



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 24 September 2013 that found that the appellant is not eligible for income assistance or disability assistance. The ministry found that the appellant receives income, in the form of a Canada Pension Plan (CPP) disability benefit, which after deducting the prescribed exemption for CPP income, is in excess of the appellant's legislated rate of assistance. The ministry therefore determined that in accordance with sections 1 and 28 and Schedules A and B of the Employment and Assistance Regulation and sections 1 and 24 and Schedules A and B of the Employment and Assistance for Persons with Disabilities Regulation, he is ineligible for assistance.

The ministry did not accept the appellant's proposition that the net income adjustment of a \$3000 per year deduction available to an applicant/recipient of Medical Services Plan (MSP) premium assistance who has a disability should also apply to an applicant/recipient of income or disability assistance in calculating net income under section 28 of the Employment and Assistance Regulation or section 24 of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) sections 1, 10, and 28, and Schedules A and B.
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1, 9, and 24, Schedule A and Schedule B sections 6 and 7.



PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

1. From the ministry's files: The appellant is not designated as a person with disabilities (PWD).
2. The appellant's bank statements for May and June 2013, showing "Canada CPP" deposits near the end of each month of \$1099.36.
3. A Canada Pension Plan (CPP) "Decision of the Review Tribunal" dated 31 October 1996. The Tribunal found that the appellant is disabled as that term is defined under the Canada Pension Plan. He was deemed disabled as at August 1993, with payments to commence in December 1993.
4. An MSP Application for Regular Premium Assistance for 2013, showing tax year 2012 total net income of \$12959.00 and a \$3000 disability deduction, giving adjusted net income of \$9959.00. Hand-written calculations show this adjusted net income = 829.92/month.
5. The appellant's Request for Reconsideration, dated 02 August 2013. Under reasons, the appellant notes that since 1997 he has been given medical, dental and eye assistance under MSP. The balance of his reconsideration submission goes to argument (see Part F, Reasons for Panel Decision below, where his position is summarized).

At reconsideration, under the assumption that the appellant intends to apply for PWD designation, the ministry applied ministry policy that, when assessing an applicant who intends to apply for PWD designation, eligibility may be assessed based on PWD assistance rates set out in the EAPWDR. Under Schedule A, the appellant's monthly disability assistance rate would be \$908.42. The appellant's CPP monthly income is \$1099.36. The only legislative exemption is in Schedule B, section 7(1)(e), which would provide a deduction of \$37.00 from the appellant's CPP income. The remaining \$1062.36 is in excess of his potential disability assistance rate of \$908.42.

The appellant submitted his Notice of Appeal on 03 October 2013. His argument is summarized below in Part F.

At the hearing, the appellant reviewed his history and present circumstances as background to his legal argument as to how CPP disability benefits should be treated in determining the eligibility and amount of disability assistance. (See Part F, Reasons for Panel Decision, below for his argument.)

The appellant explained that in the 1990s he and his then wife were in receipt of disability assistance, except for a brief time after he received his retroactive CPP disability benefits. When in receipt of disability assistance, he was covered by MSP through the ministry and also received medical benefits, such as the medical transportation supplement on a regular basis. In 1997 he moved to another province, returning to BC in June 2013.

Since he was first diagnosed with Lyme disease, he is found that the most effective treatment for him is once or twice monthly injections of a certain antibiotic. These treatments cost slightly more than \$100 per dose. There is another treatment, which he found to be invasive and does not work as well



for him, that costs over \$1000 per month. When he lived in BC in the 1990s, the first antibiotic was covered by MSP, and the medical plan in the other province covered it when he moved there. On returning to BC, he discovered that that this antibiotic was no longer in the formulary of drugs covered by BC PharmaCare, though the more expensive treatment is covered, but he prefers the other antibiotic and he is had to pay for that treatment himself. With his limited CPP disability benefits, he has just enough to make ends meet and has found it difficult to pay for his monthly treatment, having to sometimes rely on borrowing money from friends.

In support of this account, the appellant submitted 3 packages of documents. These included cheque stubs for ministry assistance, medical transportation supplement and diet allowance from the 1990s, ministry confirmation of ministry sponsored MSP coverage for the appellant, letters from his physicians in support of his CPP appeal, and recent receipts for prescription drugs including the above mentioned antibiotic at the cost of \$ 114.44, not covered by ParmaCare.

One package of the documents also included copies of legislation and calculations. (See Part F below.)

The appellant explained that the documents from the 1990s were from his personal records. He has attempted to obtain ministry records from that period to demonstrate that he had been designated as a person with disabilities (PWD). A letter in the package dated 17 December 2013 from the FOI Office states that any listings or records for a GAIN file in the appellant's name for the decade 1990 to 2000 would have been destroyed in accordance with the *Document Disposal Act*. The FOI office was able to provide copies of the appellant's PWD application and supporting documents/information from his Health Assistance Branch file and that file remains listed as open.

The panel notes that its mandate is strictly limited to the reconsideration decision under appeal and therefore the panel is not in the position to confirm the appellant's PWD designation status.

The ministry noted that the ministry does not provide funding for prescription medications. The appellant's physician could approach the Ministry of Health for special authority coverage for the appellant by BC PharmaCare for the treatment antibiotic.

The panel accepted the documents submitted by the appellant as background information, but did not admit them as evidence as they were not relevant to the legal arguments put forward by the appellant.



PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry determination that the appellant is not eligible for income assistance or disability assistance, because he receives income, in the form of a Canada Pension Plan disability benefit which after the prescribed exemption is in excess of the appellant's legislated rate of assistance, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

At reconsideration, the ministry also rejected the proposition advanced by the appellant that the net income adjustment of a \$3000 per year deduction available to an applicant/recipient of MSP premium assistance who has a disability should be applicable to an applicant/recipient of income or disability assistance in calculating net income under section 28 of the EAR or section 24 of the EAPWDR. The ministry acknowledged that other branches of government may use different calculations for assessing eligibility for their programs. However, for determining eligibility for income or disability assistance, the ministry is bound by the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act* and the Regulations made thereunder.

The panel notes that at no point up to reconsideration, nor at the hearing, did the appellant raise any difficulties with the basic amounts used or calculations performed by the ministry in determining his eligibility for assistance. His sole objection has been regarding the failure of the ministry to take into account deductions or exemptions to his CPP benefits as he argues is provided in legislation. The panel has verified the ministry's basic calculations and finds that, up to the point of considering the appellant's deduction/exemption propositions, the ministry was reasonable in its application of the of the "Schedule A minus Schedule B" legislation. The panel therefore sees no need to review that legislation or the calculations in detail.

At the hearing, the appellant indicated that he was no longer pursuing the MSP income adjustment proposition advanced at reconsideration. Accordingly, and taking into account the legislation and the analysis by the ministry in the reconsideration decision in rejecting this proposition, the panel finds that the ministry was reasonable in rejecting this proposition.

Instead, the position of the appellant is that CPP disability benefits should be considered as disbursements from a trust and treated as such in accordance with section 7(1)(d) or (d.3) of Schedule B of the EAPWDR with the \$8000 annual limit set out in subsection (2.1) of section 7. The appellant argues that his CPP account is something he paid into all his working life and should be viewed as a trust with him as the beneficiary. As a person with disabilities these funds are used exclusively for his living costs – that is, disability related costs to promote his independence, as required under paragraph (d.3) of subsection 7(1) of Schedule B referred to above. By his calculations, this method of treating his CPP disability benefits would result in the ministry providing him with \$473.73 of disability assistance per month. In his case, this would provide him with sufficient funds to cover his treatment costs.

The relevant legislation regarding this proposal is from the EAPWDR:

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: *[numerous classes of payments, including]*

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

Assets held in trust for person with disabilities

12 (1) In this section, "**disability-related cost**" means the cost of providing to a person with disabilities or a person receiving accommodation or care in a private hospital or a special care facility, other than a drug or alcohol treatment centre,

- (a) devices, or medical aids, related to improving the person's health or well-being,
- (b) caregiver services or other services related to the person's disability,
- (c) education or training,
- (d) any other item or service that promotes the person's independence, and
- (e) if a person with disabilities does not reside in a special care facility, a private hospital or an extended care unit in a hospital,
 - (i) renovations to the person's place of residence necessary to accommodate the needs resulting from the person's disability, and
 - (ii) necessary maintenance for that place of residence.

(2) If a person referred to in subsection (1) complies with subsection (4), up to \$200 000, or a higher limit if authorized by the minister under subsection (3), of the aggregate value of the person's beneficial interest in real or personal property held in one or more trusts, calculated as follows:

- (a) the sum of the value of the capital of each trust on the later of April 26, 1996 or the date the trust was created, plus
- (b) any capital subsequently contributed to a trust referred to in paragraph (a),

is exempt for the purposes of section 10 (2) *[asset limits]*.

(4) A person referred to in subsection (2) who has a beneficial interest in one or more trusts must keep records of the following and make the records available for inspection at the request of the minister:

- (a) for a trust created before April 26, 1996, the capital of the trust on that date;
- (b) for a trust created on or after April 26, 1996, the capital of the trust on the date the trust was created;
- (c) the amount of capital contributed in each subsequent year to a trust referred to in paragraph (a) or (b);
- (d) all payments made after April 26, 1996 to or on behalf of the person from a trust in which that person has a beneficial interest.

And from Schedule B of the EAPWDR:

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:

(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.3) subject to subsection (2.1),

- (i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation,

if the payment, structured settlement annuity payment or money is applied exclusively to or used exclusively for disability-related costs to promote independence;

(2.1) The maximum amount of the exemption under subsection (1) (d.3) is \$8 000 in a calendar year, calculated as the sum of all payments, structured settlement annuity payments and money that, during the calendar year, are applied exclusively to or used exclusively for disability-related costs to promote independence.

The appellant's position has been set out above.

The position of the ministry is that CPP benefits are specifically listed in section 1 of the EAPWDR as a class of payment considered to be "unearned income," and therefore must be included in the calculation of net income. As the appellant's net income is greater than his eligible amount, he is not eligible for income assistance or disability assistance.

Panel findings

As the ministry has noted, CPP benefits are listed in section 1 of the EAPWDR as one of an extensive list a class of payment considered to be "unearned income." For some of these classes of payment there are exemptions listed in section 7 of Schedule B of the EAPWDR. An example is a tax refund, listed both in section 1 and in section 7 of Schedule B. Indeed, there is an exemption applicable to CPP benefits in section 7 of Schedule B – subsection 7(e), that provides a modest tax related adjustment, which in its calculations the ministry determined to be \$37 and included this sum in its calculations of the appellant's net income. No further exemptions are listed for CPP benefits in

section 7 of Schedule B, and it is clear that the deduction proposed by the appellant is not one of the two deductions from unearned income allowed under section 6 of Schedule B.

While the appellant considers his CPP disability benefits as disbursements from a trust, the panel considers it unnecessary to delve into the complexities of trust law, noting that the payments referred to in section 7(1)(d) or (d.3) of Schedule B of the EAPWDR refer to payments from not just any trust but only from a trust established under section 12(1) of the EAPWDR. Payments from such a trust must be only for the purposes listed in paragraphs (a) to (e) of that subsection and be subject the minister's review. By comparison, CPP disability benefits may be spent at the absolute discretion of the recipient.

Based on the foregoing, the panel finds that the ministry was reasonable in rejecting the appellant's proposition that section 7(d) or (d.3) of the Schedule C of the EAPWDR provided an exemption for CPP disability benefits. The panel therefore finds that the ministry's decision that the appellant was not eligible for income assistance or disability assistance, due to income in excess of the legislated rate of assistance, as a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.