

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“the ministry”) dated January 17, 2019, which held that the appellant was not eligible for disability assistance for the month of November 2018 in accordance with sections 9 and 24 of the Employment and Assistance for Persons with Disabilities Regulation (“the Regulation”) because her net monthly income was in excess of her monthly rate of disability assistance. The ministry determined that the \$2819.88 of Canada Pension Plan (CPP) benefits received in September 2018, which must be reported in September 2018 and affects the November 2018 assistance month, was unearned income that was not exempt or deductible when calculating the appellant’s monthly income under Schedule B.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation, sections 1, 9, 24, 29 and Schedules A and B

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration

The appellant's file with the ministry opened in July 2018. She was designated as a person with disabilities (PWD) effective September 1, 2018, at which time she began receiving disability assistance.

On September 27, 2018, the appellant received CPPD payments comprised of three payments of \$699.86 and the \$720.30 September benefit payment, totalling \$2819.88. On December 28, 2018, the ministry advised the appellant that the \$2819.88 in CPP benefits received in September 2018 were not exempt and were in excess of the ministry's rate of disability assistance of \$1133.42, making the appellant ineligible for November 2018 disability assistance.

On January 3, 2019, the ministry received a Request for Reconsideration submitted by the appellant's committee, the Public Guardian and Trustee ("the trustee"). The trustee explains that through no fault of the appellant, as far as the trustee is aware, the three back payments of CPP were late. The trustee also provides information respecting approximately \$25,000 owed by the appellant for her care residence and legal fees and states that denial of [disability] assistance would add to the appellant's hardship. Included with the trustee's written submission are copies of:

- The 2017 court appointment of the trustee;
- Email communication between the care residence and the trustee;
- Documentation respecting the monthly charges to the appellant for her care residence and the balance outstanding as of November 2018;
- Documentation respecting legal fees owed by the appellant; and,
- A summary of deposits to the appellant's trust account for the period January 1, 2018 through December 21, 2018, showing monthly CPP payments of \$720.30, including on September 27, 2018, on which date there were three additional CPP payments of \$699.86 identified as: "Receipt from: 26Sep2016 CPP."

Information provided on appeal and admissibility

Included with the appellant's Notice of Appeal (NOA), dated January 24, 2019, is a letter of the same date from the trustee describing the circumstances under which the appellant became disabled and explaining why the trustee was appointed to manage the appellant's legal and financial affairs. The trustee enclosed:

- 1) Copies of the appellant's bank statements from 2015 and 2016;
- 2) The most recent invoice from the care residence;
- 3) A summary of deposits to and withdrawals from the appellant's trust account for January 8, 2018 through January 24, 2019; and,
- 4) Documentation respecting the removal of two previous committees.

No additional submissions were provided on behalf of the appellant. By email on February 26, 2018, the ministry stated that its submission is the reconsideration summary provided in the Record of Ministry Decision. The ministry did not take a position as to the admissibility of the documentation provided on appeal on behalf of the appellant.

In accordance with section 22(4) of the *Employment and Assistance Act* (EAA), the panel may admit oral and written testimony that is in support of the information and records available at the time of reconsideration.

The panel determined that evidence included in the NOA submission either reiterated or provided additional detail of the appellant's health and financial circumstances. Accordingly, it was admitted as information in support

of the information available at reconsideration. The NOA submission also included additional information which was accepted as argument.

The arguments of both parties are set out in Part F of this decision.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant November 2018 disability assistance was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the CPP benefits received by the appellant in September 2018 were unearned income in excess of the rate of disability assistance thereby making the appellant ineligible for November 2018 assistance in accordance with sections 9 and 24 of the Regulation?

Relevant Legislation

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**

Limits on income

9 (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 disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

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.

Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

(i) a change that is listed in paragraph (b) (i) to (v);

(ii) a family unit receives earned income as set out in paragraph (b) (vi);

(iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 87/2018:

(i) change in the family unit's assets;

(ii) change in income received by the family unit and the source of that income;

(iii) change in the employment and educational circumstances of recipients in the family unit;

(iv) change in family unit membership or the marital status of a recipient;

(v) any warrants as described in section 14.2 (1) of the Act;

(vi) the amount of earned income received by the family unit in the calendar month and the source of that income;

(vii) the amount of unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act received by the family unit in the calendar month.

Schedule A - Disability Assistance Rates

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.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

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, 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 (\$)
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

People receiving special care

8 (1) For a person with disabilities who receives accommodation and care in a special care facility (other than a special care facility described in subsection (3)) or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus

(b) a comforts allowance of \$222 for each person for each calendar month.

(2) If the special care facility under subsection (1) is an alcohol or drug treatment centre, the minister may, in addition, pay either or both of the following while the applicant or recipient is in the alcohol or drug treatment centre:

(a) actual shelter costs for the applicant's or recipient's usual place of residence up to the amount under section 4 for a family unit matching the applicant's or recipient's family unit;

(b) a monthly support allowance for the applicant's or recipient's family unit, equal to the amount calculated under sections 2 and 3 of this Schedule minus the portion of that allowance that would be provided on account of the applicant or recipient.

(3) For a person with disabilities who receives accommodation and care in a special care facility operated by a service provider as defined in section 1 of the *Community Living Authority Act*, the amount referred to in section 24 (a) [amount of disability assistance] of this regulation is the sum of

- (a) the support allowance that is applicable under sections 2 and 3 of this Schedule for a family unit matching the applicant's or recipient's family unit, plus**
- (b) the maximum shelter allowance that is applicable under section 4 of this Schedule for a family unit matching the applicant's or recipient's family unit.**

Schedule B - Net Income Calculation

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.....

- (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 [climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the *Income Tax Act* (British Columbia);
 - (xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;
 - (xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);
 - (lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;
- (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.

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.

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.

PANEL DECISION

On behalf of the appellant, the trustee argues that denial of disability assistance for November 2018 will cause further hardship and is unfair given the appellant's background, including her medical and financial circumstances, and as the lateness of the CPP payments was not the fault of the appellant. The ministry argues that under Schedule B of the Regulation, the CPP payments received in September 2018 are to be treated as non-exempt or deductible unearned income received in September 2018, which in accordance with section 29 of the Regulation must be reported by October 5, 2018 and impacts November 2018 assistance. The ministry concluded that as the total amount of the payments exceeds the appellant's monthly rate of disability assistance as calculated under section 24, the appellant is not eligible for disability assistance in accordance with section 9.

Section 9 of the Regulation states that a family unit is not eligible for disability assistance if the net income of the family unit, as determined under Schedule B, equals or exceeds the amount of disability assistance determined under Schedule A for the family unit.

In this case, the appellant is a single person family unit for whom the amount of monthly disability assistance determined under Schedule A, section 8(3) People receiving special care is \$1133.42. The amount of disability assistance is not in dispute.

Regarding the appellant's net income, the trust account records confirm that the appellant received three back payments of CPPD of \$699.86 and her regular monthly CPPD payment of \$720.30 on September 27, 2018. That the appellant received these payments totalling \$2819.88 is also not in dispute.

Section 1 of the Regulation states that "unearned income" includes money or value received from "any type or class of Canada Pension Plan benefits." Schedule B of the Regulation sets out the rules for calculating a family unit's net monthly income and provides certain deductions and exemptions for unearned income which are set out in sections 1, 3, 6, 7 and 8.

Exemptions set out in section 1 of Schedule B relate to orphan's benefits and disabled contributor's child benefits under the CPP, which the ministry reasonably concluded were not applicable in the appellant's case. Section 3 of Schedule B, which provides an annual exemption respecting earned income does include unearned income paid under certain sections of the *Workers Compensation Act* when calculating an annual exemption, but does not apply in the appellant's circumstances. As the ministry notes, the exemptions under section 6 of Schedule B relate to employment insurance benefits or operating costs of renting self-contained suites, neither of which applies to the appellant. Most of the exemptions set out in section 7 of Schedule B address payments of unearned income unrelated to the appellant's circumstances, including structured annuity payments and settlement agreements; however, subsection 1(e) exempts monthly income tax paid on CPP benefits, except voluntary CPP tax deductions. The ministry notes that this calculation is automatic and is based on a data match with Service Canada's computer system. Relying on the data match information, the ministry concluded that no tax was deducted from the appellant's CPP payments as her income is below the taxable threshold amount determined under the *Income Tax Act*. In the absence of any evidence or argument to the contrary, the panel finds the ministry's conclusion reasonable. Finally, section 8 of Schedule B provides exemptions related to education costs which do not apply in the appellant's circumstances.

While not setting out an exemption, section 11 of Schedule B addresses the month in which backdated CPP benefits are considered to have been received under certain circumstances. Specifically, if a family unit had received disability assistance for a calendar month, and subsequently a CPP benefit becomes payable (or payment may be made under the CPP) to a recipient in the family unit for that calendar month (or portion of that month), the amount of that benefit must be treated as unearned income and is considered to have been received in that month. That is, if the appellant had been receiving disability assistance for the calendar month September 2016, the month respecting which the backdated CPP payments were made, the three backdated CPP payments would be considered as unearned income received in September 2016, not as September 2018 unearned income that affects November 2018 assistance. However, as the ministry notes, the appellant was not in receipt of disability assistance at all in 2016 and reasonably concluded that this section does not apply.

Conclusion

While the panel sympathizes with the appellant's circumstances, the legislation does not afford discretion in determining how the CPP payments are to be treated when calculating the appellant's net income. Based on the above analysis, the panel finds that the ministry considered all possible exemptions and deductions and was reasonable to determine that the whole amount of CPP received in September 2018 is unearned income that must be included in when determining the appellant's net income under Schedule B of the Regulation and must

therefore be deducted from her monthly assistance for November 2018 in accordance with section 24 of the Regulation. Accordingly, the panel finds that the ministry was reasonable in concluding that the appellant's net income of \$2819.89 exceeded her monthly amount of disability assistance of \$1133.42 and that pursuant to section 9 of the Regulation the appellant was not eligible for November 2018 disability assistance.

The ministry's reconsideration decision is confirmed as being a reasonable application of the legislation in the appellant's circumstances. The appellant is not successful on appeal.

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PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Jane Nielsen	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/03/12

PRINT NAME Katherine Wellburn	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/03/12
PRINT NAME Adam Rollins	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/03/12