

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated December 1, 2015 in which the Ministry required the Appellant to repay income assistance (IA) pursuant to section 27 of the Employment and Assistance Act (EAA). The Ministry determined that the Canada Pension Plan (CPP) orphan's benefit the Appellant receives for her child was considered unearned income under section 1 of the Employment and Assistance Regulation (EAR), was not exempt under EAR Schedule B, and therefore had to be deducted from her IA pursuant to EAR section 28.

## PART D – Relevant Legislation

*Employment and Assistance Act* – EAA, section 27

Employment and Assistance Regulation – EAR, sections 1, 28 and 33, and Schedules A and B

## PART E – Summary of Facts

The evidence before the Ministry at the reconsideration consisted of the following:

**1.** The Appellant's Request for Reconsideration (RFR) dated November 19, 2015 in which she stated that she immediately contacted the Ministry regarding her eligibility for the orphan's benefit and payments she received, and followed the Ministry's instructions for reporting the benefit. She spoke to Ministry workers more than three times during the payment of the benefit and received no adjustments to her IA. She stated that her IA cheques for August to November 2015 were then reduced by \$234.87 (CPP benefit) "along with \$20 for 'repayment' each month." Her submission also outlines her argument which the panel will address in *Part F - Reasons*.

Five documents were attached to the RFR as follows:

**(a)** Bank statements for the Appellant's account in which she has highlighted reduced IA payments for July, August and September 2015. She also highlighted CPP back pay of \$922.88 in November 2014, and CPP monthly payments of \$230.72 for November and December 2014 and \$234.87 for January 2015.

**(b)** Notification from Service Canada to the Appellant dated October 22, 2014 indicating that her application for CPP children's benefits has been approved. The monthly amount effective July 2014 is \$230.72 and the retroactive amount is \$922.88.

**(c)** A one page print-out with the heading, *Canada Pension Plan September 1, 2015*. The Appellant described this as the Ministry "policy". It states that "CPP income is not exempt except for the CPP Orphan's Benefit...also known as a surviving child's benefit for the child of a deceased contributor – a monthly payment for a natural or adopted child or a child who was in the care and custody of the contributor at the time of death." The print-out further states that clients are required to report CPP benefits received in the current month by the 5<sup>th</sup> day of the following month to impact the next month's IA. In addition, all CPP benefit types are considered unearned income.

**(d)** A copy of the Appellant's child's birth certificate.

**(e)** A copy of the death certificate for the Appellant's child's father.

**(f)** A letter from Service Canada dated November 12, 2015 advising the Appellant that the rate of monthly child's benefit for her daughter was \$230.72 at the effective date, July 2014 and the current monthly benefit amount is \$234.87.

**2.** The Ministry's IA Overpayment Chart for the Appellant from December 2014 to July 2015 showing the following overpayments:

- \$226.99 for December 2014, "CPP income"
- \$945.68 for January 2015, "CPP Nov. \$922.88 + \$230.72"
- \$230.72 for February 2015, "CPP income"
- \$226.69 for March - July 2015, "undeclared CPP income"
- Chart totals as of July 2015 = overpayment amount \$2,536.74.

**3.** An Overpayment Notification for the Appellant's file dated September 29, 2015 stating that the Ministry has determined that she received \$2,536.74 IA for which she was not eligible under the EAA, and the overpayment is a debt to the government that the Appellant is liable to repay under section 27(1) of the EAA. The Ministry will deduct a minimum of \$10 per month from the Appellant's IA in order to effect repayment of the debt. The terms of repayment are subject to periodic review and revision at the sole discretion of the minister.

4. Information from the Ministry reconsideration record indicating the following:

- The Appellant receives IA as a single parent of one dependent child.
- The Appellant received retroactive orphan's benefits of \$922.88 on November 7, 2014 and a monthly benefit of \$230.70 in November and December 2014. Starting in January 2015, the monthly benefit increased to \$234.87.
- On July 7, 2015, the Ministry determined that the CPP income had not been included in the calculation of the amount of income the Appellant received. The funds were deducted from her IA starting with her August 2015 assistance cheque.
- The Ministry stated that monthly CPP income has been declared on the Appellant's declaration to the Ministry.

*Additional submissions*

In her Notice of Appeal dated December 10, 2015 and oral submissions at the hearing, the Appellant provided her argument which the panel will address in *Part F - Reasons*. The panel accepts the argument as substantiating her position at reconsideration that the orphan's benefit and repayment are being inappropriately deducted from her IA.

At the hearing, the Appellant stated that she always reported the CPP income on her monthly slips and it was also brought up when she called the Ministry about other issues. Month after month, the Ministry did not deduct anything from her IA or indicate that she had to repay anything. She explained that the deduction and repayment came about when she accidentally made an error on her monthly slip and incorrectly indicated that she no longer needed IA. The Ministry called her to follow up and advised then that there may be a debt and they would check their policy and send her a letter. She confirmed receipt of a Ministry letter stating that CPP would be deducted and that she would also be required to pay back the IA that the Ministry said she was not eligible for.

In response to questions, the Appellant stated that she does not dispute the amount of CPP the Ministry determined she received. She has contacted the Ministry to ask why the orphan's benefit is still being deducted to this day despite the change in the legislation on September 1, 2015. She stated that the Ministry said they are investigating and someone still has to look into it.

At the hearing, the Ministry relied on the reconsideration record and explained that they have three categories for the client's income: earned, unearned, and fully exempt. Prior to September 1, 2015, the orphan's benefit was deducted dollar for dollar from a recipient's IA. It did not matter whether the client or their dependent was receiving the benefit as it is money received by the family unit. The Ministry stated that there was confusion over the orphan's benefit and it was not entered on the system until August 2015. The Ministry stated that repayment is for amounts received from November 2014 to July 2015.

In response to questions, the Ministry did not know why the CPP benefits were not previously entered in the system and does not have the Appellant's monthly slips or information to confirm that the income was declared. The Ministry stated that there may have been an oversight because the Ministry had several staff working on the file. The Ministry confirmed that a worker called the Appellant to follow up on her file and that is how the CPP income was captured.

The panel finds that all of the oral testimony corroborates the reconsideration record concerning the Appellant's receipt of orphan's benefits and the information that the Ministry did not begin deducting the benefits from the Appellant's IA or requiring any repayment prior to her August 2015 assistance cheque. The panel admits the testimony under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the minister at the time the decision being appealed was made.

As a finding of fact, the panel determines that the Appellant declared her CPP orphan's benefit to the Ministry. Although there are no copies of the Appellant's monthly slips on the record and the overpayment charts record most months as "undeclared CPP income", the reconsideration decision states that the Appellant provided a copy of the letter from Service Canada confirming benefits effective July 2014. As well, the Ministry background information for the reconsideration states that "the monthly income has been declared on your declaration to the ministry."

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably required the Appellant to repay IA pursuant to section 27 the EAA. The Ministry determined that the CPP orphan's benefit the Appellant receives for her child was considered unearned income under section 1 of the EAR, was not exempt under EAR Schedule B, and therefore had to be deducted from her IA pursuant to EAR section 28.

The relevant sections of the legislation are as follows:

### **Employment and Assistance Act**

#### **Overpayments**

**27** (1) If income assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

### **Employment and Assistance Regulation**

#### **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:

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

#### **Limits on Income**

**10** (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.

(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 income assistance**

**28** 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.

## Monthly reporting requirement

**33** (1) For the purposes of section 11(10(a) [reporting obligations] of the Act,

(a) the report must be submitted by the 5<sup>th</sup> day of each calendar month, and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation

(i) whether the family unit requires further assistance;

(ii) changes in the family unit's assets;

(iii) all income received by the family unit and the source of that income;

(iv) the employment and educational circumstances of recipients in the family unit;

## Schedule A Income Assistance Rates

### Monthly support allowance

**2** (1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Family unit composition	Age or status of applicant or recipient	Amount of support
4	Sole applicant/recipient and one or more dependent children	Applicant/recipient is under 65 years of age	\$375.58

### Monthly shelter allowance

**4** (2) The monthly shelter allowance for a family unit to which section 15 (2) of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

Item	Family Unit Size	Maximum Monthly Shelter
2	2 persons	\$570

## Schedule B Net Income Calculation

### 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,

(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

(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

(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;

(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) Repealed

(xxi) payments granted by the government of British Columbia under section 8 of the *Child, Family and Community Service Act* [agreement with child's kin and others];

(xxii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program

(xxiii) Repealed

(xxiv) 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.

(xxv) a loan that is

(A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and

(B) received and used for the purposes set out in the business plan.

(xxvi) 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,

(xxvii) 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.

(xxviii) 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.

(xxix) a refund provided under Plan I, "Fair PharmaCare", of the PharmaCare program established under the Continuing Care Programs Regulation, B.C. Reg. 146/95;

(xxx) 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.

(xxxi) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada).

(xxxii) 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.

(xxxiii) money withdrawn from a registered disability savings plan,

(xxxiv) a working income tax benefit provided under the *Income Tax Act* (Canada),

(xxxv) Repealed

(xxxvi) the climate action dividend under section 13.02 of the *Income Tax Act*,

(xxxvii) 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,

(xxxviii) 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.

(xxxix) payments granted by the government of British Columbia under the Ministry of Children 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 Supported Child Development program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development 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 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 of this Schedule.

#### **Section 6 – Deductions from unearned income**

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.

#### **Section 7 – Exemptions – unearned income**

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(2) [assets held in trust for person with disabilities] of this regulation;
- (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*.

The Ministry's position is that the CPP orphan's benefit must be treated as unearned income and prior to the legislative changes on September 1, 2015, it was not excluded (under Schedule B of the EAR) from the calculation of the amount of income received. Therefore, the benefits received from November 2014 to June 2015 must be subsequently deducted from the Appellant's IA.

At the hearing, the Ministry argued that the Ministry's delay in capturing the CPP benefits does not negate what the legislation requires. The Ministry noted that it bases the decision on legislation and not on policy, arguing that the EAR clearly requires the deduction to be made for orphan's benefits received prior to September 1, 2015. The Ministry further submitted that the Appellant is liable, under section 27 of the EAA, to repay the income assistance she was not eligible to receive.

The Appellant's position pertains to two issues:

**(a)** Regarding the continued deduction of CPP from her IA, in her Notice of Appeal the Appellant believes it is "distasteful" for the Ministry to continue deducting the CPP orphan's benefit when the policy from the Ministry website states that CPP income is not exempt "except for the CPP orphan's benefit". She argued that child support is no longer deducted from IA, and the orphan's benefit should be treated the same way as she receives no child support because her child's father is deceased. In her reconsideration submission, she believes that the overpayment of \$939.48 for August to November 2015, and repayment requirement of \$80 for these four months, is incorrect and that the money was "unnecessarily removed" from her family's IA cheques.

**(b)** Regarding the Ministry's deductions prior to the legislative change on September 1, 2015, the Appellant argued that it is no fault of hers that a debt accumulated. She followed all of the appropriate steps to declare the CPP orphan's benefit to the Ministry, including reporting it on her monthly slips and bringing it up in her phone calls to the Ministry. The worker initially told her "it would probably be exempt" and no problem was indicated or deductions made until a year had passed and the Ministry followed up on an unrelated error in her file. The Appellant noted that she has had many problems with different Ministry branches and many slip ups have occurred on her account. She submits that "it is unfair that something is overlooked or missed by the Ministry on yet another occasion".

#### *Panel's decision*

The Appellant does not dispute that she had unearned income of \$2,536.74. Her bank statements as well, corroborate the amounts she received from CPP. The panel finds that the Ministry reasonably determined that the CPP orphan's benefit meets the definition of unearned income under EAR subsection 1(1)(f) which applies to "any type or class of Canada Pension Plan benefits".

Regarding whether the orphan's benefit is exempt from being included in the calculation of the Appellant's income, both the Ministry and the panel are bound by the version of the legislation that was in force as of the dates the benefit was received. As noted by the Ministry, sections 6 and 7 of EAR Schedule B do not list the orphan's benefit as a type of income that may be excluded. The panel notes that section 6 applies only to deductions for Employment Insurance and rental suites, and section 7 exempts interest on mortgages, veteran's benefits, criminal injury awards, disability trust payments, and the portion of CPP that involves a calculation under the *Income Tax Act*. As further

noted by the Ministry, section 1(a)(xivii) of Schedule B, which lists the orphan's benefits as a type of unearned income that may be excluded, did not take effect until September 1, 2015. The panel therefore finds that the Ministry reasonably determined that unearned CPP income of \$2,536.74 received from November 2014 - June 2015 is to be included in the calculation of the Appellant's income.

As noted by the Ministry, section 28 of the EAR determines the amount of IA the client is eligible for by deducting the amount of income calculated under Schedule B from the amount of support and shelter allowances calculated under Schedule A. As noted above, the Appellant's income under Schedule B (not deducted at the time it was received), is \$2,536.74. Under Schedule A, the Appellant's single parent rate is \$357.58 support plus \$570 shelter for shelter.

As explained by the Ministry, EAR section 33 sets out reporting requirements whereby income received in a particular month must be reported by the 5th day of the following month and is normally deducted from the next month's IA cheque. However, in the Appellant's case, CPP benefits received from November 2014 to June 2015 were not deducted from her January to July 2015 IA cheques. The Ministry recorded the amount as an overpayment and did not begin making the deduction until her August 2015 cheque.

While the Appellant argued that the overpayment resulted through no fault of her own and the panel accepted that she declared her CPP income to the Ministry, EAR section 28 clearly requires the income to be deducted from IA. While the panel is sympathetic to the Appellant's circumstances and it appears that the delay in capturing the CPP orphan's benefit was caused by confusion or oversight on the part of the Ministry, there is no provision in the EAR to waive the deduction of orphan's benefits (received prior to September 1, 2015) on account of Ministry error. The panel notes that neither section 28 nor the reporting provisions in section 33 provide any time frame for the Ministry to make the deduction from the client's IA.

Further, the Ministry has the authority to require repayment because under EAA section 27(1), the client is liable to repay IA that is provided to or for a family unit that is not eligible for it, "during the period for which the overpayment is provided". Again, the panel notes that there is no exception in the legislation for Ministry error or oversight. Accordingly, the panel finds that the Ministry was reasonable in deducting November 2014 to June 2015 CPP benefits from the Appellant's IA and requiring her to repay IA that she was not eligible to receive,

Regarding the CPP benefits that the Appellant submits are still being deducted from her IA despite the legislative change on September 1, 2015, the panel's authority is limited to determining the reasonableness of the Ministry's reconsideration decision which relates to orphan's benefits received from November 2014 to June 2015 (prior to such benefits being made exempt). As noted at the hearing, the Ministry provided the Appellant with a list of independent advocates at the back of the reconsideration record.

In conclusion, the panel finds that the Ministry's decision finding that the Appellant is required to repay IA pursuant to section 27 the EAA because she had non-exempt CPP income that must be deducted from her IA under the EAR, was a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the Ministry reconsideration decision.