PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 23, 2016 in which the ministry reduced the appellant's income assistance (IA) by $100 per month pursuant to section 14 of the *Employment and Assistance Act* (EAA) and section 31 of the Employment and Assistance Regulation (EAR) for failing to pursue Canada Pension Plan - Early Retirement (CPPE) income.

PART D – Relevant Legislation

Employment and Assistance Act - EAA, sections 2 and 14

Employment and Assistance Regulation - EAR, sections 9 and 31

Interpretation Act, sections 8 and 11(1)

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. Information from the reconsideration record indicating as follows:

- The appellant is an employable, 61 year old recipient of IA with a dependent child. She has been in receipt of IA benefits since January 2012. She turned 60 in November 2014.
- On September 12, 2016, the ministry sent her a letter advising that she may qualify for a CPP pension and that she is required to seek out all sources of available income including CPPE.
- On September 29, 2016, the appellant spoke to a ministry worker by phone and advised that she did not want to apply for CPP and would like a reconsideration of the requirement to do so. The worker explained the requirement to pursue all available sources of income and the appellant said she did not agree and will not be pursuing CPPE.
- After reviewing the documents submitted with the appellant's Request for Reconsideration (RFR), the ministry determined she is not eligible for IA for failing to pursue all sources of income. The ministry noted that although the appellant requested a reconsideration of the decision requiring her to apply for CPPE, she may request a reconsideration of a ministry decision that results in a denial, discontinuance, or reduction of assistance. The ministry indicates that as a result of her refusal to pursue CPP income, the ministry has imposed a sanction of a $100 reduction in her assistance until such time that the failure to pursue income is remedied. The ministry states that the reconsideration will be for the ministry's decision to impose a sanction of reduced IA for failing to pursue income.

2. Two RFRs signed by the appellant:

- October 25, 2016 indicating she has obtained an advocate and is requesting a 20 day extension of time to gather evidence;
- December 21, 2016 with attached submissions from the advocate as follows:
  - (i) A 9-page submission consisting of argument and indicating that based on CPP projections from Service Canada, the appellant would receive a monthly benefit of $361.76 if she were to apply for CPPE at this time and a benefit of $411.99 if she receives CPP at age 65 [for a difference of $50.23 per month]. Service Canada explained that her pension will be reduced by up to 36% at age 60. The submission further indicates that the appellant has a 14-year old child for whom she is the sole caregiver and provider, and she looks after her disabled adult child and her elderly parent, as well as engaging in volunteer labour.
  - (ii) A copy of Employment and Assistance Appeal Tribunal (EAAT) decision *2016-00321* dated July 19, 2016.
  - (iii) Copies of ministry policy: (i) *Legislative Authority*, pertaining to employment and assistance legislation, policy, and procedures and (ii) *Pursuing Income*, stating that CPP is considered to be "other income" and applicants or recipients are therefore required to pursue CPP benefits including a CPP retirement pension. The policy states that the ministry assesses clients who turn 60 years of age to determine if they may be eligible for CPP. Under CPPE, the policy states that "any applicant or recipient who reaches 60 years of age and is not working must apply for CPPE benefits for which they are potentially eligible." The policy provides for "limited exceptions" that include a confirmation of imminent employment; an inability to apply for CPP due to illness or incapacitation; and the pending receipt of Employment Insurance for a laid off worker.

(iv) A copy of a Government of Canada information hand-out titled *Canada Pension Plan- How much could you receive.*
(v) A letter to the appellant from Service Canada dated October 25, 2016 providing an estimate of CPP benefits based on her earnings, contribution history, and anticipated retirement age. The letter indicates she could be entitled to a retirement pension of $361.76 per month at age 62, and $411.99 per month at age 65.
(vi) A CPP *Statement of Contributions* for the years 1972 to 2016.

3. A letter to the appellant from the ministry dated September 29, 2016 stating that she may be eligible for CPPE and is required under section 14 of the EAA and section 9 of the EAR to seek out all sources of income including CPPE, and if she does not pursue all other sources of income her cheque may be delayed. The ministry requested the appellant to submit a CPPE application package [ISP1000} and a *Consent to Deduction and Payment* form [ISP1613] that authorizes Service Canada [where CPPE benefits are backdated] to repay the ministry any early retirement benefits for previous months to prevent duplicate payments. The letter states that the CPP application is required to determine ongoing eligibility for assistance and failure to comply could result in a discontinuance of assistance.

Procedural matters

The hearing was previously adjourned twice to accommodate the advocate's availability. The appellant attended the hearing with her advocate and the panel chair called a recess part way through the hearing.

Additional submissions

In her *Notice of Appeal* dated December 7, 2016, the appellant provides her argument on appeal. At the hearing, the advocate submitted copies of the following legislation and ministry policy in support of the appellant's argument: (i) *Interpretation Act*, (ii) section 9 of the EAR, and (iii) the policy, *Pursuing Income.* The ministry stated that it did not have copies of these at the reconsideration but it had no objections to admitting them. The advocate clarified that section 9 of the EAR and the *Pursuing Income* policy are reproduced in the reconsideration record and while the submissions refer to the *Interpretation Act*, she is now providing a copy of that legislation. The panel accepts the documents as submissions in support of the appellant's argument that was before the minister at reconsideration. The panel will consider the arguments of both parties in *Part F - Reasons for Panel Decision*.

Oral testimony

At the hearing, the advocate summarized the appellant's argument. The appellant provided additional details regarding her circumstances indicating that her dependent child will still be a minor when she turns 65 and she consistently spends 5 hours per day caring for this child, assisting her disabled adult child who lives nearby, and being on call for her elderly father. She stated that while she receives a monthly child tax benefit, IA is her only source of income and with the ministry's reduction it is difficult to get through the month as she still has expenses for transportation, food, and her child's clothing/ equipment needs for sports and activities.

In response to a question from the panel regarding her employment prospects, the appellant stated that her volunteer work became a full-time commitment for a couple of months and is considered to be part of her job search, and when her volunteer project became funded the ministry treated it as self-employment which the ministry supports for disability recipients but not for regular IA clients. She stated that her other option is to go to an employment program which she may do and she is not completely pessimistic about employment; however, the probability of getting a job is very low due to her age and circumstances.

In response to other questions from the panel, the appellant stated that she was receiving $945 per month IA from the ministry and she is now receiving $845, ever since the ministry imposed the reduction beginning with her November 2016 cheque. She explained that her IA includes her shelter costs of $570 and that if she was receiving CPPE, she would get a total of $945 per month which is the same as her regular IA rate, but $361.76 would come from CPP and the balance [$583.24] would come from the ministry. The appellant indicated that she received information about how the ministry treats CPPE through telephone conversations with ministry workers. She stated that they told her that at age 65 she will not be eligible for any IA because Old Age Security will begin. She stated that she also understood she would be cut off IA altogether for not pursuing CPP right away.

In response to further questions, the appellant stated that she did not submit either the CPP application form or the *Consent to Deduction and Payment* form as requested by the ministry and she told the ministry that she would not fill out the CPP forms because forcing her to apply for CPPE is unfair and has a negative impact on her future household income including reduced resources for the support of her minor child. The advocate explained that if the appellant collects CPP before age 65, she would receive less CPP at age 65 - approximately $600 per year less if the she collects CPPE of $361.76 per month now, at age 62.

At the hearing, the ministry summarized its arguments as set out in the reconsideration record and confirmed that if the appellant was receiving CPPE of $361.76, the ministry would deduct that amount from her single parent IA rate of $945 per month. The ministry confirmed that instead of receiving $945 per month, the appellant would receive IA of $583.24. The ministry further confirmed that despite the statement in the reconsideration decision indicating that the appellant is ineligible for IA, she has not been denied IA - a sanction of a $100 per month reduction in IA was imposed and if the appellant applies for CPPE, the sanction will be removed in accordance with subsection 31(1)(a) of the EAR. When asked how the ministry determined to impose a $100 reduction versus "cutting the appellant off" of IA, the ministry replied that it looked at the appellant's situation as a single parent and determined that her child would be endangered if the family was denied IA.

In response to questions from the advocate, the ministry explained that once a recipient reaches the age of 60, the ministry's policy is applied to all clients and a letter is "automatically sent out" requesting that they submit a CPP application. The ministry explained that if the person is eligible for CPPE, they are expected to use those funds towards their living expenses. When asked whether a CPPE income of less than $400 could form part of the $400 earnings exemption that the ministry allows IA recipients [under section 3(6)(b) of Schedule B of the EAR], the ministry explained that the $400 exemption is only for earned income from employment and does not include CPP benefits which are treated as unearned income under the Regulation.

When asked how the ministry interprets the word "may" in legislation, the ministry replied that it cannot give a definite answer because "may" is not defined in the *Interpretation Act*. The ministry added that in reference to a decision that the ministry is making, "may" involves a "common sense interpretation" in which the person's circumstances "can be looked at more closely to make a more detailed decision."

When asked about the content of the CPP *Consent to Deduction and Payment* form that the ministry requested the appellant to submit [pursuant to section 9 of the EAR], the ministry explained that the form requests information to identify the person and it allows the federal government to assess the amount of CPP for which the person may be eligible and to send any back-dated payments to the ministry. The ministry confirmed that submitting the form on its own would not result in the appellant receiving CPPE benefits. Rather, she would need to submit a separate CPP application form to Service Canada in order to receive payments.

The panel finds that the appellant's testimony provides additional information regarding her circumstances that were before the minister at reconsideration, including her caregiver roles, volunteer activities/ job search obligation, and the impact of CPPE on her current and future financial situation. The panel admits the testimony under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the minister at the time the decision being appealed was made. Regarding the ministry's testimony that answered questions about its process for having clients apply for CPP and its process for imposing a sanction when clients do not comply, the panel accepts the testimony as argument in support of the ministry's position at reconsideration.

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PART F – Reasons for Panel Decision

The issue in this appeal is whether the reconsideration decision of November 23, 2016 in which the ministry reduced the appellant's IA by $100 per month pursuant to section 14 of the EAA and section 31 of the EAR for failing to pursue CPPE income, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant sections of the legislation are as follows:

Employment and Assistance Act

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if
(a) each person in the family unit on whose account the income 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 income assistance, hardship assistance or supplement under this Act.

Consequences of not accepting or disposing of property

14 (1) The minister may take action under subsection (3) if…at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done…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;

(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.

Employment and Assistance Regulation

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;

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.

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

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,

Schedule B

Exemption - earned income

3 (6) The exempt amount for a family unit is the lesser of the family unit's total earned income in the calendar month of calculation and the following:
(b) $400, if the family unit
(i) includes a recipient who
(A) has a dependent child,

Interpretation Act

Enactment remedial
8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Reference aids and clarifications
11 (1) In an enactment, a head note to a provision or a reference after the end of a section or other division
(a) is not part of the enactment, and
(b) must be considered to have been added editorially for convenience of reference only.

The relevant sections of the ministry's policies are as follows:

1. The policy titled *Legislative Authority*

Overview

The *Employment and Assistance Act*…and companion regulations provide the legislative authority for the BC Employment and Assistance programs.
Policy manuals set out the ministry's intent with respect to the Act and Regulations and are

guidelines. Policy is not law. Policy provides guidelines to assist staff in making decisions. Staff must, however, make decisions based on the legislation. Where the policy and the legislation conflict, the legislation must be followed.
The *Interpretation Act* assists in the interpretation of provincial enactments.

Procedures

General Interpretation

Effective December 1, 2003

Where the word "may" appears in the act or regulation, it denotes discretion and is generally followed by a listing of eligibility criteria, some or all of which (as specified) must be met to support a decision to grant or deny assistance.

2. The policy titled *Pursuing Income*

Overview

Applicants and recipients of income assistance…who may be eligible for other income or other means of support are required to pursue and accept the other income or means of support. Those who fail to accept or refuse to pursue other income, or other means of support, may be ineligible for assistance or eligible at a reduced rate.

Policy

Canada Pension Plan – Human Resources and Skills Development Canada

Effective September 1, 2015

CPP is considered to be "other income" and therefore applicants or recipients are required to pursue CPP benefits. These benefits include CPP retirement pension, disability benefits, and survivor benefits. Applicants and recipients who have not applied for CPP are to be reviewed for potential CPP eligibility.

Applying for CPP Benefits

While clients should be assessed on a case-by-case basis to determine who may eligible for CPP, the following are some general guidelines:

- early retirement pension: clients who turn 60 years of age

CPP Early Retirement Benefits

A CPP early retirement pension is a contribution-related benefit, payable monthly upon application, to CPP contributors who are at least age 60. Any applicant or recipient who reaches 60 years of age and is not working must apply for CPP early retirement benefits for which they are potentially eligible.

There are limited exceptions including the following circumstances:

- the person has imminent employment (within one month) that has been confirmed with an employer or a service provider (must be followed up within a month)
- due to illness or incapacitation, the person cannot apply even with ministry assistance (these cases are to be reviewed monthly)
- the person has been laid off work and is in receipt of *hardship assistance* pending receipt of Employment Insurance

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Position of parties

The appellant's position is that the ministry has discretion on whether to impose a sanction under section 14 of the EAA and should have considered whether it was reasonable and fair to reduce the appellant's IA for not pursuing CPPE given the negative impact this has on her future CPP benefits. The appellant argues that collecting "early CPP" ensures hardship because she is made poorer at age 65 when her child is still a dependent. The advocate notes that according to the Government of Canada's information, the appellant's CPP will be reduced by up to 36% if she takes it before age 65.

The appellant submits that the current reduction to her IA "puts a lot of strain" on her family unit and she has "the feeling of being tapped" when she cannot make ends meet. She submits that when CPP is "forced on her" the benefit is "incredibly reduced" and she is already impacted by not being able to make CPP contributions when her children were young, despite the CPP child-rearing provisions. The appellant submits that $50 per month [higher CPP at age 65] is a lot to her and that the ministry is being "unusually cruel…with no spirit of kindness or acknowledgement of peoples' lives."

The advocate argues that the ministry has not applied a fair and liberal construction of the legislation per section 12 of the *Interpretation Act* [*sic* - the panel notes that the correct reference is section 8]. The advocate asks the panel to follow EAAT decision *2016-00321* which found that the ministry "did not exercise its discretion reasonably when considering whether it might be unfair to impose the $100 reduction" given the impact of the ministry's action on future CPP benefits. The advocate submits that while that decision is not binding on this panel, the decision is public [available on the tribunal's website] and it is important for decisions to be made consistently in the interest of natural justice.

In the RFR submission, the advocate argues that the reduction in IA imposed by the ministry is unreasonable because there is no legislative requirement to apply for CPP benefits. The advocate asks the panel to follow the previous EAAT decision regarding the interpretation of section 9 of the EAR which "confirmed that the heading of the legislation has no substantive or asserting meaning, or is not completely accurate as the requirement is in fact to complete the consent to deduction and payment, not to apply for CPP benefits…" In support of that argument, the advocate noted at the hearing that section 11(3) of the *Interpretation Act* confirms that a head note to a legislative provision is not part of the enactment, and must be considered to have been added editorially for convenience of reference only.

Regarding section 14(1)(a) of the EAA, the advocate argues that the $400 earnings exemption for employed recipients of IA [section 3(6)(b) of EAR Schedule B] should be used as a "benchmark" for determining whether the appellant would be "completely or partly independent" of IA if she were to receive CPPE of $361.76 per month. The advocate argues that the income the appellant would receive from CPPE should be exempt as it is lower than the $400 earnings exemption. The appellant adds that it is "confusing, arbitrary, unfair, and panic-inducing" for the ministry to not allow her to wait for an extra $50 for CPP when clients "can keep $400 when they are working."

The advocate argues that despite the ministry viewing the $400 earnings exemption as an incentive to encourage employment, the appellant's CPPE entitlement is lower than her IA and does not create any financial independence for her or make her even "partly independent" of IA. The advocate submits that section 14 of the EAA does not specify an amount of income that would need to be earned and argues that this section [referencing "the minister's opinion"] requires the ministry to assess what amount would entail the appellant to be completely or partly independent of IA.

The ministry's position is that the reduction in the appellant's IA is justified because she has refused to pursue CPPE income and has therefore "failed to pursue income that would enable [her] to be partly independent of income assistance." Regarding the earlier EAAT decision cited by the advocate, the ministry argues that EAAT decisions: "do not take precedent on future reconsideration or tribunal decisions" and the ministry is unable to speak to the particulars of that case due to confidentiality.

The ministry cites policy that requires "any applicant who reaches 60 years of age and is not working" to "apply for" CPPE for which they are potentially eligible. The ministry notes that the policy lists "limited exceptions"[summarized by the panel under *Part E - Summary of Facts* [**2**(iii)], and that the appellant's circumstances do not meet any of the policy exceptions. Regarding the advocate's position that $400 per month should be the benchmark for determining whether or not the appellant would be partly independent from IA, the ministry argues that the intent of the earnings exemption is to provide an incentive for recipients to work and help cover employment related expenses.

Panel's decision

Under the general eligibility provisions of section 2 of the EAA, a family unit must satisfy the initial and continuing conditions to receive IA and the family unit must not have been declared ineligible for assistance. The ministry confirmed that despite the contradictory statement in the reconsideration decision, the appellant has not been found ineligible for IA. The basis for the ministry's decision is that the $100 per month reduction in IA was imposed "as a result of [the appellant's] refusal to pursue CPP income".

The panel finds that the ministry's decision to impose the reduction in IA under section 14(1)(a) of the EAA was a reasonable application of the legislation in the circumstances of the appellant. Under subsection 14(3)(a) of the EAA, the minister is authorized to reduce the recipient's IA where the recipient has failed to "accept or pursue income" under subsection 14(1)(a). The amount of the sanction is prescribed under section 31(1) of the EAR as a $100 per month reduction for each calendar month until the failure to pursue income is remedied. The panel notes that section 14(1) of the EAA clearly provides the ministry with discretion ["may take action"] in deciding whether to impose

a sanction for failing to pursue income. According to the ministry's *Legislative Authority* policy, the word "may" in legislation denotes discretion. When asked how it applies its discretion, the ministry stated that it follows a "common sense interpretation" in which the person's circumstances "can be looked at more closely."

The ministry based its decision to impose the reduction on its *Pursuing Income* policy which states that an applicant or recipient who reaches 60 years of age and is not working "must apply for CPP early retirement benefits for which they are potentially eligible." The ministry indicates that it "automatically" applies this policy to all recipients who reach 60 years of age, and while the policy lists limited exceptions, including confirmation of employment and medical reasons, the ministry notes the appellant does not fall under any of the circumstances listed.

However, the list of exceptions is not exhaustive and the appellant argues that the ministry ought to look at her circumstances of having a minor child to support. On an appeal, a panel is mandated to consider the reasonableness of the minister's exercise of discretion. The ministry can be found to have unreasonably fettered its discretion if it blindly requires all recipients to apply for CPP in all cases, under its policy (through the use of the word "must"), without considering whether the requirement is appropriate in the specific circumstances of the case. While ministry policy is not binding on the panel, the policy provides a guideline for interpreting the legislation. As long as the policy does not conflict with the legislation, it can reasonably guide the ministry's decision-making.

By reducing the appellant's assistance, rather than finding her ineligible for IA, the panel finds that the ministry did take into account the appellant's circumstances of having a minor child. While the appellant argues that she will be supporting her child at age 65 [the child will still be a minor when the appellant turns 65], the panel notes that the legislation speaks to the appellant's current circumstances, and neither the policy nor section 14 of the EAA contemplate future events or require the ministry to consider prospective circumstances when deciding whether or not to impose a sanction to IA.

Regarding the advocate's argument that there is no requirement in the legislation to apply for CPP, [section 9 of the EAR requires the appellant to submit a *Consent to Deduction and Payment* form, when requested by the minister], the panel accepts that there is no explicit requirement in the legislation to apply for any class of CPP benefits under either section 14 of the EAA or section 9 of the EAR. However, under the ministry's policy, CPP is considered to be "other income" and this is not inconsistent with section 14 of the EAA. While subsection 14(1)(a) does not specifically include CPP income under the requirement to "pursue income or other means of support", the legislation does not exempt CPPE from being treated as "income". As noted by the advocate, section 14(1)(a) does not differentiate between earned and unearned income for the purpose of the sanction and all classes of CPP benefits are included in the definition of unearned income under section 1(1)(f) of the EAR. As CPP is not specifically exempted from the definition of "income" or "support", the panel finds that the ministry was reasonable in treating CPP as income/ support pursuant to subsection 14(1)(a) of the EAA.

While the advocate argues that the ministry's application of discretion under the legislation goes against the spirit of the *Interpretation Act's* requirement for a "large and liberal construction and interpretation" as best ensures the attainment of a statute's objectives, the panel notes that the

legislative intent of the EAA includes the expectation that recipients reduce their reliance on public funds by pursuing paid employment and declaring all sources of income. The discretion conferred by the legislation is not simply based on the best interests of the recipient in isolation of broader legislative objectives, and it will generally always be the case that a recipient will receive increased CPP benefits if they wait until age 65 or 70. However, that in itself is not an adequate basis for finding that the ministry's decision was unreasonable.

Regarding the appellant's argument that CPPE should be exempted as "income" under section 14 of the EAA because employed IA recipients are allowed to make $400 per month without penalty, the panel cannot find any connection in the legislation between the $400 earnings exemption for employed recipients under subsection 3(6)(b) of EAR Schedule B and the requirement to pursue income in section 14(1)(a) of the EAA. There is no evidence that the appellant is engaged in paid employment at the current time and she confirmed that IA is her only source of income, other than her child tax benefit. In any event, the crux of the panel's decision is that the ministry reasonably imposed the reduction in IA on the basis of policy that is not inconsistent with the legislation, and the ministry reasonably exercised discretion pursuant to section 14(1) of the EAA by considering the appellant's circumstances of having a minor child, thereby reducing her assistance rather than finding her ineligible for IA

Conclusion

Although sympathetic to the appellant's circumstances, the panel finds that the ministry's reconsideration decision that reduced the appellant's IA by $100 per month pursuant to section 14 of the EAA and section 31 of the EAR for failing to pursue CPPE income, was a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the decision pursuant to section 24(1)(b) and 24(2)(a) of the EAA and the appellant is not successful in her appeal.