

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (“ministry”) dated November 25, 2016, which determined that as the appellant had reached the age of 65 in August 2016 and began receiving the Old Age Security pension (OAS) and the Guaranteed Income Supplement (GIS) effective September 2016, that her combined net income of OAS, GIS and Canada Pension Plan (CPP) exceeds the amount of disability assistance and therefore pursuant to section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), she is no longer eligible to receive disability assistance. The ministry noted that, under section 61.1 of the EAPWDR, the appellant is eligible to access medical services only as a “continued person”.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) – Sections 1, 9 and 24.1

Schedule A Sections 1, 2, 4 and 5

Schedule B Sections 6 and 7

## PART E – Summary of Facts

The following evidence was before the ministry at time of reconsideration:

- The appellant's Request for Reconsideration, dated November 11, 2016 to which is attached an undated letter from the appellant outlining her health issues and medications.
- Letter, undated, from Service Canada showing OAS and GIS monthly entitlement of \$892.12 effective September 2016.
- Letter dated October 25, 2016 from the ministry to the appellant explaining that because her OAS/GIS/ CPP would be in pay effective the end of September that she was no longer eligible for assistance and that the only entitlement would be for the Transitional Transportation Supplement (TTS) amount of \$52 per month to the end of December, 2016. As a hydro payment of \$50 was being paid directly, this amount went to hydro and \$2 to the appellant's account for October and November. However, for December the ministry would pay the full \$52 to the appellant and she would then be responsible to pay the bill herself with her OAS/GIS/ CPP income.
- Request for Reconsideration included information that on November 1, 2016 a worker left a message for the appellant regarding the TTS and that the file had been changed to Medical Services Only (MSO).

The reconsideration decision noted that:

- A CPP computer match indicated the CPP amount is \$465.16

In her Notice of Appeal the appellant wrote that she disagreed with the decision as she did not receive money from an inheritance. This was in reference to a cover letter that came with the reconsideration decision which indicated that the appellant had received an inheritance. Neither the ministry nor the appellant referenced the letter or inheritance monies at the appeal. Further, the reconsideration under appeal is regarding OAS/GIS/ CPP income in excess and does not involve an inheritance.

At the hearing the appellant stated that:

- She has had health issues for many years and has used various medications and therapies but is able to only work part time and has a desire to continue working.
- She applied for OAS and submitted a letter from Service Canada to the ministry that showed her OAS would be in pay effective September 2016.
- She confirmed her total monthly income from OAS and GIS is \$892 and from CPP is \$465.
- Prior to turning 65 she had also been receiving monthly CPP disability benefits. She asked for the reconsideration as she wanted to ask about her CPP and explain she does want to work in the future when her health permits.
- She stated that she had received a letter from the ministry regarding an overpayment and that she had a right to a reconsideration.

- 
- She anticipated that when she got her OAS and GIS that her disability assistance cheque would stop.

At the hearing the ministry relied on its reconsideration decision and emphasized that:

- The appellant had been in receipt of CPP disability benefits and was receiving a disability assistance top up from the ministry prior to turning 65.
- The ministry was not aware of any overpayment.

*Admissibility of New Information*

The panel admits the appellant's testimony as being in support of what was before the ministry at reconsideration. However, we do not admit the part of her testimony regarding the overpayment letter. The issue of an overpayment was not addressed in the reconsideration decision, however the ministry did address it at the hearing. As this is not in support of information or records referred to in the reconsideration decision, it is inadmissible pursuant to section 2(4) of the Employment and Assistance Act (EAA).

[ ]

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision of November 25, 2016, which found that the appellant was no longer eligible for disability assistance because her monthly OAS, GIS and CPP net income exceeds the rate of disability assistance as per section 9(2) of the EAPWD Regulation, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

### Relevant Legislation

**Section 1** of the EAPWDR provides that:

"**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;

...

(u) Federal Old Age Security and Guaranteed Income Supplement payments;

...

**Section 9(2)** of the EAPWDR provides 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 a family unit matching that family unit.

**Section 24.1(1)** provides that:

The minister may provide to or for a family unit, for a calendar month, in respect of each applicant or recipient who is designated as a person with disabilities in the family unit, one of the following forms of transportation support allowance:

(a) in money, in the amount of \$52

**Schedule A** of the EAPWDR sets out the maximum amount of disability assistance before deduction of net income:

Section 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.

[ ]

In calculating the net income of a family unit under **Schedule B** of the EAPWDR, specific deductions and exemptions from unearned income are provided for as follows:

**Section 6 – Deductions from Unearned Income**

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.

**Section 7 Exemptions - Unearned Income**

None of the exemptions applied to the appellant

*Appellant's Position*

The appellant's position is that she had requested a reconsideration as she thought it was an opportunity to ask about her CPP and say that she would like to continue working part time, even though she continues to have health issues. The appellant anticipated that her disability assistance cheque would stop when her OAS came in.

*Ministry's Position*

The ministry's position is that based on legislation, the appellant's total monthly OAS, GIS and CPP income of \$1357.28 is considered unearned income and because it is over the disability assistance rate of \$984.42 she is no longer eligible for disability assistance. She continues to be eligible for medical services only.

*Panel Decision*

The panel notes that the appellant emphasized throughout the hearing that she would like to continue to work. The issue under appeal, however, is whether the reconsideration decision, which was to discontinue her disability assistance due to her monthly income now being higher than ministry rates, is reasonable. The appellant did not dispute the amount of her monthly OAS, GIS and CPP amounts.

The ministry confirmed the appellant is eligible for medical services only, pursuant to section 61.1 of the EAPWDR, so that was not under review by this panel.

Section 9(2) of the EAPWDR states 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 OAS, GIS and CPP.

The panel did not find evidence of any deductions or exemptions permitted pursuant to Schedule B of the EAPWDR. Further, the appellant confirmed that she earned \$1357.28 per month in OAS, GIS, and CPP. Therefore the panel finds that the ministry was reasonable in determining that \$1357.28 is the income amount under consideration.

Therefore the panel finds that the ministry was reasonable in determining that, as the appellant's monthly income of \$1357.28 exceeds the monthly support, shelter and transportation amount of \$984.42 pursuant to section 24.1 of the EAPWDR and sections 2(1)(a) and 4(2) of Schedule A of the EAPWDR, the appellant is not eligible for disability assistance.

*Conclusion*

The panel finds that 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 thus not successful.