

## PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 13 October 2015 determined that the appellant's disability assistance had to be reduced by the amount of unearned income he was receiving from the Canada Pension Plan (CPP) under section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

## PART D – Relevant Legislation

EAPWDR, sections 1, 24 and 29.

EAPWDR, Schedule A, s. 1, 2, 4 and 5.

EAPWDR, Schedule B, s. 1, 6 and 7.

Employment and Assistance Act (EAA), s. 24(1).

Employment and Assistance for Persons with Disabilities Act (EAPWDA), s. 13.

## PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant is a sole recipient of disability assistance and his file was opened in 2010 at the ministry.
- In March 2015 the ministry was advised that the appellant would receive \$591.93 monthly as CPP benefits starting May 2015.
- On 16 June 2015, the ministry received a copy of 2 CPP letters, the first dated 26 March and the second dated 27 March 2015 and indicating that the appellant had been approved as disabled under the CPP and confirming that his monthly disability benefits for 2015 would be \$591.93.
- On 13 July 2015, the ministry issued the appellant's assistance of \$349.49 for the month of July, having deducted the CPP amount from the total benefits (\$531.42 support + \$375 maximum shelter for a total of \$906.42) the appellant was otherwise eligible for as a person with disabilities (PWD). A cheque was issued and according to the ministry file, was cashed on 15 July 2015.
- On 29 July 2015, the ministry also issued the appellant's assistance for the month of August for the same amount. The payment was made via electronic funds transfer to the appellant's pre-authorized bank account and according to the ministry file; the transfer was successful on or by 29 July 2015.
- A one-page letter dated 14 August 2015 to the ministry expressing the appellant's dissatisfaction with the ministry's management of his file and stating he had made a formal request on 15 July 2015 for the reconsideration of the CPP deduction but he had not received any response from the ministry. He indicated there were problems with paying his rent and was concerned that if he could not pay the rent for the month of August he may end up homeless and impoverished again.
- In his Request for Reconsideration dated 17 September 2015, the appellant indicated his request concerned his "monthly payment for 349.49 in assistance for July and August which I never received and was entitled."

In his Notice of Appeal dated 22 October 2015, the appellant indicated that he "did not consent when applying for PWD to have [his] future CPP deducted" and that his CPP benefits were allocated in another province while the PWD designation was from BC.

At the hearing the appellant testified that his monthly rent was \$750 and that he was left with only \$191.42 a month for all his other expenses, including utilities, food etc. He indicated he was very frustrated by this situation and that he had no help from the local ministry office, having been yelled at and hung up on. He also finds his situation is extremely humiliating, having to collect empty bottles and resorting to the food bank to be able to live. Recently he stated he had been assaulted by a roommate and had to find new accommodations, which he did and plans to move there soon. His new rent will be \$700 per month.

The appellant provided the panel with the following documents:

- A 4-page letter dated 16 August 2015 to the ministry indicating his displeasure with how his file was managed, arguing that the ministry cannot deduct the CPP from his disabilities assistance dollar for dollar and his intent to initiate legal actions against the government, the ministry and its employees.
- Bank statement (7 pages) from 1 September to 1 November 2015 for a bank account of the appellant. Two disability assistance payments of \$349.49 dated 23 September and 21 October

2015 appear on this statement.

- A poster titled “Why do we need affordable housing?” about the high cost of living in the appellant’s region.
- Another poster with the mention “Homeless, Pregnant + Hungry Anything Help’s”.

At the hearing, the ministry indicated that the calculation for the exemption of s. 7 (1)(e) of Schedule B of the EAPWDR is made by the federal authorities and the ministry was informed through a data match that the deduction did not apply to the appellant.

The panel determined the additional oral evidence to the effect that the appellant had been assaulted and had secured new accommodations and the documentary evidence that is the poster “Homeless...” was not admissible under s. 22 (4) of the Employment and Assistance Act (EAA) as it was not in support of the records before the minister at reconsideration but was new evidence that is subsequent to the reconsideration decision, is not relevant to the deduction the ministry made of the CPP payments from the appellant’s disability assistance and is not relevant to the appeal.

However, the panel finds the other additional oral and documentary evidence is admissible as it was in support of the records before the minister at reconsideration and provides more information of the appellant’s financial situation, the particular difficulties in the appellant’s region and the difficulties he had in his dealings with the ministry about this issue. However, while it provides some context about the appellant’s situation, the panel cannot give much weight to this evidence, as it is not directly related to the issue before the tribunal, that is the CPP deduction from the appellant’s disability assistance. The ministry did not object to the admissibility of the additional evidence.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision that the appellant's disability assistance had to be reduced by the amount of unearned income he was receiving from the CPP under s. 24 of the EAPWDR was either a reasonable application of the legislation or reasonably supported by the evidence.

S. 1 of the EAPWDR defines unearned income:

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:...

(f) any type or class of Canada Pension Plan benefits;

S. 24 of the EAPWDR sets the basis for disability assistance calculation:

**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.

S. 1, Schedule B of the EAPWDR determines the deduction and exemption rules and applicable is subsection (d):

**1** When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation,...

(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.

The appellant argued that it was profoundly unfair for the ministry to deduct his CPP benefits, dollar for dollar, from the disability benefits he receives from the ministry. He argued that since he received his CPP benefits in another province, the ministry had no authority to deduct this amount from benefits received in this province. He stated that no one could live on such a small amount of \$191.42 that is left after he pays his rent. He argued that this amount was insufficient to deal with all his needs in terms of food and utilities and he could not afford both at the same time. He argued that the legislation was unfair to low income people and put their lives at risk. He wanted to send a strong message to the government and the ministry about the desperation, frustration and humiliation he and other people like him feel, in particular since they are disabled and he suggested they were taken advantage of.

The ministry argued that the legislation specifically provided that CPP benefits were unearned income that were not exempt and that must be deducted from disabilities benefits that the appellant is eligible for.

The panel's jurisdiction is established by s. 24 (1) of the EAA that states:

**24** (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

(a) reasonably supported by the evidence, or

(b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

While the panel acknowledges the arguments about the difficulties the appellant faces as a result of the ministry's decision based on legislation, the panel has no jurisdiction to deal with the fairness or reasonableness of legislation as argued by the appellant but must look at whether the ministry's decision was reasonably supported by the evidence or a *reasonable application of the legislation* in his circumstances. It is noted as well that the ministry workers have no choice but to apply the legislation enacted by the legislature.

With respect to the appellant's argument that the ministry had no jurisdiction to deduct his CPP benefits because when he was approved he resided in another province, the panel notes that the appellant now resides in this province, his file with the ministry was opened 5 years ago in 2010, he is designated as a PWD in this province and receives disability benefits from this province. CPP benefits are federally funded, available to eligible Canadians across the country, including in this province. The panel notes that regardless of where the appellant resided at the time he became eligible for CPP benefits, the legislation does not discriminate as to the province of origin and applies to "any type or class of [CPP] benefits" (s. 1, *unearned income*, (f) of the EAPWDR). The panel finds the ministry reasonably determined the applicable legislation applied to the appellant in the present circumstances.

The legislation is specific that CPP payments are considered 'unearned income' under s. 1(1)(f) of the EAPWDR and the panel finds it was therefore reasonable for the ministry to determine the appellant's CPP payments were unearned income. Under s. 1, Schedule B of the EAPWDR, all unearned income must be included in the net income of a family unit, except for the deductions and exemptions provided by the legislation. The panel finds that in the circumstances of the appellant the ministry reasonably determined that none of the deductions and exemptions provided at s. 6, 7, 7.1, 7.2 and 8 of said Schedule B applied and therefore reasonably interpreted the legislation in determining that the appellant's CPP payments had to be included in his net income for the purpose of calculating his disability assistance.

The appellant did not contest the amount of disability assistance the ministry determined he was eligible for under Schedule A of the EAPWDR (\$531.42 support + \$375 shelter) and the panel finds the ministry reasonably determined the amount of assistance the appellant was eligible for as \$906.42 from which the full amount of his CPP is deductible as of assistance month July 2015.

Given those circumstances, the panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.