

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated May 24, 2018, which determined that the appellant was ineligible for disability assistance for the month of April 2018, under section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) due to Canada Pension Plan (CPP) benefits of \$1700.76 received in February 2018.

As a result of these benefits, the ministry determined that the family unit's net income under Schedule B of the EAPWDR exceeded the amount of disability assistance under Schedule A.

### **PART D – RELEVANT LEGISLATION**

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA) Part 1, section 1

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Part 1, section 1, section 24 and schedules A and B

## **PART E – SUMMARY OF FACTS**

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

### **Relevant Evidence Before the Minister at Reconsideration**

#### Ministry Records

- The appellant is an ongoing recipient of disability assistance. His current file opened in May 2015.
- The appellant receives assistance of \$1185.42 per month (\$758.42 support allowance + \$375 shelter allowance + \$52 transportation supplement).
- On January 17, 2018 the ministry received confirmation that the appellant had been approved for CPP disability benefits.
- Letter from Service Canada to BC Ministry of Social Development (January 9, 2018) containing the following:
  - The Canada Pension Plan disability benefit for the appellant became effective October 2016 at the monthly rate of \$826.24. His current monthly entitlement is \$850.38 (January 2018). An amount of \$12,532.44 will be reimbursed to BC Ministry of Social Development for the period of October 2016 to December 2017.
- As per the data match with the CPP program the appellant is now in receipt of CPP disability benefits of \$850.38 per month.
- No CPP was reported for January 2018 but \$1700.76 was reported for February 2018.
- The appellant received bank deposits of \$850.38 on February 1 and 26, for a total of \$1700.76.
- The appellant received full assistance for January, February and March 2018, and no assistance for April 2018.
- As of May 2018, \$850.38 has been deducted from the appellant's assistance each month due to the monthly CPP income.
- As per the ministry's normal reporting cycle, February income is reported in March and affects April assistance. As the appellant's February net income exceeds his April assistance, he is not eligible for April assistance.
  
- Nextwave Titanium Prepaid MasterCard – My Transaction History (April 25, 2018) shows:
  - credit \$850.38 (1 February, 2018)
  - credit \$850.38 (26 February, 2018)
  - credit \$850.38 (27 March, 2018)

#### **Additional Information**

In his Notice of Appeal dated June 5, 2018 the appellant wrote "This would not have been an issue if CPP had my file completed and sent in for Direct Deposit a day or few earlier. The deposit would not have been in my accoun [sic] in February then but in January instead so I am being penalized for them not having it done earlier. As well your office was notified that the application was approved by both myself and CPP so your office knew there was a payment on route,"

The ministry relied on its reconsideration decision at the hearing.

The information in the Notice of Appeal was considered as argument.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry decision, dated May 24, 2018, which determined that the appellant was ineligible for disability assistance for the month of April 2018, under section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) due to the Canada Pension Plan (CPP) benefits of \$1700.76, received in February 2018.

As a result of these benefits, the ministry determined that the family unit's net income under Schedule B of the EAPWDR exceeded the amount of disability assistance under Schedule A of the EAPWDR.

### Relevant Legislation

#### Employment and Assistance for Persons with Disabilities Act

##### Part 1 — Introductory Provisions

##### Interpretation

1 (1) In this Act:

... "**disability assistance**" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*];

...

#### Employment and Assistance for Persons with Disabilities 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;

...

##### Amount of disability assistance

24 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.

##### Schedule A

##### Disability Assistance Rates

(section 24 (a))

##### Maximum amount of disability assistance before deduction of net income

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

...

2 (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, ...

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	758.42

...

## Monthly shelter allowance

...

4 (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

...

## Schedule B

### Net Income Calculation

(section 24 (b))

### Deduction and exemption rules

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) Repealed. [B.C. Reg. 96/2017, App. 2, s. 2 (a).]

(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;

(iv.1) the Canada child benefit, 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;
- (xlv) a BC early childhood tax benefit;
- (xlvi) 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;
- (lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;
- (lvi) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;
- (lvii) 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;
- (lviii) 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,
- (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.

**Annual exemption — qualifying income**

3 (1) In this section:

...  
"qualifying income" means

- (a) earned income, except the deductions permitted under section 2, and
- (b) unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act;

...  
**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), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for person with disabilities*] 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 12 (1) of this regulation;

"**intended registered disability savings plan or trust**", in relation to a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person 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 10 [*asset limits*] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) [*assets held in trust for person with disabilities*] 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 12 (1) 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 12.1 (2) [*temporary exemption of assets for person with disabilities or person 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 12 (1) of this regulation;

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation;

(iii) money expended by a person referred to in section 12.1 (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.

(2.1) Repealed. [B.C. Reg. 204/2015, App. 2, s. 4 (b).]

(3) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 13 (f).]

### **Repealed**

**7.1-7.2** Repealed. [B.C. Reg. 226/2014, s. 4.]

### **Minister's discretion to exempt education related unearned income**

**8** (1) In this section:

**"day care costs"** means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the *Child Care Subsidy Act* to a family unit matching the student's family unit;

**"education costs"**, in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

(2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of student financial assistance received by the student for the period of study.

### **Application of deductions and exemptions**

**9** (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

- (a) the date the income is payable;
- (b) the period for which the income is payable;
- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

### **Backdated CPP treated as unearned income**

**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 Argument

The ministry's position is that the appellant is not eligible for any disability assistance for April 2018 due to the CPP benefits received in February 2018, as his February net income (\$1700.76) exceeds his April assistance (\$1133.42).

### Appellant Argument

The appellant's position is that this would not have been an issue if CPP had his file completed and sent in for direct deposit earlier as the deposit would not have been in his account in February but in January instead. He is being penalized for CPP not having it done earlier. As well, the ministry office was notified that the application was approved by both himself and CPP, so they knew there was a payment on route.

### **Panel Decision**

The appellant is an ongoing recipient of disability assistance. His current file opened in May 2015. According to the letter from Service Canada dated, January 9, 2018, the appellant's monthly CPP disability benefit entitlement is \$850.38 and as per the bank transaction history, he received a credit of \$850.38 on February 1 and 26, 2018, totalling \$1700.76.

As, section 1(1)(f) of the EAPWDR includes "any type or class of Canada Pension Plan benefits as "unearned income", the \$1700.76 received in CPP benefits is considered unearned income.

Section 24 of the EAPWDR states that, "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."

In the appellant's case, the amount determined under schedule A was \$1185.42 (disability assistance). The amount determined under schedule B was \$1700.76 (CPP benefits).

Schedule B of the EAPWDR provides deduction and exemption rules to calculate net income. Section (1)(d) of schedule B states, "all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8." As there are no deductions or exemptions that apply in the appellant's case, the unearned income is calculated at \$1700.76.

Section 11(2) of the EAPWDR states, "If (a) disability assistance is provided to a family unit for 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...made under Canada Pension Plan...to a recipient in the family unit for that calendar month...the amount of the pension benefit...must be treated as unearned income and is considered to have been received by the recipient in that month."

As the appellant was a recipient of disability assistance in January 2018, the CPP benefits for January (received as February income) are deducted from April assistance.

As per the ministry's normal reporting schedule, February income affects April assistance.

The panel finds the ministry reasonably determined that the appellant was ineligible for disability assistance for the month of April 2018, under section 24 of the EAPWDR as the family unit's net income under Schedule B of the EAPWDR (\$1700.76) exceeded the amount of disability assistance under Schedule A of the EAPWDR (\$1133.42).

**Conclusion**

For these reasons, the panel finds the ministry's decision was reasonably supported by the evidence, and confirms the decision. Therefore, the appellant's appeal is unsuccessful.

**PART G – ORDER**

**THE PANEL DECISION IS: (Check one)**

**UNANIMOUS**

**BY MAJORITY**

**THE PANEL**

**CONFIRMS THE MINISTRY DECISION**

**RESCINDS THE MINISTRY DECISION**

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?  Yes  No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a)  or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

**Connie Simonsen**

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

**2018/June/26**

PRINT NAME

**Brenda Austin**

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

**2018/June/26**

PRINT NAME

**Adam Shee**

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

**2018/June/26**