

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated January 28, 2019 in which the ministry found that the disability assistance for the appellant's family unit must be reduced by the family unit's net income received from unearned income in the form of Canada Pension Plan (CPP), Old Age Security (OAS), and Guaranteed Income Supplement (GIS) payments, pursuant to Section 24 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR). The ministry found that there are no applicable exemptions or deductions for CPP, OAS, or GIS payments under the EAPWDR Schedule B.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1, 24, and Schedules A and B

## **PART E – SUMMARY OF FACTS**

Although the hearing had been adjourned to allow for an advocate to attend, the appellant advised that, due to serious medical issues that arose for the named advocate, he was unable to attend. The appellant decided to go ahead with the hearing and to represent himself as he considered that the continuing process has been stressful for his family.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Bank statement for the period September 19 to September 28, 2018.
- 2) Letter dated November 22, 2018 to the appellant in which the ministry advised that the appellant's assistance had been reduced by the amount of OAS/GIS and CPP benefits received;
- 3) Bank statement for the period January 10 through January 28, 2019; and,
- 4) The appellant's Request for Reconsideration dated December 28, 2018.

In his Request for Reconsideration, the appellant wrote that:

- When they started getting OAS and CPP benefits, these amounts and the disability assistance payments were all directly deposited into his bank account.
- All they received in the mail from the ministry was a "Notice of Deposit" slip. They were not sent a monthly report and were never informed or notified that this was necessary.
- If they had known that they needed to fill in monthly reports, they would certainly have done it.
- The overpayment being deducted has left his family in financial crisis.
- Their daughter, who was re-assessed with a medical condition, needs more trips to the hospital to see doctors and specialists and their old car needs to be fixed. They cannot access any more funding for her medical condition.

### ***Additional Information***

In his Notice of Appeal dated February 6, 2019 the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that his arguments are the same as those in the Request for Reconsideration. There were no stubs ever mailed to them, and there is no reason given by the ministry as to why they have a repayment obligation.

At the hearing, the appellant's spouse stated that:

- They did not get any stub from the ministry. If they had received the stub, they would have written the amount that was received by them. They only received a deposit slip from the ministry after the (assistance) money was deposited.
- The ministry did not provide a notice or place a call during the alleged payment period. They did not receive a call from anyone.

At the hearing, the appellant stated that:

- His main points are covered in his Request for Reconsideration; however, he believes it is important to go through the process as the ministry has not given reasons for their decision in the first paper work he received.
- In order to start receiving OAS, he had to make several trips to Service Canada. When he had completed the process, he asked if there was anything else he needed to do or that he should know. He was told by Service Canada that there was nothing to worry about and there were no outstanding debts.
- He understood that there would be communication between the federal and provincial governments and the ministry. He had no reason to believe that there was anything "out of whack." He did not request a stub because he assumed that the ministry would know that he was eligible for, and would be receiving, the federal benefits.
- All he ever received from the ministry was deposit slips.
- He believes there should be some process where the ministry follows up to contact the person on disability to make sure that they know what to do.
- His whole family is on disability and they have to go to medical appointments all the time. They are either taking their young daughter to the doctor or they are going to their doctors for appointments on a regular basis. He has severe asthma and COPD [chronic obstructive pulmonary disorder] and he is not getting any younger. They are survivors but he worries about his family because he "is not going to be around forever."
- A child with the medical condition that his daughter has can take 10 times the work of a child without the condition, and it may be hard for others to understand. They do not get financial help for her medical condition. She was given a tablet so she can watch kids' shows. There are many extra things they have to do for their daughter.
- Their vehicle currently needs repairs and he is wondering how they will carry on.
- His family's health is his main concern, especially making sure his daughter's needs are met, and it has been many years since he signed the application for disability assistance and agreed to submit a report if there is a change in circumstances.
- He thinks it is not reasonable for the ministry to be aware that the client is receiving money from the federal government and, instead of contacting the client and reminding them of their obligation, letting the situation continue and the client get into debt further and further and then claim the amounts back later. He wonders why the ministry would not start an audit right away upon receiving the information from the database that the client was receiving federal benefits.
- He thinks it is reasonable for him to expect that if there was a serious issue, the ministry would have contacted him.

The ministry relied on its reconsideration decision, as summarized at the hearing. At the hearing, the ministry clarified that:

- The application for disability assistance, last signed by the appellant in 2010, sets out his responsibilities to provide accurate and complete information and he must report all money and assets that he receives each month. He must also report all changes in circumstances and can request a stub at any time to do so.
- The ministry no longer conducts an annual review of files. The data match database

reports the federal payments to the ministry, although it can take some time for this information to be relayed.

- CPP, OAS, and GIS benefits are all considered “unearned” income as opposed to “earned” income, for which there is an annual income exemption. The ministry has no option except to deduct the unearned income received dollar-for-dollar from the amount of the appellant’s disability assistance.
- The appellant has essentially received the same amount of benefits each month, it is just that the amounts are being paid from different sources. Disability assistance for a PWD is paid from the provincial government while CPP, OAS, and GIS are paid from the federal government.
- The ministry has made a decision that there has been an overpayment in this situation. If the appellant is successful in his appeal, then the overpayment would not apply. If the appellant is not successful in his appeal, the ministry will grant him the opportunity for a reconsideration of the decision for an overpayment despite the passage of time since the original ministry decision.

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.



## **PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the ministry reasonably determined that the disability assistance for the appellant's family unit must be reduced by the family unit's net income received from unearned income in the form of CPP, OAS, and GIS payments, pursuant to Section 24 of the EAPWDR. The ministry found that there are no applicable exemptions or deductions for CPP, OAS, or GIS payments under the EAPWDR Schedule B.

The relevant sections of the legislation are as follows:

### **Section 1 of the EAPWDR defines "unearned income" as:**

"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;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the Employment and Assistance Act or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the Criminal Injury Compensation Act or awards of benefits under the Crime Victim Assistance Act, other than an award paid for repair or replacement of damaged

or destroyed property;

(t) any other financial awards or compensation;

(u) Federal Old Age Security and Guaranteed Income Supplement payments . . .

## **Section 24** of the EAPWDR provides:

### **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 of the EAPWDR sets out the total amount of disability assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance.

In calculating the net income of a family unit under Schedule B, some deductions and exemptions from income are provided for but, otherwise, all earned and unearned income must be included.

## **Section 1 of Schedule B** of the EAPWDR provides as follows:

When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation, . . .

(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 [annual exemption- qualifying income], 7 [exemptions- unearned income] and 8 [minister's discretion to exempt education-related unearned income].

## **Section 7 of Schedule B** of the EAPWDR provides as follows:

### **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).]

### *Panel's decision*

In the reconsideration decision, the ministry wrote that Section 24 of the EAPWDR requires that a recipient's income calculated under Schedule B of the EAPWDR must be deducted from their disability assistance calculated under Schedule A of the EAPWDR. The ministry also wrote that under Section 1(d) of Schedule B of the EAPWDR, all unearned income must be included in the calculation of net income unless there is an allowed deduction or an amount is specifically exempted and, according to sub-sections 1(f) and (u) of the EAPWDR, "unearned income" is defined to include "any type or class of Canada Pension Plan benefits" and "Federal Old Age Security and Guaranteed Income Supplement payments," respectively.

The appellant does not dispute that he was in receipt of CPP, OAS and GIS payments although he argued at the hearing that he did not request a reporting stub because he assumed that the ministry would know that he was eligible for, and would be receiving, the federal benefits. The appellant argued that it is not reasonable for the ministry to be aware that money has been received from the federal government and, instead of contacting the recipient and reminding them of their obligation, letting the recipient get further into debt. In his Request for Reconsideration, the appellant wrote that if they had known that they needed to fill in monthly reports, they would certainly have done it. At the hearing, the appellant's spouse reiterated that they did not get any stub from the ministry and, if they had received the stub, they would have written the amount that was received by them. The appellant stated at the hearing that his family's health is his main concern, especially making sure his daughter's special needs are met, and it has been many years since he signed the application for disability assistance and agreed to submit a report if there is a change in circumstances.



In the reconsideration decision, the ministry wrote that Sections 1, 7, and 8 of Schedule B of the EAPWDR lists the exemptions from unearned income that are permitted for the purposes of calculating net income. The ministry wrote that money received from CPP, OAS and GIS are not listed as income that may be exempted unless the CPP is for orphan's benefits or a disabled contributor's child's benefit paid under CPP, which does not apply in the appellant's case, and the tax exemption for a portion of CPP benefits under Section 7 of Schedule B is calculated as zero for the appellant because his income falls below the taxable threshold amount determined in the *Income Tax Act*. The appellant did not argue that these exemptions applied in his circumstances. The panel finds that the ministry reasonably included the amount of the CPP, OAS and GIS payments in the calculation of the appellant's net income as "unearned income" for which there were no applicable deductions or exemptions.

The panel notes that the use of the word "must" in Schedule B of the EAPWDR requires the ministry to include all unearned income in the calculation of the net income of a family unit, except for permitted deductions and applicable exemption amounts as specifically set out in the Schedule, and does not give the ministry the discretion to do otherwise. The panel finds that the ministry reasonably determined that the disability assistance for the appellant's family unit must be reduced by the family unit's net income received from CPP, OAS and GIS payments, pursuant to Section 24 of the EAPWDR.

#### *Conclusion*

The panel finds that the ministry's decision, that the disability assistance for the appellant's family unit must be reduced by the family unit's net income received from unearned income in the form of CPP, OAS, and GIS payments, pursuant to Section 24 of the EAPWDR and there are no applicable exemptions or deductions under Schedule B of the EAPWDR, is a reasonable application of the applicable enactment in the appellant's circumstances and confirms the decision pursuant to Section 24(1)(b) of the *EAPWDA*. The appellant is therefore not successful in his appeal.

At the hearing, the ministry stated that if the appellant is not successful in his appeal, the appellant will be granted an opportunity for a reconsideration of the ministry decision to pursue an overpayment under Section 18 of the *Employment and Assistance for Persons With Disabilities Act*.

**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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-04-08

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-04-08

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-04-08