

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision of January 18, 2016 in which the ministry declared the appellant ineligible for disability assistance (DA) for the month of January 2016 because her November 2015 Canada Pension Plan (CPP) income exceeded her DA rate, rendering her ineligible for DA under Section 9 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). .

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):

- Sections 1 (f), 9, 29
- Schedule B, Sections 9 (1), 11

PART E – Summary of Facts

The appellant is a recipient of DA with no dependents.

The evidence before the ministry at reconsideration included the following:

- request for reconsideration received by the ministry received by the ministry on January 4, 2016 in which the appellant stated:
 - her husband died in 2000 and she has been receiving a widow's pension for many years, supplemented by disability assistance because of a back injury;
 - CPP made a mistake by paying her \$6883.40;
 - she gets direct deposit for anything and she brought in all her bank statements;
 - she did not receive this amount of money, and all deposits and cheques would show on her bank account;
 - she has no money for Christmas or for rent and this has given her a lot of emotional distress;
 - a 3-way call to CPP is needed to clean up the matter;
- banking statements for the period September 21, 2015 - November 20, 2015;
- detailed account inquiry of the appellant's bank account for the period November 20, 2015 – December 5, 2015.

In her Notice of Appeal dated January 27, 2016 the appellant wrote that CPP had apologized for sending information to the wrong address, and that she had made sure that CPP had her updated information. CPP has on their computer that they did not give her a \$6000 [sic] cheque, and a 3-way call will verify that. She is experiencing significant anxiety over this and hopes it can be cleared up soon.

At the hearing the appellant stated that since her husband's death she has received a monthly CPP widow's pension of approximately \$175, which then was increased to approximately \$300 month without her being aware of the change. She did not receive a cheque or a stub from CPP; the funds were deposited directly into her bank account. She repeated that she never received \$6,883.45 from CPP. She did not go to the ministry office as requested on December 29 2015 to have a follow-up 3-way telephone conversation with the CPP office, the reconsideration officer and herself because the bank was closed and she was unable to obtain a copy of her bank statements. She did not receive any of the reconsideration officer's phone calls because her cell phone is on a "pay as you go" plan and she had run out of minutes.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the reconsideration decision of January 18, 2016 in which the ministry declared the appellant ineligible for disability assistance (DA) for the month of January 2016 because her November 2015 Canada Pension Plan (CPP) income exceeded her DA rate, rendering her ineligible for DA under Section 9 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The applicable legislation is as follows:

EAPWDR:

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 of class of Canada Pension Plan benefits;

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.

Reporting requirement

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

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income.

Schedule B

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.

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 appellant argues that a CPP employee told her that a mistake had been made on her file, and that the information that the ministry claims it received from CPP is not accurate. She adds that she did not receive \$6,883.45 from CPP but on November 4, 2015 received \$396.58 from CPP. She was unable to meet with the reconsideration officer on December 29, 2015 to discuss the matter further because the bank was closed. She did not receive any of the reconsideration officer's calls because her cell phone did not have enough minutes left to receive a call.

The ministry argues that pursuant to EAPWDR Schedule B, Section 11 all retroactive or backdated CPP benefits are considered unearned income for the month in which the income is received, and that in November 2015 CPP made a determination that the appellant was owed a CPP pension benefit of \$6,883.45. Although CPP determined that an overpayment to the appellant of \$6,311.30 had also occurred, and set off or deducted that amount from the underpayment of \$6,883.45, the gross benefit must be considered as income in the month in which it is declared, because according

to EAPWDR Section 9 (1) "income" includes amounts that are deducted or set off from a recipient's income.

Panel Decision

Section 9 (2) of the EAPWDR states that 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 that family unit. Net income is calculated by adding all the "earned" and "unearned" income received by a DA recipient. CPP benefits are included in the definition of "unearned income" in Section 1 and are therefore included in calculating Schedule B net income.

Section 11 of Schedule B states that if DA has been provided to a recipient for any portion of a month that would not have been provided if the CPP pension benefit had been paid for that calendar month, and subsequently that CPP benefit becomes payable, "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 appellant did not actually receive the entire backdated pension amount of \$6,883.45 because the overpayment of \$6,311.30 she had received was deducted from the underpayment at source. However, EAPWDR Section 9 (1) requires that the amount deducted or set off from the recipient's income must be included when calculating the income of the recipient.

The panel therefore finds that the ministry reasonably determined that the appellant received a backdated CPP pension benefit of \$6,883.45 in November 2015 which must be included in calculating the net income of the appellant under schedule B.

The panel also finds that because the appellant's November 2015 Schedule B income exceeded her monthly DA rate determined under Schedule A she was ineligible for assistance for the month of January 2016, which is the earliest date upon which the ineligibility determination could be applied.

In conclusion, the panel finds that the ministry's determination that the appellant is ineligible for DA for the month of January 2016 because her net income under Schedule B, namely a CPP pension benefit of \$6,883.45, exceeded her DA rate calculated under Schedule A is a reasonable application of the applicable legislation, and confirms the decision.