
PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of November 8, 2018 in which the ministry determined that the appellant was not eligible to receive income assistance (IA), because his Canada Pension Plan (CPP) and Old Age Security (OAS) income exceeded the rate of income assistance; pursuant to Section 10 (2) and Schedule A and B of the Employment and Assistance Regulation (EAR).

PART D – RELEVANT LEGISLATION

EAR *Employment and Assistance Regulation, Section 1, 10(2), 28 and Schedule A and B*

PART E – SUMMARY OF FACTS

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

- 1) At the time of the request for ministry reconsideration; the appellant was not currently in receipt of income assistance or hardship assistance, and his file had been open since May 11, 2018.
- 2) **August 23, 2018** - the ministry notes the appellant completed a Persons with Disabilities (PWD) application.
- 3) **September 10, 2018** – the appellant declared \$427.37 CPP and \$1741.78 OAS. The ministry determined he was no longer eligible for assistance as his income was in excess of his rate of income assistance.
- 4) **September 21, 2018** – the ministry advised that his PWD application was not able to be processed as his monthly income was in excess of both the income assistance and disability assistance rates for his family unit size.
- 5) **November 1, 2018** – The appellant submitted a monthly report indicating that his CPP income is \$435.60 and the OAS was \$1157.27.
- 6) **November 1, 2018** – The appellant submitted a request for reconsideration. He had indicated that the CPP is \$435.60 per month and OAS is \$1157.27 and not the amounts quoted in the letter sent to him on September 21, 2018. The appellant indicated that he has a tax deduction from his CPP and so it actually only amounts to \$360.83 per month. The appellant acknowledged that his monthly income was more than what the PWD benefits would be. The appellant described his worsening medical conditions resulting in his need for medical services. The appellant also noted that he had received disability benefits from September 2009 until 2014 from the Federal government and referred to Section 32 of the Employment and Assistance for Persons with Disabilities Act.

Additional Information

The ministry relied on the November 7, 2018 Reconsideration Decision. The appellant additionally submitted a December 27, 2018 dated letter from himself which outlined the nature and extent of his diagnoses, and worsening medical conditions. The panel considered the two-page letter, and while unfortunate, the panel determined the information would not be relevant to the appeal. The appeal under consideration is an asset or income test, and not the medical criteria necessary for a disability designation. The panel admitted the appellant's letter, however placed little weight towards the over-all determination of his income assistance eligibility.

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of November 7, 2018 in which the ministry determined that the appellant was not eligible to receive income assistance (IA), because his Canada Pension Plan (CPP) and Old Age Security (OAS) income together exceeded the rate of income assistance; pursuant to Section 10 (2) and Schedule A and B of the Employment and Assistance Regulation (EAR).

The relevant sections of the legislation are as follows:

Employment and Assistance Regulation, Section 10(2)

EAR, s. 1 "unearned income"

- (f) any type or class of Canada Pension Plan Benefits; and
- (u) Federal Old Age security and Guaranteed Income Supplement payments

Limits on income

10 (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(2) A family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

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 A

Maximum amount of income assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income 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.

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, 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 support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$335.00

4(2) The monthly shelter allowance for a family unit to which section 15.2 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

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,

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;

Exemptions — unearned income

7 (1)

(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*;

Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant is not eligible for continued income assistance, because the appellant's OAS and CPP income per month exceeded the rates set out in Schedule A and B of the EAR. The ministry provides that section 2 and 4 of Schedule A of the EAR specifies that the maximum allowable rate of support and shelter for a sole recipient before net income deductions is \$335.00 for support and \$375.00 for shelter. The ministry's position in this matter, is that there is no legal authority to deny the appellant the opportunity to *apply* for persons with disabilities designation, however that currently, his combined monthly CPP and OAS income is over and above what would be set out by Schedule A and B of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – and that his income would be further assessed at the time of PWD application.

The ministry relied on section 10 (2) of the EAR, where it states (2) A family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

The ministry calculated the total monthly income from the Appellant's recently confirmed self-report, where his CPP per month total is \$435.60. The ministry determined that under Schedule B, section 6 and 7 of the EAR, that there are no permitted deductions or exemptions permitted under the legislation for this type of income, regardless if the income has a voluntary tax deduction taken off. The ministry calculated the total monthly income including the OAS amount of \$1157.27, for a combined total of \$1592.87. The ministry, in accordance with section 10 (2) of the EAR determined that the appellant was not eligible for (IA) as his combined net income of \$1592.87 exceeds the \$710.00 rate of (IA) determined under Schedule A for his family unit size (sole recipient). Further, the ministry asserted that disability assistance is an income tested program, if the appellant was approved for PWD designation, his eligibility for disability assistance would need to be assessed based on his income and assets at the

time of the application.

The appellant's position, as submitted in his Notice of Appeal is that in the Decision section, the reconsideration officer notes that the ministry has no authority to prevent him from applying for disability designation, and that one must apply for designation before receiving any disability assistance.

The panel finds that the evidence establishes that the appellant's total combined income is \$1592.87, based on the appellant's income report that he receives \$435.60 from his CPP benefit per month, and \$1157.27 from his OAS benefit. The panel finds that the evidence established that the total combined net income does exceed the \$710.00 rate set out by the Schedule A of the EAR. The panel finds that the legislation under Schedule B section 7 (e) of the EAR does not consider a voluntary tax deduction an exemption to CPP income.

On this issue, the panel finds that the ministry was reasonable to deny the appellant income assistance on the basis that his combined net monthly income exceeds the rate set out by Schedule A of the EAR. The panel finds that the ministry was reasonable to determine the appellant's income exceeds the set income assistance amount (\$710.00) provided his family unit size, as the appellant's income per month is \$1592.87.

Moreover, the panel finds that the ministry was reasonable when it determined that the ministry has no authority to deny the appellant the opportunity to apply for persons with disabilities designation. The panel also finds that the ministry was reasonable to provide information related to the income limit for the appellant if he were to apply for disability assistance. The panel considered that the appellant acknowledged that his income is higher than the set disability assistance rates.

Accordingly, the panel finds that the decision of the ministry to deny income assistance 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 his appeal. The appellant may however, have his income evaluated when he applies for disability designation, as the ministry does not have the authority to deny him his application.

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

Jennifer Armstrong

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/01/24

PRINT NAME

Carla Tibbo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/01/24

PRINT NAME

Kevin Ash

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/01/24