the EAR, consisting of a support allowance of \$282.92 plus a shelter allowance in the amount of \$375. The ministry argued that the appellant was in receipt of CPP benefits in May 2015 of \$3,422.40, which are included in the definition of "unearned income" in Section 1 of the EAR, and that there are no applicable exemptions available in Schedule B to reduce this amount of income. The ministry argued that under Section 1(b) of Schedule B of the EAR, any amount garnished, attached, seized, deducted or set off from income is considered to be income received and, therefore, the entire amount of the CPP benefits (\$3,422.40) must be included in the calculation of the amount of income received. As the monthly net income of the appellant's family unit (\$3,422.40) exceeded the income assistance rate (\$657.92), the appellant is not eligible for assistance for the month of July 2015 pursuant to Section 10(2) of the EAR.

***Appellant's position***

The appellant does not dispute that she was in receipt of CPP benefits in May 2015 in the total amount of \$3,422.40 as she stated at the hearing that she reported this amount to the ministry. However, the appellant argued that she understood that this was a retroactive amount covering the previous year and that she could use the money to pay previous debts, such as paying her neighbors for the help they provided to her when she was in need, paying for her husband's debt of \$1,000, and reimbursing her landlady for an amount owed since the time the appellant moved in. The appellant argued that she did not know that the money from CPP was supposed to be used for her rent, she felt obliged to pay off the previous debts owing to others, and now she is left owing a lot of money to the ministry.

***Panel's decision***

The panel finds that it is not disputed that the appellant received a lump sum payment of \$3,422.40 in

May 2015 consisting of CPP survivor benefits paid upon the death of the appellant's husband. Money or value received from any type or class of Canada Pension Plan benefits is specifically included in the definition of "unearned income" under Section 1(1) of the EAR. Section 1(d) of Schedule B of the EAR stipulates that all unearned income must be included in income except the deductions permitted under Section 6 and any income exempted under Sections 7 and 8 of Schedule B. Section 6 of Schedule B of the EAR relates specifically to income tax deducted from source for employment insurance benefits and essential operating costs of renting self-contained suites and Section 8 of Schedule B provides an exemption for education-related costs. While Section 7(.01)(e) provides an exemption for a portion of CPP benefits, the appellant did not claim that any of the deductions or exemptions applied to her situation and the CPP exemption relates to the tax portion when a person is taxable; the panel finds that the ministry reasonably determined that none of the deductions or exemptions apply to the appellant's situation.

The panel finds that the ministry reasonably concluded that there is no income exemption or deduction available in Schedule B of the EAR to reduce the amount of the appellant's income in May 2015 as a result of the CPP survivor benefits. Although the appellant argued that she did not benefit from the funds because she disbursed them to pay off previous debts, under Section 10(1) of the EAR "income", includes an amount garnished, attached, seized, deducted or set off from the income of a recipient and, therefore, the entire amount of the CPP benefits (\$3,422.40) must be included in the calculation of the amount of income received by the appellant. The panel finds that the ministry reasonably concluded that the net income of the family unit in May 2015 (\$3,422.40) exceeded the amount of income assistance determined under Schedule A of the EAR for a family unit matching the appellant's family unit (\$657.92) and, therefore, no income assistance is payable for July 2015, pursuant to Sections 28 and 10(2) of the EAR.

#### *Conclusion*

The panel finds that the ministry reconsideration decision was reasonably supported by the evidence, pursuant to Section 24(1)(a) of the *Employment and Assistance Act* and confirms the decision under Section 24(2)(a).