

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 10 March 2016 that denied the appellant's request to not have Canada Pension Plan (CPP) benefits deducted from his disability assistance. The ministry determined that, pursuant to sections 1, 24 and Schedule B of the Employment and Assistance for Persons with Disabilities Regulation, the amount of the CPP benefits must be deducted from his disability assistance.

PART D – Relevant Legislation

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

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 1, 24, Schedule A and Schedule B, sections 1, 3, 6, and 7.

PART E – Summary of Facts

The information before the ministry at reconsideration included the following:

1. From the ministry's files:
 - The appellant has been a sole recipient of disability assistance since May 1994. His assistance rate under Schedule A of the EAPWDR is \$906.42/month (\$531.42 support plus \$375.00 shelter).
 - The appellant has been a recipient of CPP benefits since 2002. His current CPP benefits are \$511.65/month.
 - The appellant's net income, the CPP benefits, is deducted from his monthly disability assistance.

2. The appellant's Request for Reconsideration dated 04 March 2016. Under Reason for Request, the appellant provides argument in support of his request (see Part F, Reasons for Panel Decision, below).

The appellant submitted his Notice of Appeal on 16 March 2016. Under Reasons for Appeal, he gives further argument (see also Part F below).

The appellant provided no additional written submission for the hearing.

The ministry, in an email dated 26 April 2016, stated that its submission is the reconsideration summary provided in the Record of Ministry Decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in denying the appellant's request to not have Canada Pension Plan (CPP) benefits deducted from his disability assistance pursuant to sections 1, 24 and Schedule B of the EAPWDR. More specifically, the issue is whether the ministry's determination, which held that the amount of the appellant's CPP benefits must be deducted from his disability assistance, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from the EAPWDR:

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;

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 A sets out the maximum amount of disability assistance before deduction of net income. In the appellant's situation as a sole recipient, this amount is \$906.42/month (\$531.42 support plus \$375.00 shelter).

Schedule 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:

[A list of several sources of income, none of which is CPP]

Annual exemption — qualifying income

3 [This section provides for exemptions for prescribed amounts of earned income, except the deductions permitted under section 2, and unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act.]

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(1) 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*;

[Does not apply to the appellant, as his gross monthly amount of CPP benefits is less than 1/12 of the Income Tax Act (Canada) section 118(1)(c) amount, as adjusted, of \$11,327.00]

The positions of the parties

The position of the ministry, as set out in the reconsideration decision, is that CPP benefits must be deducted from the appellant's disability assistance pursuant to section 24 of the EAPWDR. The ministry explains that under section 13(1) of the *EAPWDA* a person is required to pursue all sources of income and the appellant met this requirement by applying for CPP benefits in 2000.

Under section 1 of the EAPWDR, any type or class of CPP benefits is defined as unearned income for the purposes of administering the Act and Regulation. Under section 24 of the EAPWDR, the amount of assistance a person is eligible to receive is determined by deducting the amount of income calculated under Schedule B from the amount of shelter/support allowance established under Schedule A. Under Schedule A, as a sole recipient, the appellant is eligible for \$906.42 (\$531.42 support plus \$375.00 shelter) per month.

In Schedule B, sections 1, 3, 5 and 7 set out types of income that may be excluded from the calculation of the amount of income received. CPP benefits are **not** listed in these sections as a type of unearned income that may be excluded from the calculation of the amount of income received. Consequently, the appellant's CPP benefits must be deducted from his disability assistance. [Panel note: the highlighted "not" is missing from the text of the reconsideration decision; given the overall context of the decision and the cited sections of Schedule B, the panel considers this missing word to be a typographical error.]

The appellant's position, as explained in his Request for Reconsideration and Notice of Appeal, is that he was ordered by the ministry to apply for CPP disability benefits "under duress" after he began receiving disability assistance. He submits that the rules requiring the deduction of CPP benefits from his disability assistance leads to persons with disabilities having to live in "government sanctioned poverty," with increased stress and mental illness, crime and drug abuse. He argues that these rules are "undemocratic" and violate the human rights of those who paid into the CPP.

Panel Decision

The appellant does not take issue with how the ministry applied the legislation in determining his monthly benefits – i.e. by deducting his CPP benefits from the amount of disability assistance set out in Schedule A of the EAPWDR. Rather, the appellant disputes the *government policy* underlying the legislation requiring such deductions and he argues that these deductions violate the human rights of people who paid into CPP.

Under section 24(1) of the *Employment and Assistance Act (EAA)*, the jurisdiction of the panel is strictly limited to determining whether a reconsideration decision is (a) reasonably supported by the evidence or (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. The panel has no jurisdiction to decide matters of government policy. Nor does the panel, under section 19.1(f) of the *EAA*, have jurisdiction over matters relating to the *BC*



Human Rights Code. Accordingly, the panel is not authorized to make a determination on the policy or human rights issues raised by the appellant.

The panel has reviewed the Act and Regulation and finds that the minister has no discretion under the legislation to waive the deduction of CPP benefits from the appellant's disability assistance. Based on the explanation provided by the ministry, the panel finds that the ministry's reconsideration decision to deny the appellant's request to not have CPP benefits deducted from his disability assistance is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.