

PART C – Decision under Appeal

The decision under appeal is whether the Ministry of Social Development and Social Innovation's (the "ministry") Reconsideration Decision of March 24th, 2017 in which the ministry found that the appellant's entire amount (\$230.72) of CPP benefits for a Child of a Disabled Contributor must be deducted from her March, 2017 income assistance, pursuant to section 1, 28, and Schedule B, sections 1, 6 & 7 of the Employment and Assistance Regulation is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

PART D – Relevant Legislation

EAR *Employment and Assistance Regulation*, Sections 1, 28 & Schedule B sections 1, 6 & 7

PART E – Summary of Facts

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

- 1) January 11, 2017 – the appellant applied for income assistance.
- 2) February 17, 2017 – a worker discussed the application with the appellant. The appellant noted that she is in receipt of Canada Pension Plan Child Benefits (CPPCB) of \$230.72 per month. The appellant also noted that she was in receipt of child maintenance via FMEP however, the respondent was injured, became disabled and was no longer able to work. Due to this, the child maintenance payments were reduced however, the appellant was eligible to receive CPPBC payments of \$230.72 per month from the respondent's CPP benefits.
- 3) On February 17, 2017 – the appellant was deemed eligible for income assistance. The appellant was advised on this date by the ministry that the CPPBC benefits were considered unearned income, and as such, would be deducted from the income assistance payment in full.

The ministry relied on the reconsideration decision and did not introduce any additional evidence.

At the teleconference hearing, the appellant provided that she had a 2016 tax receipt which evidenced the CPP benefit being tied to her daughter's social insurance number, and that the benefit was in her daughter's name, and not hers. The panel admitted the tax statement as additional evidence, pursuant to section 22(4)(b) of the Employment and Assistance Act, as it was in support of the information before the reconsideration officer at the time the reconsideration decision was made. The ministry did not object to the additional document being submitted by the appellant.

PART F – Reasons for Panel Decision

The decision under appeal is whether the Ministry of Social Development and Social Innovation's (the "ministry") Reconsideration Decision of March 24th, 2017 in which the ministry found that the appellant's entire amount (\$230.72) of CPP benefits for a Child of a Disabled Contributor must be deducted from her March, 2017 income assistance, pursuant to section 1, 28, and Schedule B, sections 1, 6 & 7 of the Employment and Assistance Regulation is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant sections of the legislation are as follows:

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;

EAR

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.

Schedule B

Net Income Calculation

(section 28 (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;

(xlix) 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;

(l) 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 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;

(g) a benefit paid under section 22, 23 or 23.2 of the *Employment Insurance Act* (Canada) to any person in the family unit.

(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.

Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant's CPP Benefits for a Child of a Disabled Contributor must be deducted from the March, 2017 income assistance. The appellant provides that the benefits are for the child, to support the child, and in the child's name. The ministry notes that under section 1 of the EAR, any type or class of CPP benefits are defined as unearned income. Further, under section 28 of the EAR the amount of assistance a family unit is eligible to receive is determined by deducting the amount of income received calculated under Schedule B from the amount of shelter/support allowances calculated under Schedule A. Moreover, Schedule B sections 1, 6 and 7 of the EAR list the types of unearned income that may be excluded from the calculation of the amount of income received, and the CPP Benefits for a Child of a Disabled Contributor are not listed as a type of unearned income that may be excluded at this time. The ministry provides that the legislation pertaining to CPP Benefits for a Child of a Disabled Contributor - effective April 1, 2017 will be included as a type of unearned income that may be excluded from the calculation of the amount of income received, and therefore, the appellant's CPP benefits will not be deducted from further income assistance payments.

The panel finds that the evidence establishes that the entire amount of the appellant's CPP Benefits of \$230.72, for a Child of a Disabled Contributor are defined as unearned income, pursuant to section 1 of the EAR, and as such, are required by section 28, Schedule B sections; 1, 6 & 7 of the EAR to be deducted from the March, 2017 income assistance.

Therefore, the panel finds that the ministry reasonably determined that the appellant's entire amount (\$230.72) of CPP Benefits for a Child of a Disabled Contributor be deducted from the March, 2017 income assistance. Accordingly, the panel finds that the decision of the ministry to deduct the appellant's entire amount of CPP benefits from the March, 2017 income assistance was a reasonable application of the applicable enactment in the circumstances of the appellant. Therefore, the panel confirms the ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the Employment and Assistance Act. The appellant therefore is not successful in her appeal.