



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of June 6, 2016 which found that the appellant failed to pursue income that would enable him to be completely or partly independent of income assistance, as set out in section 14 of the *Employment and Assistance Act* (EAA), and the decision to reduce the appellant’s income assistance until the failure is remedied, pursuant to section 13 of the *Employment and Assistance Regulation* (EAR).

### PART D – Relevant Legislation

*EAA* section 14  
*EAR* sections 9 and 31

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- The appellant has been in receipt of income assistance as a single parent of one dependent child since September 2015. As the appellant's daughter is under 3 years of age the appellant is exempted from employment related requirements
- Letter from the ministry to the appellant dated October 30, 2015 requesting the appellant to apply for Canada Pension Plan (CPP) early retirement benefits
- Consent to Deduction and Payment CPP form signed by the appellant October 30, 2015
- Document titled Conditions of Acceptability
- Appellant's CPP Statement of Contributions dated November 5, 2015 indicating that if his pension were to begin next month, he could receive a retirement pension of \$31.82 per month
- Letter from the appellant's advocate dated December 14, 2015 (2015 Letter)
- Letter from the appellant, undated, seeking a reconsideration of the ministry's decision to apply a \$100 monthly sanction due to failure to apply for CPP benefits. The appellant states that he has not applied for CPP since that action is irreversible and would active a permanent reduction in his future pension entitlements down to only 65% of normal standard rates. The appellant also states that the amount involved is \$30 and the ministry is now penalizing him \$100 per month which is not justifiable (Letter 1)
- Letter from a ministry senior manager, programs to the appellant's advocate dated February 15, 2016 stating that as the appellant has chosen not to apply for early CPP benefits, he has failed to accept or pursue income that would, in the minister's opinion, enable him to be completely or partly independent of income assistance.
- Letter from the appellant's advocate dated March 10, 2016 (2016 Letter)
- Request for Reconsideration form (RFR) dated May 19, 2016 with attached letter from the appellant (Letter 2)
- Letter from the appellant dated May 24, 2016 (Letter 3)

### **Additional Information**

In his Notice of Appeal signed and dated June 14, 2016, the appellant states that the ministry has failed to give due consideration to the available powers of direction and the appellant's circumstances both financially and as primary caregiver. The appellant states that there is no requirement in law that he must apply for CPP and that any penalty imposed should be applied in a common sense and fair manner.

At the hearing the appellant provided oral testimony indicating that he is the sole caregiver of his 2-year-old daughter and that he is separated from his wife who is unable to care for their daughter or provide any spousal support due to her mental health conditions. He states that he needs to work for the rest of his life in order to feed, clothe, and provide for his daughter. He states that he needs to work as long as he can in order to get the most CPP benefits for when he does retire. The appellant stated that he receives \$945 per month and that after bills he has \$160 per month for food but that with the \$100 sanction he is left with \$60 for food, which is only approximately \$16 per week. The appellant states that the ministry has discretion whether or not to apply the legislation imposing the \$100 penalty but in choosing to do so it has to be reasonable and in this case the ministry has not provided any reasonable analysis indicating that the ministry has considered the information he

provided or the impact to his family.

At the hearing the appellant provided a copy of the ministry's policy "Pursuing Income", 6 pages. He also provided a document from his My Service Canada Account titled Estimated Monthly CPP Benefits, 2 pages.

The ministry relied on the reconsideration decision. At the hearing the ministry representative stated that although section 14 of the EAA states that the minister "may" take action under subsection 3 and apply a reduction, the ministry policy states that the appellant must apply for CPP so that is how the ministry interprets the legislation. The ministry representative stated that the employment and assistance workers at the ministry office do not have any discretion and they have been told by government officials to substitute the word "must" in place of "may" for the purposes of EAA section 14. The ministry representative states that the policy does not trump the legislation but it does interpret the legislation. The ministry representative stated that the ministry asked the appellant to apply for CPP benefits and the appellant failed to comply with that request so the ministry chose to enforce the legislation.

The ministry representative stated that while the employment and assistance workers consider policy, at reconsideration the ministry only considers the legislation and not ministry policy. The ministry representative indicated that as receipt of the CPP benefits of \$31.82 per month would result in the appellant being partly independent of income assistance it is reasonable to expect the appellant to apply for the CPP benefits. The ministry representative stated that the policy provides limited exceptions to the requirement to apply for CPP benefits, generally health and safety issues or imminent employment, and the appellant's situation does not fall into one of these limited exceptions.

### **Admissibility of New Information**

The ministry did not object to the additional information. The panel has admitted the information contained in the appellant's Notice of Appeal, his oral testimony, ministry policy information, and the appellant's My Service Canada Account information into evidence as it is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information relates to the appellant's position with respect to the ministry's application of the legislation in his circumstances and his CPP benefits. With respect to the ministry policy, the appellant had included in the link to the policy in Letter 1 but not the printout of the policy.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision, which found that the appellant failed to pursue income that would enable him to be completely or partly independent of income assistance, as set out in section 14 of the EAA, and reduced the appellant's income assistance until the failure is remedied pursuant to section 31 of the EAR is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

The relevant legislation is as follows:

### **EAA**

#### **Consequences of not accepting or disposing of property**

**14** (1) The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

- (a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements;
- (b) disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.

(2) A family unit is not eligible for income assistance for the prescribed period if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

- (a) disposed of real or personal property to reduce assets;
- (b) [Not in force.]

(3) In the circumstances described in subsection (1), the minister may

- (a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or
- (b) declare the family unit of the person ineligible for income assistance or hardship assistance for the prescribed period.

### **EAR**

#### **Requirement to apply for CPP benefits**

**9** If a family unit includes a recipient who may be eligible for a benefit under the *Canada Pension Plan* (Canada), for the family unit to continue to be eligible for income assistance, the recipient, when requested by the minister, must complete a Consent to Deduction and Payment under the *Canada Pension Plan* (Canada) directing that

- (a) an amount up to the amount of income assistance provided to or for the family unit from the date that the recipient becomes eligible for the Canada Pension Plan benefit be deducted from the amount of that benefit, and
- (b) the amount deducted be paid to the minister.

[am. B.C. Reg. 463/2003, s. 1.]

#### **Effect of failing to pursue or accept income or assets or of disposing of assets**

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**31 (1) For the purposes of section 14 (3) (a) [consequences of not accepting or disposing of property] of the Act in relation to a failure to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the amount of a reduction is \$100 for each calendar month for each applicant or recipient in the family unit and the period of the reduction is**

**(a) if the income, assets or other means of support are still available, until the failure is remedied, and**  
**(b) if the income, assets or other means of support are no longer available, for one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.**

(2) For a family unit that is declared ineligible under section 14 (3) (b) of the Act for income assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the period of ineligibility is,

(a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied, and

(b) if the income, assets or other means of support are no longer available when the declaration is made, one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

(3) For the purposes of section 14 (3) (a) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate,

(a) the amount of the reduction is \$100 for each calendar month for each applicant or recipient in the family unit, and

(b) the period of the reduction is one calendar month for each \$2 000 of the value of the forgone consideration.

(4) For the purposes of section 14 (3) (b) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate, the period of the ineligibility is one calendar month for each \$2 000 of the value of the forgone consideration.

(5) For the purposes of section 14 (2) (a) of the Act, the period of ineligibility is 2 calendar months for each \$2 000 of the value of the real or personal property that was disposed of to reduce assets.

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The appellant's position is that the ministry has exercised its discretion to apply the legislation in an unfair manner and has failed to reasonably consider his circumstances. The appellant's position is that EAA section 14 states that the minister may take action to reduce a recipient's income but that as discretion exists in the legislation it is not mandatory and must be exercised reasonably and in a non-discriminatory manner.

The appellant states that while the ministry states that he must apply for CPP benefits, EAR section 9 only requires that he complete a Consent to Deduction and Payment, which he has done, but that the legislation does not require that he apply for CPP benefits. The appellant also states that the ministry's policy "Pursuing Income" provides exceptions confirming that the requirement to apply for CPP is not absolute but that the ministry has not reasonably considered his circumstances. For example, the 2015 Letter indicates that the ministry's policy identified circumstances in which a recipient will not be expected to apply for early CPP, such as where there is imminent employment, but in the appellant's case he is not able to seek employment right now as he is the sole caregiver for an infant child. The appellant states that the ministry has discretion whether or not to apply the legislation imposing the \$100 penalty but in choosing to do so it has to be reasonable and in this case the ministry has not provided any reasonable analysis indicating that they have considered the

financial impact of the \$100 monthly reduction to his family circumstances.

The appellant's position is that it is unreasonable for the ministry to force him to pursue early CPP retirement benefits as that will have life-long implications because his CPP pension will be reduced for the rest of his life. The appellant states that by forcing him to pursue early CPP benefits he will be prevented from ever having the opportunity to increase his pension to a reasonable level, which in turn prevents him from ever having the opportunity to increase the orphan benefits and survivor benefits available to his 2 year old daughter. The appellant refers to the CPP website which states that "[c]ontributions made after the start of retirement pension do not create eligibility for, or increase the amount, of other CPP benefits".

In addition the appellant states that by being forced to apply for CPP now, he will be prevented from sharing any future retirement benefits with any future or former spouse and any future employment income he receives will be taxed at a higher rate due to the addition of ongoing CPP payments which will not be able to be stopped.

The appellant states that as he moved to Canada from another country in 2011 he will not have been a permanent resident of Canada for the full 10 year qualifying period in order to be eligible for Old Age Security benefits at age 65, which also means that he will not be eligible for GIS benefits at age 65 since their receipt is dependent on being an OAS recipient. As a result, the appellant states that he will be even more dependent on his full CPP entitlement rather than any significantly reduced CPP benefits from forced early activation. The appellant also states that if he applies for CPP now, the action is irreversible and that the Consent to Deduction is irrevocable.

The appellant's position is that as demonstrated by his CPP Statement of Contributions he would only be entitled to receive a retirement pension of \$31.82 per month and that it is not reasonable for the ministry to impose a \$100 penalty. The appellant also argues that while the ministry relies on section 31 of the EAR to impose a \$100 penalty there is nothing in the EAA or EAR that requires the mandatory imposition of the \$100 penalty. In the 2016 Letter, the appellant's advocate states that it is "...completely disproportionate to cut the family off benefits entirely, possibly rendering them homeless, over this sum".

The ministry's position, as set out in the reconsideration decision, is that on October 30, 2015 the ministry sent a letter to the appellant explaining that continued eligibility for assistance is dependent on clients seeking all sources of available income which would include CPP early retirement benefits for those aged 60 to 65 or nearing the age of 60. The ministry attached CPP application forms and Consent to Deductions and Payment forms and asked the appellant to complete and return the forms by December 14, 2015. On November 23, 2015 the ministry sent a second letter to the appellant asking him to return the completed forms.

The ministry received the 2015 Letter from the advocate setting out the reasons why the appellant should not have to apply for CPP early retirement pension benefits and on December 17, 2015 the ministry advised that the legislation required individual's to pursue all sources of income. The ministry's position is that the appellant is required to apply for CPP benefits as an alternate possible source of income that may enable him to be partly independent of income assistance and that as he declined to do so, the ministry has determined that a reduction sanction of \$100 per month will be applied to his file. The ministry also states that while the appellant submits that apply for CPP

benefits will have a negative impact on his future benefits, there is no provision within the legislation to adjust the requirement to apply for all possible sources of income due to impact on future benefits from another source. The ministry's position is that under section 31(2) of the EAR the reduction sanction will continue until the source of income has been pursued.

### ***Panel Decision***

The panel finds that although the appellant did not apply for CPP benefits the ministry's decision to apply section 14 of the EAA was not a reasonable application of the legislation in the appellant's circumstances. The panel finds that the ministry representative's statement that the employment and assistance workers are directed to substitute the word "must" in place of "may" indicates that while the legislation gives the ministry discretion, the ministry has chosen not to exercise that discretion except in very limited circumstances. While the ministry policy indicates that there are limited exceptions that will excuse a person from applying for CPP benefits, the ones listed in the policy indicate that there must be illness, incapacitation, health and safety reasons or imminent employment, and the appellant does not fall into one of those categories.

At the hearing, the ministry representative stated that at reconsideration the ministry only looks at the legislation and not the policy. While the legislation clearly provides the ministry the discretion to determine whether to apply section 14(3) and impose a sanction, the panel finds that the ministry did not reasonably exercise its discretion as it did not reasonably consider the appellant's circumstances. In particular, the panel finds that it was not reasonable to impose a \$100 reduction to the appellant's income assistance when the appellant would only have received \$31.82 per month had he applied for CPP benefits.

In response to the question whether section 14(1) of the EAA is the provision on which the ministry relied in requiring the appellant to pursue income by means of a CPP application, the ministry representative replied in the affirmative. In response to the question as to whether there was any other provision in the EAA or the EAR that provided the ministry with the power to compel the appellant to pursue income by means of a CPP application, the ministry representative replied in the negative. Given the ministry's responses and wording of section 9 of the EAR that indicates a recipient must complete a Consent to Deduction and Payment under the Canada Pension Plan, it appears that the heading of section 9 of the EAR that states "[r]equirement to apply for CPP benefits" has no substantive or asserting meaning or is not entirely accurate as the requirement is in fact to complete a Consent to Deduction and Payment, not to apply for CPP benefits and the documentation confirms and the ministry agrees that the appellant did complete that form as required.

In addition, while the ministry states that there is no provision in the legislation to adjust the requirement to apply for all possible sources of income due to impact on future benefits from another source, the panel finds that the ministry did not exercise its discretion reasonably when considering whether it might be unfair to impose the \$100 reduction given the impact to the appellant by requiring him to apply for CPP benefits given the impact of that action on his ability to contribute to future CPP benefits. The panel finds that the ministry's decision was not reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

While the ministry's position is that receipt of \$31.82 per month will result in the appellant being partly

independent of income assistance as contemplated in section 14(1) of the EAA, the amount that the appellant would receive represents approximately 4% of his monthly income assistance amount of \$945 per month. Further, page 6 of the Consent to Deduction and Payment CPP form indicates that a criteria of acceptability of the Consent to Deduction and Payment CPP is that the amount in issue be greater than \$50 and the ministry concedes that the amount in issue is less than \$50. When considering the contribution of this amount to the appellant's income in light of the reduction of \$100 per month, the panel finds that the ministry did not interpret the legislation or consider the evidence in a fair, large and liberal construction and interpretation as best ensures the attainment of its object as required by section 12 of the *Interpretation Act*.

Consequently, the panel finds that the ministry's use of its power pursuant to section 31 of the EAR for the recovery of a monetary amount less than, and contrary to, the threshold pursuant to the Consent to Deduction and Payment CPP form was an unreasonable use of the ministry's section 31 powers, and an unreasonable application of the discretionary authority set out in section 14 of the EAA.

Accordingly, the panel finds that the ministry's decision that the appellant failed to pursue income that would enable him to be completely or partly independent of income assistance, as set out in section 14 of the EAA, and that he is subject to a reduction of \$100 per month until the failure is remedied pursuant to section 31 of the EAR was not reasonably supported by the evidence and was not a reasonable application of the applicable enactment in the appellant's circumstances.

### **Conclusion**

As the panel finds that the ministry's reconsideration decision was not reasonably supported by the evidence and was not a reasonable application of the applicable legislation in the appellant's circumstances, the panel therefore rescinds the ministry's reconsideration decision and the appellant is successful in his appeal.