

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of October 25th, 2017 in which the ministry determined that a portion of the appellant's CPP benefit was unearned income, and not considered an exempt orphan's benefit, and therefore must be deducted as net income from the appellant's income assistance, pursuant to sections 1 & 28 of the Employment and Assistance Regulation.

PART D – RELEVANT LEGISLATION

EAR - *Employment and Assistance Regulation*, Sections 1, 28
EAR - Schedule A – Sections 1, 2, & 4
EAR - 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) The appellant is a sole recipient of income assistance with three dependent children.
- 2) Statement dated **January 10, 2017** from Service Canada indicating that the appellant will receive a monthly children's benefit for two children in the amount of \$241.02 each.
- 3) Letter dated **March 17, 2017** in which the appellant wrote that the CPP payment is for her children and that the oldest child will be added when she gets his birth certificate.
- 4) **September 1st, 2017** – The ministry received information from Service Canada through an electronic data match system that confirmed that the appellant had received a lump sum payment of \$2678.12 from CPP in August 2017. As a result of this, the appellant's October assistance cheque was withheld.
- 5) **September 19th 2017** - The ministry notes that on this day, a ministry worker reviewed the appellant's file and information reported by Service Canada and had determined that \$512.27 was for a survivor's benefit and \$2165.85 was an orphan's benefit for the appellant's oldest child. The ministry had determined that the portion that had been considered a "survivor benefit" was not exempt and must be deducted from the appellant's income assistance.
- 6) **September 21st, 2017** – The ministry notes that the appellant advised that she was not receiving any "survivor's benefit" and that the only money that was received for her children was an orphan's benefit and was placed in trust each month. The appellant indicated that she would provide verification from Service Canada that the money was considered an orphan's benefit.
- 7) **September 29th, 2017** – The ministry notes that on this day, another data match with Service Canada revealed that the monthly amount the appellant receives from CPP is \$1096.61. The breakdown of this amount indicated that there was a "survivor portion" of \$373.55. The other highlighted amounts of \$241.02 x 3 indicate that each of the three children receive these benefits under orphan's benefits.
- 8) **October 18th, 2017** – The appellant submitted two documents to the ministry which were from Service Canada.

*The first; A dated statement of October 10th, 2017 from Service Canada– which indicated that a monthly children's benefit will be paid and that each child receives a payment per month of \$241.02, and that the oldest child receives an additional payment of \$373.55.

*The second; A dated letter of October 10th, 2017 – from Service Canada, indicating that the appellant was not eligible for CPP and that an adjustment of \$372.55 "will be sent to the Estate upon requested documents to (sic) for the Canada Pension Survivors Benefits for the child in question" (the oldest of the three children).

Additional Information

Prior to the hearing, the appellant submitted an updated version, (dated - November 9th, 2017) in the format of the October 10th, 2017 – Service Canada statement which provides a breakdown of the children’s benefits. The statement provides that a monthly children’s benefit will be paid and that each of the three children receives a per month payment of \$241.02, and the oldest child receives an additional amount of \$241.02. The appellant submitted a letter dated November 9, 2017 in which Service Canada indicated that the appellant’s three children are receiving orphan’s benefits in the amount of \$241.02 and an additional amount of \$241.02 as a *child of a person in receipt of CPP disability*. The letter also indicates a retroactive payment of \$373.55.

At the hearing, the appellant stated:

- Although the money received from CPP is for the children, she understands that it must be paid to her until they reach the age of 18. She is their legal guardian.
- The money is sent directly to the Public Trustee and is “locked-in” until they are 18.
- Initially her oldest child was denied the benefits because he has a different surname and she had to provide further supporting documentation.
- She does not receive any money because she was denied survivor benefits. She could not show that she and the deceased were paying a mortgage together or other familial connections.
- She understood that an additional survivor’s benefit goes to the oldest child.
- She had asked for another clarifying letter from Service Canada but she has not received anything to date.

The ministry did not object to the admissibility of the Service Canada statement, nor to the Service Canada letter. The panel determined that the information provided by the appellant, was in support of the information that was before the reconsideration officer at the time the decision was made, and therefore admitted the evidence, pursuant to section 22(4) of the EAA.

At the hearing, the ministry relied on the reconsideration decision and did not introduce any additional evidence. The ministry clarified that the information regarding the characterization of payments was derived directly from the data matching database and that the “survivor” portion was automatically deducted from the appellant’s income assistance. The ministry stated that when the appellant receives information from Service Canada that clarifies the characterization of each payment made as CPP benefits, whether orphan’s benefit, survivor benefit, or disabled contributor’s child’s benefit, the ministry will review her circumstances for future income assistance eligibility.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of October 25th, 2017 in which the ministry determined that a portion of the appellant's CPP benefit was unearned income, and not considered an exempt orphan's benefit, and therefore must be deducted as net income from the appellant's income assistance, pursuant to section 1 & 28 of the Employment and Assistance Regulation.

The relevant sections of the legislation are as follows:

Employment and Assistance Regulation

EAR 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:

"**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;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;**

EAR Section 28

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

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:

(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;

(li) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;

(lii) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;

(liii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;

(liv) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits,

(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.

Panel Decision

The ministry's position, as set out in the reconsideration decision, is that any type of Canada Pension Plan income that is received by the appellant is considered unearned income as per section 1(f) of the EA regulation and is not exempt from income assistance under Schedule B unless it is an orphan's benefit. The ministry provides that the statement and letter that the appellant submitted from Service Canada – dated October 10th, 2017, does clearly indicate that the oldest child of the three, is receiving an orphan's benefit payment of \$241.02 per month. Where the ministry is not satisfied of the breakdown of benefits, is the additional stated payment of \$373.55, and therefore, it cannot be determined that the additional \$373.55 is in fact considered a payment that would fall under the children's benefit/orphan's benefit, and be exempt from the appellant's unearned income. The ministry provides that Service Canada confirms that there are two types of children's benefits; that of the orphan's benefit, and that of a child benefit for a child of a person receiving CPP disability, and that each of these types are paid at a set rate of \$241.02 per month. The appellant provides that she does not receive any money from CPP, that she was deemed ineligible for death benefits, and that any money that is being paid by CPP is going into a trust for each of the three children every month. The appellant provides, that she does not see any of the money going into the trust each month, but believes that the additional payments are for her oldest child, and still fall under the child benefit for a child of a person receiving CPP disability. The appellant provides that Service Canada has yet to send a letter which definitively provides a breakdown of the characterization of payments for each of the children, including the additional payment of \$373.55. The ministry's position is that due to the inconsistencies between the September 29th, 2017 Service Canada data match, which indicates the appellant is receiving a *survivor* payment of \$373.55 and the October 10th, 2017 Service Canada letter - which indicates the appellant is *not eligible* for survivor's benefits, the ministry must rely on the information provided by the Service Canada data match system, and therefore maintains that the \$373.55 survivor's portion is not an orphan's benefit, is not exempt from the appellant's unearned income, and must be deducted as net income from her monthly income assistance.

Section (1) of the Employment and Assistance Regulation (EAR) states that, "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;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits [...].**

Further, under Section 1 of Schedule B of the EAR, accordingly; the deduction and exemption rules specify that 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:** (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)* [...].**

The panel confirms that the ministry reasonably determined that any type of Canada Pension Plan income that is received by the appellant is considered unearned income as per section 1(f) of the EA regulation and is not exempt from unearned income under Schedule B unless it is an exempted amount, including an orphan's benefit. The panel finds that the evidence establishes that the letter that the appellant submitted from Service Canada – dated October 10th, 2017, does indicate that the oldest child of the three, is receiving an orphan's benefit

payment of \$241.02 per month and an additional payment of \$373.55. The panel finds that the evidence establishes that the updated version of the statement provided by Service Canada – dated November 9th, 2017 also indicates that all three children are receiving an *orphan's benefit* of \$241.02 per month, and in addition, the other type of child benefit – *that of a child of a person receiving CPP disability* for \$241.02 is also being paid. The panel finds that the updated letter and statement show that the oldest child receives two payments for \$241.02 (one as an orphan's benefit, and the other as a child of a person receiving CPP benefits). The panel finds that the November 9th, 2017 letter from Service Canada establishes a retroactive amount for \$373.55 for the oldest child, and that this amount is inclusive of the total monthly amount of \$241.02 for the oldest child. The panel finds that the two letters from Service Canada – dated October 10th, 2017 and November 9th, 2017 clearly indicate that the appellant is not eligible for survivor benefits, and as well, the October 10th, 2017 letter indicates that the additional monies that the oldest child receives are considered *survivor benefits* for a child of a person receiving CPP disability. The panel finds that the ministry's decision to rely on the data match system, which is automated, and would have been triggered to deduct the survivor amount from the appellant's monthly income due to the term *survivor* being listed in the system, rather than relying on the initial Service Canada clarification letter of October 10th, 2017 - which highlighted the appellant's ineligibility for survivor benefits, and the oldest child's additional survivor payment entitlement, as unreasonable in the appellant's circumstances.

Accordingly, the panel finds that the decision of the ministry to determine that the appellant's additional payment of \$373.55, as indicated as a survivor's benefit, is not to be considered an orphan's benefit, and therefore must be included in her net income as unearned income and deducted from the appellant's income assistance an unreasonable application of the applicable enactment in the circumstances of the appellant. Therefore, the panel rescinds the ministry's decision pursuant to section 24(1)(b) and section 24(2)(b) of the Employment and Assistance Act. The appellant therefore is successful in her appeal.