



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry's) reconsideration decision of July 25, 2016 wherein the ministry determined that the appellant was ineligible for assistance for the month of June 2016 pursuant to Employment and Assistance Regulation section 28. The ministry determined that the appellant had received unearned income in April 2016 that was deducted from the assistance he was eligible for for the month of June 2016.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Sections 1, 10, 28, 33, Schedule B sections 1,6,7

PART E – Summary of Facts

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

- A letter addressed to the appellant from Service Canada dated March 19, 2016. The letter provides that the appellant has been approved for a Canada Pension Plan Disability (CPPD) pension of \$1,031.47. The letter stated that the appellant's pension is subject to a monthly deduction of \$475.38 for the benefit of his two children.
- A letter addressed to the appellant from Service Canada dated April 11, 2016. The letter indicated that the appellant's monthly gross income payable for April 2016 was \$556.09.
- A Request for Reconsideration form dated June 24, 2016 signed by the appellant. The appellant requested a 10-day extension for medical reasons.
- A letter addressed to the ministry written by the appellant dated July 23, 2016. The appellant writes:
 - He had two knee surgeries, one on August 7, 2015 and the other on July 27, 2016 and still suffers from pain.
 - He has been approved for Persons With Disabilities status and he expects to receive \$1277 per month.
 - He has not received income assistance since March 2016 and was evicted from his house because he could not pay the rent.
 - His monthly expenses include hydro, car loan, internet, tv, phones, car insurance, and rent totaling about \$2000 per month.
 - His wife has been looking for work but is restricted from some work due to medical issues.
 - The appellant summarized the various medical conditions he suffers from and the treatments he has received.
- A letter addressed to the appellant from the ministry dated July 12, 2016 advising the appellant he has been approved for Persons with Disabilities (PWD) status.

With the Notice of Appeal the appellant wrote that he disagreed with the ministry's reconsideration decision. He wrote that he was approved as a PWD as of August 1, 2016 and would receive \$1277 per month and not \$877 per month.

The ministry submitted a statement to the panel noting that "the issue is about the appellant's eligibility for June income assistance. For the time in question the appellant had not been approved for PWD designation and therefore the Employment and Assistance Regulations and income assistance rates applied to his eligibility for June income assistance."

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in finding the appellant was ineligible for assistance for the month of June 2016. The ministry determined that the appellant had received unearned income in April 2016 in the amount of \$1031.47 from CPPD. Pursuant to Employment and Assistance Regulation section 28 this amount was deducted from his June 2016 assistance of \$877.22 that he was eligible for as a two adult family, both with employment related responsibilities. As a result of the unearned income in April 2016, the appellant was ineligible for assistance for the month of June 2016.

The relevant legislation is as follows:

Employment and Assistance Regulation (EAR)

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 (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 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 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th 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, B.C. Reg. 95/2012:

- (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;
- (v) changes in family unit membership or the marital status of a recipient;
- (vi) any warrants as described in section 15.2 (1) of the Act.

Schedule B

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 in respect of a child in care;
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (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. [B.C. Reg. 197/2012, Sch. 1, s. 22 (a).]

(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, B.C. Reg. 291/96;

(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. [B.C. Reg. 85/2012, Sch. 1, s. 5.]

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

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

(xxiii) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]

(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) Repealed. [B.C. Reg. 148/2015, App. 1, s. 1 (a).]

(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 as established under the Drug Plans Regulation;

(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. [B.C. Reg. 180/2010, s. 1 (b).]

(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;

(xlii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;

(xliii) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

(xliv) a BC early childhood tax benefit;

(xlv) child support;

(xlvi) orphan's benefits under the *Canada Pension Plan Act* (Canada);

(xlvii) gifts, other than recurring gifts;

(xlviii) compensation paid or payable under section 17 [*compensation in fatal cases*] or 18 [*addition to payments*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 17 of that Act,

(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.

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 (0.1) In this section:

"disability-related cost" means a disability-related cost referred to in paragraph (a), (b) or (c) of the definition of disability related cost in section 13 (1) [*assets held in trust for person receiving special care*] of this regulation;

"disability-related cost to promote independence" means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 13 (1) of this regulation;

"intended registered disability savings plan or trust", in relation to a person referred to in section 13.1 (2) [*temporary exemption of assets for person applying for disability designation or receiving special care*] of this regulation, means an asset, received by the person, to which the exemption under that section applies;

"structured settlement annuity payment" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(1) 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 11 [*asset limits*] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [*assets held in trust for person receiving special care*] of this regulation if the payment is applied exclusively to or used exclusively for
 - (i) disability-related costs,
 - (ii) the acquisition of a family unit's place of residence,
 - (iii) a registered education savings plan, or
 - (iv) a registered disability savings plan;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 13 (2) (a) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 13.1 (2) [*temporary exemption of assets for person applying for disability designation or receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:

- (i) a payment made from a trust to or on behalf of a person referred to in section 13 (2) of this regulation;
- (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 13 (2) (a) of this regulation;
- (iii) money expended by a person referred to in section 13.1 (2) of this regulation from an intended registered disability savings plan or trust;

(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*;

(f) a tax refund.

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

(a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

(b) the settlement agreement requires the defendant to

(i) make periodic payments to the person for a fixed term or the life of the person,

(ii) purchase a single premium annuity contract that

(A) is not assignable, commutable or transferable, and

(B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,

(iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and

(iv) remain liable to make the payments required by the settlement agreement.

Arguments of the Parties

The appellant argues that he should have received his June 2016 income assistance benefit of \$877.22 despite receiving \$1,031.47 from his Canada Pension Plan Disability (CPPD). He argues that the ministry was not correct when it determined the money he received from CPPD was in excess of the income assistance benefit he was eligible for. He maintains the ministry should not have included the \$475.38, which benefits his two children, when calculating the amount he received from CPPD.

The ministry argues that in April 2016 the appellant received a payment from CPPD for \$1,031.47 that is considered unearned income by the EAR section 1(1)(f). The ministry argues that, according to the EAR section 33, the CPPD benefit was reported by May 5th to be applied against the appellant's June 2016 benefit. The ministry maintains that, although the Family Maintenance Enforcement Program (FMEP) deducts \$475.38 from his CPPD and directs it to his children, the EAR schedule B section 1(b) requires that the garnishee must be included when calculating his unearned income. The ministry determined that the appellant's rate of income assistance for June was \$877.22 however he received a CPPD benefit that was in excess of his income assistance benefit and therefore he was ineligible for his income assistance benefit.

CPPD as Unearned Income

The ministry determined the \$1,031.47 the appellant received in April 2016 from CPPD was unearned income. The panel reviewed the legislation and determined the ministry's determination was reasonable. The panel finds the EAR section 1(1)(f) is unambiguous in its description of unearned income including "any type or class of Canadian Pension Plan Benefits."

Calculation of June 2016 Eligibility

The ministry determined that the \$475.38 deducted from his CPPD by FMEP is considered unearned income when calculating his eligibility for income assistance. The panel finds the ministry's decision was reasonable based on EAR section 10(1), which states that, for the purposes of the act, "income" includes an amount garnisheed from the income of a recipient.

The ministry determined that the CPPD benefit the appellant received in April 2016 would affect his eligibility for June 2016. The panel finds the ministry's determination was reasonable that, according to EAR section 33(1)(a), income received by the appellant would be declared to the ministry by the 5th of May and any adjustments to the appellant's eligibility would affect his June 2016 benefit. The panel finds the ministry was reasonable to determine the appellant's CPPD benefit of \$1,031.47 exceeded the income assistance of \$877.22 and therefore he was ineligible for any benefit from the ministry.

Conclusion

The panel finds that the ministry's reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the ministry's decision.