

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of February 14, 2017 wherein the ministry determined that the appellant was not eligible for disability assistance for the month of September 2016 as her net income exceeded her monthly disability assistance rate of \$1,188.42 as set out in section 9(2) *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

The ministry determined the appellant had received a Canada Pension Plan (CPP) benefit of \$2,604.69 in July 2016 which is considered unearned income and must be included when calculating an applicant’s monthly net income to determine the amount of disability assistance, if any, the person is eligible to receive. Income received in July 2016 and reported in August 2016 determines the amount of disability assistance, if any, a person is eligible to receive in September 2016.

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 1, 9, 24, 29 and Schedule A and Schedule B section 1, 6, 7, 11

PART E – Summary of Facts

This is a written hearing.

The evidence before the ministry at the time of reconsideration:

- Decision to be Reconsidered dated September 01, 2016;
- Request for Reconsideration dated February 7, 2017;

The appellant is a recipient of disability assistance as a sole recipient. Her monthly assistance is \$1,188.42 which is comprised of \$375.00 shelter, \$556.42 support, \$205.00 nutritional supplement and \$52.00 transportation subsidy. In July 2016 the appellant received a CPP benefits payment of \$2,604.69. The ministry confirmed through the CPP data match tapes that the appellant had received the CPP benefit payment. The CPP benefit payment was deducted from the appellant's September 2016 disability assistance and since her net income (CPP benefit payment) exceeded her shelter/support allowance she was not eligible to receive disability assistance for the month of September 2016.

In the Appellant's two-page submission she addresses other issues regarding her CPP benefits (including she mistakenly signed a Consent to Deduction and Payment – Canada Pension Plan - CPP) but does not offer any evidence or argument regarding the ministry's decision to deny her disability assistance for the month of September 2016 because she had excess income.

In the Ministry's submission the ministry stated the appellant had received the ministry's decision of September 1, 2016 regarding her receipt of the CPP benefit and had also received a Reconsideration package for that decision.

In the Reconsideration decision the ministry determined the appellant did not have any applicable exemptions and the entire amount of the CPP benefit (\$2,604.69) must be deducted from her disability assistance. The ministry determined she was not eligible for disability assistance because her income exceeds the amount of her support/shelter allowance.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of February 14, 2017 wherein the ministry determined that the appellant was not eligible for disability assistance for the month of September 2016 as per section 9(2) EAPWDR because she had received a Canada Pension(CPP) benefit payment of \$2,604.69 in July 2016 which is considered unearned income and must be included when calculating the net income to determine the amount of disability assistance, if any, an individual is eligible to receive. The income received in July 2016 and reported in August 2016 determines the amount of disability assistance, if any, an individual is eligible to will receive in September 2016.

The legislation considered: EAPWDR

Definitions

Section 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:

(a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

...

(f) any type or class of Canada Pension Plan benefits;

Limits on income

Section 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

Section 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.

Reporting requirement

Section 29

For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

(i) a change that is listed in paragraph (b) (i) to (v);

(ii) a family unit receives earned income as set out in paragraph (b) (vi);

(iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the [Workers Compensation Act](#) as set out in paragraph (b) (vii), 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) change in the family unit's assets;

(ii) change in income received by the family unit and the source of that income;

Schedule A

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.

Monthly support allowance

Section

(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, plus

(a.1) subject to section 24.1 [*disability assistance in the form of transportation support allowance*], the amount set out in Column 4 of the following table for the family unit, plus

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of base support	Column 4 Amount of transportation support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	\$556.42	\$52.00

Monthly shelter allowance

Section 4

(1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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

Net Income Calculation - (section 24 (b))

Deduction and exemption rules

Section 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;

(xliii) 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;

- (xiv) a BC early childhood tax benefit;
 - (xlv) 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;
 - (liii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;
 - (liv) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry,
- (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 3, 7 and 8.**

Deductions from unearned income

Section 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

A list of sources of unearned income, none of which apply to this appeal.

Backdated CPP treated as unearned income

Section 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.

Ministry's Position

The appellant's monthly disability assistance rate is \$931.42. The ministry's position is that the appellant received a CPP benefits payment of \$2,604.89 in July 2016 which was reported in August of 2016. When the ministry calculated the appellant's net income they determined that her CPP benefit is defined as unearned income under section 1(1) EAPWDR and must be included when calculating a person's net income as stated in section Schedule B section 1(d) EAPWDR. The ministry argued a CPP benefit payment is not listed as an exemption from unearned income and since her net income in August 2016 exceeded her monthly disability assistance rate of \$931.42 she is not eligible to receive disability assistance for the month of September 2016.

Appellant's Position

The appellant did not argue that she was not entitled to disability assistance for the month of September 2016, rather she focused on the ministry having her sign a document authorizing a deduction from her CPP benefits to repay the Ministry for disability assistance.

Panel Decision

While the appellant argued that she mistakenly signed a Consent to Deduction and Payment form from Canada Pension Plan, she does not offer any evidence that the CPP payment benefit should not be considered as unearned income and included in calculating her net income for the month of August 2016. The appellant did not dispute the evidence that she received a CPP benefit payment of \$2,604.69 in the month of July 2016. The income received in July 2016 and reported in August 2016 determines the amount of disability assistance, if any, an individual is eligible to receive in September 2016.

The panel finds the ministry reasonably determined that the CCP benefit payment the appellant received in September 2016 was unearned income as stated in section 1(1)(f) EAPWDR and that there are no applicable exemptions set out in Schedule B EAPWDR.

Conclusion

The panel finds that the Ministry's reconsideration decision that the appellant was not eligible for disability assistance for September 2016 because her net income exceeded the amount of disability assistance she was eligible to receive is supported by the evidence and was reasonable.

The panel confirms the ministry's decision. The appellant is not successful in her appeal.