

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the "Ministry's") reconsideration decision dated September 9, 2016 determined the appellant's Canadian Pension Plan (CPP) benefit for a "Child of Disabled Contributor" is unearned income that is not excluded from income under Schedule B of the *Employment and Assistance for Persons With Disability Regulations* and must therefore be deducted from her disability assistance under section 24.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disability Regulations (EAPWDR), ss. 1, 9, 24, and Schedule B (ss. 1, 7, 8, 9, 11)

PART E – Summary of Facts

At reconsideration, the Ministry had information before it stating the appellant receives disability assistance and has a dependent child. She receives a CPP benefit of \$858.84, which is comprised of \$621.15 CPP disability benefits and an additional \$237.69 for a “Child of a Disabled Contributor” benefit (“CPP child benefit”). Previously, the CPP child benefit was not deducted from the appellant’s disability assistance. However, in August 2016, following a policy clarification, the Ministry determined the CPP benefit was not exempt and deducted the full CPP cheque from the appellant’s September 2016 disability assistance.

The following documents were before the Ministry at reconsideration:

- A submission from the appellant dated August 24, 2016 in which she notes the difficulties in finding suitable and affordable housing in the community where she lives; that the house in which she and her dependent child currently lives costs \$880 per month plus utilities; that she would not have rented that dwelling if she knew the \$237.16 child portion of her CCP Disability was not exempt; that she has been seeking a lower price home and hoping she could make a deal with her landlords about breaking her lease; and that, with the child portion of CPP Disability not exempt, it “puts a huge strain on our whole financial life.”
- Bank payment receipts dated August 11, 2016 and August 22, 2016 showing payments of \$89.49 and \$178.98 to a utility company;
- Disconnection notices from a utility company dated July 22, 2016, and August 18, 2016;
- An electricity bill dated May 18, 2016 in the amount of \$206.47;
- Natural gas bills dated August 11, 2016 in the amount of \$252.04 and July 12, 2016 in the amount of \$235.87;
- A letter from a utility company dated July 13, 2016 concerning a “payment arrangement confirmation”;
- A bank transaction record dated August 22, 2016 showing a deposit of \$300 and a payment to a natural gas company in the amount of \$117.00;
- A mobile telephone bill dated August 2, 2016 in the amount of \$135.92;
- Bank transaction records dated May 31, 2016, June 30, 2016, and July 29, 2016 showing cash payments of \$880 each with handwritten notes indicating the payments were for rent for the months of June, July, and August 2016;
- Letters from the federal government concerning CPP benefits dated January 12, 2012, April 24, 2013, February 15, 2012, and July 21, 2011;
- A Ministry Monthly Report dated April 12, 2016 completed by the appellant with the handwritten note “237.69 CPP Disability Child Portion”;
- A page from a federal tax return for the appellant (tax year not visible on copy);
- Ministry Monthly Reports completed by the appellant and dated May 31, 2016, July 12, 2016, and August 10, 2016 with handwritten notes indicating the child portion of CPP Disability is exempt; and
- Receipts written by the appellant acknowledging payments in exchange for housekeeping services, dated June 14, 2016, June 17, 2016, and June 23, 2016.

In the appellant’s Notice of Appeal, dated September 19, 2016, she writes, “ Being without that 287.64 child portion – greatly changes the bill paying abilities each month. I based where I rent on having that 237.64 each month.”

At the hearing, the appellant added that she understands that “rules are rules” but that not having the \$237 per month that she relied on in making her decision about where to live is a “big deal.” She works when her health allows it, but she cannot count on having income from work every month, creating stress for her, which causes flare-ups in her health condition. She felt that the child portion of her CPP benefit should be exempt from income. The appellant also said that the Ministry has provided her with some assistance for moving into the place where she is currently living, and that she received a supplement in place of the CPP child benefit until the tribunal decision was made, but that she may have to pay that back to the Ministry at the rate of \$20 per month.

The Ministry relied on its reconsideration decision and provided further explanations of its decision. The Ministry said it is unable to exempt the CPP child benefit because all classes of CPP are unearned income and there is no exemption in the legislation. The Ministry clarified that its earlier, original decision to exempt the CPP child benefit was made in error; there is nothing in the legislation or Ministry policy that would allow a “grandfathering” of the original exemption given to the appellant; and that other avenues the appellant could explore for support include a crisis supplement, support for moving expenses, or assistance in finding less expensive or shared accommodations. Finally, the Ministry said the appellant’s exemption for the CPP child benefit prior to August 2016 is not being treated as an overpayment.

PART F – Reasons for Panel Decision

The Issue Under Appeal

The issue under appeal is whether the ministry's decision that the appellant's CPP child benefit is unearned income that is not excluded from income under Schedule B of the *EAPWD Regulations*, and must therefore be deducted from her disability assistance under section 24, is either a reasonable application of the legislation or reasonably supported by the evidence.

The Applicable Legislation

Employment and Assistance for Persons With Disability Regulations

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;
 - (g) employment insurance;
 - ...
 - (j) workers' compensation benefits and disability payments or pensions;
 - (k) surviving spouses' or orphans' allowances;
 - ...

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.

Amount of disability assistance

24 Subject to section 24.1 (3), 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 B

Net Income Calculation

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:

- (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. 2 (c).]
- (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. 2, s. 11 (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) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;
- (xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxii) 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*;
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxv) 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;

(xxvi) a loan that is

(A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and

(B) received and used for the purposes set out in the business plan;

(xxvii) 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;

(xxviii) Repealed. [B.C. Reg. 148/2015, App. 2, s. 1 (a).]

(xxix) 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;

(xxx) a refund provided under Plan I as established under the Drug Plans Regulation;

(xxxi) 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;

(xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);

(xxxiii) 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;

(xxxiv) money withdrawn from a registered disability savings plan;

(xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada);

(xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]

(xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;

(xxxviii) 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;

(xxxix) 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;

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;

(xlili) 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;

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

(xlv) a BC early childhood tax benefit;

(xlvi) child support;

(xlvii) orphan's benefits under the [Canada Pension Plan Act](#) (Canada);

(xlviii) money or other value received, by will or as the result of intestacy, from the estate of a

deceased person;

(xlix) gifts;

(l) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;

(li) money withdrawn from a registered education savings plan;

(lii) 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,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

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 unity 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*;

Minister's discretion to exempt education related unearned income

8 (1) In this section:

"**day care costs**" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the *Child Care Subsidy Act* to a family unit matching the student's family unit;

"**education costs**", in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

(2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of student financial assistance received by the student for the period of study.

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.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

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.

Positions of the Parties

The appellant's position is that it is not reasonable for the Ministry to deduct the CPP child benefit from her disability assistance because the CPP child benefit was exempted in the past, she relied on having those funds when arranging housing for herself and her child, and removing those funds now creates a hardship and financial stress for her. The appellant argued that the CPP child benefit is for the benefit of her child, which is like a child tax credit that is exempt, and the CPP child benefit should also be exempt.

The Ministry position is that the reconsideration decision is a reasonable application of the legislation in the circumstance of the appellant because the Ministry's initial decision to exempt the CPP child benefit was in error, all classes of CPP benefits are unearned income, and there are no exemptions for the CPP child benefit in the legislation.

The Panel's Decision

Section 24 of the *EAPWD Regulations* provides that "net income" (as set out in Schedule B) must be deducted from a family unit's disability assistance (determined under Schedule A). Section 1(d) of Schedule B stipulates that when calculating the net income of a family unit for the purposes of section 24(b), all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8. For the appellant to be successful in her appeal, she must show that the reconsideration decision is unreasonable because her CPP child benefit is either (1) not unearned income, or (2) exempt from the calculation of net income in Schedule B.

Is the CPP child benefit unearned income?

Section 1(1)(f) of the *EAPWD Regulations* explicitly defines “unearned income” to include “any type or class of Canada Pension Plan benefits.” The CPP child benefit is a type or class of Canada Pension Plan benefits. Therefore, the panel finds the Ministry reasonably determined the CPP child benefit to be unearned income.

Is the CPP child benefit exempt from income?

Schedule B, section 1(a) sets out a number of exemptions from income. The only listed exemption that relates to CPP is section “(xlvii) orphan’s benefits under the *Canada Pension Plan Act* (Canada).” The Ministry reasonably determined that this exemption could not apply here as the CPP child benefit is for people who have children whereas the exemption in section (xlvii) is for orphans.

Schedule B, section 1(d) states that “all unearned income must be included [in income of a family unit], except the deductions permitted under section 6 and any income exempted under sections 7 and 8.” The CPP child benefit does not fall into either category of deduction listed in section 6, nor the education exemptions listed in section 8. Section 7(1)(e) exempts a portion of the CPP benefits, calculated by a formula, that effectively exempts amounts deducted for income tax from being considered income. Such amounts are not at issue here. While the appellant argued that the CPP child benefit should be exempt like the child tax credit, the Ministry reasonably reviewed the exemptions currently available in Schedule B.

Accordingly, since none of the exemptions in Schedule B of the *EAPWD Regulations* apply to the CPP child benefit that was deducted from the appellant’s disability assistance, the panel finds the Ministry reasonably determined that the CPP child benefit is not exempt from inclusion within net income, and therefore that it must be deducted from disability assistance in accordance with section 24 of the *Regulations*.

Conclusion

Since the CPP child benefit is unearned income (s. 1(1)(f) of the *Regulations*), and is not exempt from net income under Schedule B, the Ministry’s decision that the appellant’s CPP child benefit must therefore be deducted from her disability assistance under section 24 is a reasonable application of the legislation in the circumstances of the appellant. The appellant is not successful in her appeal.