

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated June 13, 2016, which found that the ministry was unable to adjudicate the appellant's Persons with Disabilities (PWD) designation application as the appellant was found financially ineligible for disability assistance because the family unit's net income exceeds the amount of disability assistance for his family unit pursuant to section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation.

In addition the ministry determined that the appellant was not eligible for access to medical services only pursuant to section 61.1 of the Employment and Assistance for Persons with Disabilities Regulation or a health supplement pursuant to section 62 of the Employment and Assistance for Persons with Disabilities Regulation as the appellant was not previously in receipt of disability assistance or hardship assistance, nor was he a continued person pursuant to sections 61.1 and 62 of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 1, 3, 4 and 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1, 9(2), 24, 61.1, 62 and Schedules A and B

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

1. Letter from the appellant's employer dated December 15, 2015 confirming that the appellant was employed by the company as an owner operator and was currently on unpaid medical leave and ineligible for any money or benefits from the company;
2. Various bank, credit card and insurance statements, certificates of insurance, vehicle registration forms and other documents in the name of the appellant relating to assets or liabilities in the appellant's name dated between September 27, 2015 and March 18, 2016;
3. Receipts dated January 2 2016 and March 1, 2016 for rental of a pad and electricity for the months of January 2016 and March 2016 for the appellant's trailer at recreational vehicle park;
4. Application for income assistance (part 1) in the name of the appellant dated December 22, 2015;
5. Application for income assistance (part 2) in the name of the appellant dated December 22, 2015;
6. Notification from Service Canada dated March 8, 2016 advising the appellant that his application for a Canada Pension Plan disability pension (CPPD) has been approved and that he would be receiving \$1,230.78 per month effective March 2016; and
7. Request for Reconsideration dated June 13, 2016 in which the appellant states that he believes that if his application for PWD had been processed in a timely manner he would have qualified for benefits and that it is almost impossible for him to cover the cost of his prescription drugs based on the amount of after-tax income he receives from his CPPD.

Evidence On Appeal

In his Notice of Appeal submitted on July 12, 2016, the appellant stated that PWD benefits should be provided to all disabled persons and that if Service Canada had not approved his CPPD as quickly as they did he would have received PWD benefits.

Appellant's Evidence At Hearing

The appellant is a sole applicant for a PWD designation.

The appellant did not introduce any additional evidence at the hearing.

At the hearing the appellant explained that he was not appealing the ministry's decision that found that he was not eligible for a monthly support allowance or a monthly shelter allowance under section 1 of Schedule A. He acknowledged that the unearned income he received from his CPPD exceeded the amount of disability assistance to which his family unit was entitled.

The appellant argued that the ministry took too long to assess his eligibility for PWD, and that he was approved for a CPPD and began receiving CPPD benefits before it was determined that he was eligible for a PWD designation. As a result he did not qualify for access to medical services only or a health supplement because he was not a main continued person under section 61.1 of the EAPWDR or a continued person under section 62 of the EAPWDR. Of greater importance to the appellant was the fact that without a PWD designation he was also not entitled to other benefits offered by other provincial agencies, including free camping offered by BC Parks in BC provincial campgrounds and an exemption to the toll bridge charges for designed PWD, both of which required proof of a PWD designation.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision, which found that the ministry was unable to adjudicate the appellant's PWD designation application as the appellant was found financially ineligible for disability assistance because the family unit's net income exceeds the amount of disability assistance for his family unit and therefore that the appellant was not eligible for access to medical services only or for a health supplement, is a reasonable application of the legislation in the circumstances of the appellant.

Relevant Legislation

EAPWDA

Interpretation

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit ...

"disability assistance" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*] ...

"recipient" means the person in a family unit to or for whom disability assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit ...

"supplement" means any form of assistance specified by regulation, other than disability assistance, hardship assistance or financial assistance provided under section 7 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded under this Act ...

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and

(b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

Application of Act

4 To be eligible for disability assistance or hardship assistance under this Act, a family unit must include a person with disabilities.

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

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 ...

Limits on income

9 (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.

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.

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

(a) the person was

(i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and

(ii) a person with disabilities on that date,

(b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and

(c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

(2) Subject to subsection (6), a person is a dependent continued person if

(a) the person was a dependant of a main continued person under subsection (1) on

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the main continued person's continuation date and is currently a dependant of the main continued person, or

(b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

(a) on a date the family unit includes a person aged 65 or older,

(b) as a result of a person in the family unit receiving an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act*,

(c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,

(d) as a result of a person in the family unit receiving employment income,

(e) as a result of a person in the family unit receiving a pension or other payment under the Canada Pension Plan (Canada),

(f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or

(g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*.

(4) Subject to subsection (5), a person's status as a main continued person under subsection (1) is suspended for a calendar month if

(a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and

(b) the person's continuation date is before those immediately preceding 12 calendar months.

(5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit described in subsection (3) (c) or (g).

(6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).

(7) For the purposes of subsection (4),

(a) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (a), (b), (d) or (f) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and

(b) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (e) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit receives a pension or other payment under the Canada Pension Plan (Canada).

(8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(9) Despite this Division, a person is not eligible, as a dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for a calendar month in which the main continued person's continuation date occurs.

General health supplements

62 The minister may provide any health supplement set out in section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C to or for

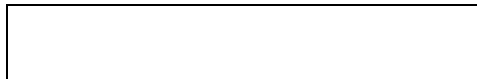
(a) a family unit in receipt of disability assistance,

(b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or

(c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

EAPWDR - Schedule A

Maximum amount of disability assistance before deduction of net income



1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [amount of disability assistance] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

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 ...

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	\$531.42

Monthly shelter allowance

4 (2) The monthly shelter allowance for a family unit to which section 14.2 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	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

How actual shelter costs are calculated

5 (1) For the purpose of this section, utility costs for a family unit's place of residence include only the following costs:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;

(d) hydro;

(e) garbage disposal provided by a company on a regular weekly or biweekly basis;

(f) rental of one basic residential single-line telephone.

(2) When calculating the actual monthly shelter costs of a family unit, only the following items are included:

(a) rent for the family unit's place of residence;

(b) mortgage payments on the family unit's place of residence, if owned by a person in the family unit;

(c) a house insurance premium for the family unit's place of residence if owned by a person in the family unit;

(d) property taxes for the family unit's place of residence if owned by a person in the family unit;

(e) utility costs;

(f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.

(3) If utility costs fluctuate, they may be averaged over the periods

(a) beginning on October 1 and ending on March 31, and

(b) beginning on April 1 and ending on September 30.

EAPWDR - 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,

(d) all unearned income must be included...

Positions of the Parties

The Appellant's Position

At the hearing, the appellant explained that he had intended to apply for income assistance in November 2015, but he said that he was advised by ministry staff to wait until after December 2015 before submitting his application because the eligibility requirements were changing. He was also told that he would have to apply for a CPPD, which he did in November 2015.

The appellant applied for income assistance in early December 2015 and was denied benefits later

that month because he had assets valued in excess of the amount specified in Employment and Assistance Regulation 11(2). He indicated his intent to apply for a PWD designation and was given a PWD designation application form in December 2015. He began gathering the information necessary to be adjudicated for PWD eligibility at that time.

The appellant received notification of the approval of his CPPD status and benefit amount in March 2016. He was surprised that the CPPD application process only took four months because he had been told that it would likely be about six months before the decision was made. If the CPPD application process had taken longer and the PWD adjudication process had taken less time the appellant argued that he would have qualified for PWD designation in advance of receiving a CPPD benefit and therefore, even if it was determined that he was eligible for PWD benefits in advance of receiving a CPPD by only one day, he would have been eligible to receive the medical and health supplements and other benefits such as free camping and toll free travel, which are not available if a person only receives a CPPD. He said that all of these benefits should be available to all disabled British Columbia (BC) residents and that there should be no difference between the eligibility requirements for PWD designation in BC and the federal CPPD requirements.

The appellant indicated that he had recently been approved for an income-based waiver of Medical Services premiums but that he had not applied for Fair PharmaCare benefits. He also did not know whether or not he was eligible for any other medical or health benefits available to low income individuals.

The Ministry's Position

At the hearing, the ministry said that the eligibility requirements for assistance did not change in December 2015. The ministry explained that ministry staff can only administer the legislation in effect at the time and they are instructed not to advise applicants to delay their applications in anticipation of changes that government might or might not make in the future. The ministry suggested that the appellant might have been told this by an advocate rather than a ministry staff member. The ministry said that the EAPWDR was changing effective September 1, 2016 and there might have been confusion on the timing of any changes to the PWD adjudication process or that there might have been changes to CPPD eligibility or application requirements that went into effect at that time.

The ministry explained the difference between income assistance and disability assistance and said that if it is determined that an applicant is eligible for either one, the benefits are effective from the date that the applicant is determined to be eligible, not retroactively. The ministry said that income assistance and disability benefits are a last resort so the ministry requires that prospective applicants apply for income and benefits from all other available sources before it will consider adjudicating income assistance or disability benefits. The ministry also said that ministry staff did not have the discretion to exempt aspects of the legislation in particular circumstances. For example, if an applicant's income from all sources was only a few dollars in excess of the prescribed support and shelter allowance amounts, the ministry could not approve an applicant's PWD designation solely for the purpose of ensuring that an applicant is granted continued person status so that he or she would have access to medical services only or health supplements.

The ministry also stated that access to medical services only under EAPWDR section 61.1 or health supplements under EAPWDR section 62 would not be recognized as disability assistance, which is defined to be the monthly and shelter support allowance for an eligible PWD and specifically excludes hardship assistance and supplements.

Regarding the length of time it took to determine whether the appellant had income in excess of the disability benefit amount, the ministry confirmed that determining an applicant's eligibility for a PWD designation under the EAPWDA is a two part process. The first part is an income test to determine whether the applicant has income in excess of the prescribed shelter and support allowance amounts. The ministry said that this part of the adjudication process typically takes about 3 months, if the applicant provides the required documentation on a timely basis. In this case, while the appellant received a letter in March 2016 from Service Canada confirming that he would start to receive his CPPD benefits in March 2016, he did not advise the ministry that he had received the benefit until five or six weeks later on April 20 and did not submit a copy of that letter to the ministry until late May 2016, approximately two months after he began receiving a CPPD.

The ministry also confirmed that if it has been determined that an applicant meets the income test for PWB eligibility, it must then be demonstrated that the applicant meets the criteria set out in section 2(2) of the *Employment and Assistance for Persons With Disabilities Act*; specifically that the applicant has reached the age of 18 years and has a severe mental or physical impairment that, in the opinion of a medical practitioner is likely to last for at least 2 years and, in the opinion of a designated health professional, directly and significantly restricts the person's ability to perform daily living activities either continuously or periodically for extended periods, and as a result of those restrictions, the person requires help to perform those activities. The ministry representative said that this second part of the process in determining PWD eligibility typically takes an additional two or three months to complete, such that the entire adjudication process usually takes 5 to 6 months.

Panel Decision

Section 9(2) of the EAPWDR says 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. The definition of unearned income in section 1(1) of the EAPWDR includes a CPPD. As the appellant's CPPD monthly benefit of \$1,230.78 exceeds the combination of \$531.42 for the maximum shelter allowance and \$375.00 for the support allowance for the appellant's family unit pursuant to sections 2(1)(a) and 4(2) of Schedule A of the EAPWDR, the appellant is not eligible for disability assistance.

A main continued person pursuant to section 61.1 of the EAPWDR is a person who was part of a family unit on the date the family unit ceased to be eligible for disability assistance as a result of a person in the family unit receiving a pension or other payment under the Canada Pension Plan, and who had previously been designated as a PWD on that date. A main continued person has access to medical services only if the conditions set out in section 61.1 of the EAPWDR have been met. Because the appellant was not designated as a PWD on the date that he started receiving a CPPD

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benefit, the appellant is not entitled to access medical services only as a main continued person.

A continued person pursuant to section 62 of the EAPWDR is a main continued person as identified above, or a dependent continued person, defined in section 61.1(2) as a person who is dependant of a main continued person. EAPWDR section 62 says that the minister may provide a health supplement in the form of one or more specified general health supplements, or medical equipment and devices, to a family unit in receipt of disability assistance or where the health supplement is provided to or for a person in the family unit who is a continued person. As the appellant is not in receipt of disability assistance and is not a continued person, the appellant is not entitled to a health supplement.

The panel therefore finds the ministry's determination that it was unable to adjudicate the appellant's PWD designation application as the appellant was found financially ineligible for disability assistance because the family unit's net income exceeds the amount of disability assistance for his family unit and that the appellant was not eligible to access medical services only or for a health supplement was a reasonable application of the applicable enactment in the circumstances of the appellant.

Conclusion

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. The appellant's appeal is therefore not successful.