

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 25, 2019, which found that the appellant is not eligible for assistance under Section 10 of the *Employment and Assistance for Persons With Disabilities Act* (EAPWDA) for failing to comply with a direction to supply requested information and verification. The ministry found that the appellant continues to be ineligible for assistance pursuant to Section 28 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) because she has not fully complied with the direction since requested information remained outstanding, namely: statement from Service Canada of Canada Pension Plan (CPP) contributions, or letter from Service Canada indicating the appellant has no CPP contributions

The ministry found that the appellant continues to be ineligible for assistance pursuant to Section 8 of the EAPWDR because she has not completed the Consent to Deduction and Payment under the CPP, as requested by the ministry.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 10

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 8 and 28

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

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

- 1) Screen shot of a Government of Canada page modified November 15, 2015 indicating a user name and password had been previously revoked;
- 2) Letter from the ministry dated October 9, 2018 requiring that the appellant complete two actions, specifically:
 - Sign the Consent to Deduct Form (ISP1613) as per Section 8 of the EAPWDR to prevent duplicate payment in the event that she is found eligible for CPPD [disability];
 - Obtain a copy of her CPP Statement of Contributions or a Service of Canada letter stating that she has no contributions;
- 3) Letter from the ministry dated November 21, 2018 advising the appellant that her January 23, 2019 assistance cheque will be held until the required information has been received by the ministry, specifically:
 - Copy of her CPP Statement of Contributions or a Service of Canada letter stating that she has no contributions, and.
 - Signed/dated original Consent to Deduct Form (ISP1613);
- 4) Letter from the ministry dated December 21, 2018 advising the appellant that her January 23, 2019 assistance cheque will be held until the required information has been received by the ministry, specifically:
 - Copy of her CPP Statement of Contributions or a Service of Canada letter stating that she has no contributions, and.
 - Signed/dated original Consent to Deduct Form (ISP1613);
- 5) Handwritten letter from the appellant dated January 14, 2019 and stamped received by the ministry on February 14, 2019, which is mostly illegible;
- 6) Letter from the ministry dated January 23, 2019 advising the appellant that she is required to submit further information to confirm her eligibility;
- 7) Letter from the ministry dated January 28, 2019 advising the appellant that her February 20, 2019 assistance cheque will be held until the required information has been received by the ministry, specifically:
 - Copy of her CPP Statement of Contributions or a Service of Canada letter stating that she has no contributions, and.
 - Signed/dated original Consent to Deduct Form (ISP1613);
- 8) Handwritten letter from the appellant dated January 29, 2019 in which she wrote:
 - She would like an email address for direct contact;
 - She did not have any income from the government of Canada;
 - She believes over 17K was included for her income from the government of Canada and that was clearly not the case.
- 9) Handwritten letter from the appellant dated January 29, 2019 in which she wrote:
 - She is not eligible for CPP and she already went into the ministry office to explain this;

- She is confused why the provincial government has sent her a federal government document to sign;
 - She was told that she must sign this federal document to continue receiving provincial disability assistance.
 - Her PWD assistance cheque has been held from her.
- 10) Handwritten letter from the appellant dated February 7, 2019 in which she wrote:
- She still does not have access to her "key" that gives her access to get her CPP statement of contributions;
 - She was told that she could not get anything sent to her in B.C, that they can only give the statement within the other province;
- 11) Handwritten letter from the appellant dated February 11, 2019 in which she wrote:
- She called CPP this date to have her statement mailed and got a pre-recorded message that the call centre was closed;
 - She was told there was no point in dropping off her letter, that "it would not help";
 - She is facing both an eviction and a final disconnect on her utilities;
 - She was told she needed to do a Freedom request from the government of another province and the fee is "very excessive";
 - It was clarified to her that if she is not eligible for CPP, she does not have to sign the consent form. She was told she was not legally obligated to sign the form.
- 12) Letter dated February 12, 2019 to the appellant from another province indicating that an application for a Statement of Participation in a provincial pension plan had been received and forwarded to the CPP program, and the CPP administration will send her a Statement of Contributions;
- 13) Handwritten letter from the appellant dated February 14, 2019 in which she wrote:
- She left a letter dated January 29, 2019 and had not received any communication in response.
 - She would like an update on what is happening as she should not have an overpayment and wanted to make sure it is cleared.
 - She does not remember receiving the letter from the ministry dated January 28, 2019.
- 14) Undated page from a letter in which an Ombudsperson Officer wrote that, in response to the investigation, a CPP program supervisor had attempted to contact the appellant on February 14 and 15 and the appellant had not yet returned the calls; and,
- 15) Request for Reconsideration dated March 19, 2019 in which the appellant wrote:
- She never refused to sign any document;
 - She has pursued any or all potential sources of income she may have access to, including CPP
 - At the end of January she gave written letters to the ministry which outlined and documented action she took or was going to take to pursue CPP income specifically, for which she believes she is not eligible;
 - She has not received a response from the ministry to her question about the minimum contribution limit for CPP;
 - She requested to speak to someone who can answer her questions as she did not understand the document she was asked to sign. The document said the consent was "irrevocable" and she took this seriously. She feels she has a right to make an informed decision;

- On December 14, 2018, she requested a call back from the ministry and she learned from the Ombudsperson that the ministry is supposed to call back within 48 hours, not 2 months. She finally got her call back on February 14, 2019;
- The ministry claims that she was informed of the decision on January 23, 2019 but does not mention what was communicated to her;
- On February 8, 2019, she was told that she was in non-compliance and this was the first she had heard of this. She provided a letter to demonstrate all the actions she was taking to pursue CPP. She was told that if she is not eligible for CPP, she does not have to sign [the Consent form]
- On February 11, 2019, she submitted her Request for Reconsideration asking what decision was made because up to that point nothing had been communicated to her
- Having to do a Freedom of Information request to another province was excessive and she would be without food and shelter money until the process was completed, causing undue hardship and economic duress;
- She asserted her right to make an informed decision.
- She was disheartened that her cheque was withheld because she would not compromise on needing to speak to someone before signing.
- On February 14, 2019, she got a message saying she must sign the form.
- Between January 23 and February 14, 2019, she attended at the local ministry office on at least 8 occasions trying to get answers about legislation, her rights, and her contractual obligations in this situation.
- What she got was staff who said they could not answer her questions and claimed that she refused to sign.
- On January 29, February 7 and 11, she put in writing the actions she was taking to pursue income. It was the ministry who was in non-compliance in this situation.
- Her Statement of Contributions has still not been mailed to her. On February 21, she got a letter from another province indicating that CPP would be mailing her the contribution statement. She can do no more than wait for the piece of mail to arrive, and the ministry was aware of this.
- Each time she has been asked by the ministry to do something, she has 100% complied.

In her Notice of Appeal dated April 9, 2019, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- She never refused to sign anything nor failed to pursue income.
- She is not eligible for CPP benefits and followed all instructions to get proof of that for the ministry.
- She received the letter from CPP four days after she submitted her Request for Reconsideration and that is why the letter was not included.
- She was told that if she is not eligible for CPP, she does not need to sign anything else.

Prior to the hearing, the appellant provided the following additional documents:

- 1) CPP Statement of Contributions dated March 18, 2019 indicating an estimated monthly

disability benefit of \$0 per month; and,
2) Written submission.

Prior to the hearing, the ministry provided a letter dated May 16, 2019 advising that the ministry acknowledges that the appellant provided a copy of her CPP Statement of Contributions; however, the ministry relies on the reconsideration decision as the ministry's submission on the appeal since the appellant failed to sign the Consent to Deduction form as requested by the ministry.

Admissibility

In the May 16, 2019 letter, the ministry acknowledged receipt of the requested CPP Statement of Contributions dated March 18, 2019 and did not raise an objection to its admissibility and, given that the record before the ministry at reconsideration included a letter dated February 12, 2019 from another province indicating that the CPP administration "will send" the appellant the requested Statement of Contributions and the appellant wrote in her Notice of Appeal that she received the letter from CPP four days after she submitted her Request for Reconsideration and that is why the letter was not included, the panel admitted the Statement received by the appellant as being in support of the information and record before the ministry at reconsideration, pursuant to Section 22(4)(a) of the *Employment and Assistance Act*.

The panel considered the ministry's letter and the appellant's written submission as argument, which will be addressed in Part F- Reasons for Panel Decision, below.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for assistance under Section 10 of the EAPWDA for failing to comply with a direction to supply requested information and continues to be ineligible for assistance pursuant to Section 28 of the EAPWDR because she has not fully complied with the direction, and also continues to be ineligible for assistance pursuant to Section 8 of the EAPWDR because she has not completed the Consent to Deduction and Payment under the CPP, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Section 10 of the EAPWDA provides:

Information and verification

10 (1) For the purposes of

- (a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,
- (c) assessing employability and skills for the purposes of an employment plan, or
- (d) assessing compliance with the conditions of an employment plan,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
 - (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
 - (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.
- (2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.
- (3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).
- (4) If an applicant or a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.
- (5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

Section 28(1) of the EAPWDR provides that:

28 (1) For the purposes of section 10 (4) [*information and verification*] of the Act, the period for which the minister may declare the family unit ineligible for assistance lasts until the applicant or recipient complies with the direction.

Section 8 of the EAPWDR provides:

Requirement to apply for CPP benefits

8 If a family unit includes a recipient who may be eligible for a benefit under the Canada Pension Plan (Canada), for the family unit to continue to be eligible for disability assistance, the recipient, when requested by the minister, must complete a Consent to Deduction and Payment under the Canada Pension Plan (Canada) directing that

- (a) an amount up to the amount of disability assistance provided to or for the family unit from the date that the recipient becomes eligible for the Canada Pension Plan benefit be deducted from the amount of that benefit, and
- (b) the amount deducted be paid to the minister.

Panel decision

Section 10 of the EAPWDA and Section 28 of the EAPWDR

Pursuant to Section 10(1)(b) and (e) of the EAPWDA, the ministry may direct a recipient of disability assistance to supply the ministry with information, within the time and in the manner specified by the ministry, for the purposes of auditing eligibility. If a recipient fails to comply with this direction, the ministry may declare the person ineligible for disability assistance until the recipient complies with the direction [Section 10(4) of the EAPWDA and Section 28 of the EAPWDR].

In the reconsideration decision, the ministry wrote that the ministry sent several letters to the appellant, including those dated October 9, 2018, November 21, 2018, and December 21, 2018, requiring the appellant to provide the ministry with a copy of her CPP Statement of Contributions or a Service of Canada letter stating that she has no contributions. The appellant does not dispute that the requested documents were not provided by her until she received the March 18, 2019 CPP Statement of Contributions, which was submitted by the appellant and admitted by the panel on the appeal. However, the appellant wrote in her Request for Reconsideration that she gave written letters to the ministry at the end of January 2019 that outlined and documented actions she had taken or was going to take to pursue CPP income, for which she believed she was not eligible. In her Notice of Appeal, the appellant wrote that she is not eligible for CPP benefits and she argued that she followed all instructions to get proof of that for the ministry. The appellant wrote that the CPP Statement of Contributions was received four days after she submitted her Request for Reconsideration and that is why it was not included earlier.

Section 28 of the EAPWDR provides that the period for which the ministry may declare the family unit ineligible for assistance lasts until the recipient complies with the direction. In her Request for Reconsideration, the appellant wrote that the Statement of Contributions had still not been mailed to her but she got a letter from another province on February 21, 2019 indicating that CPP would be mailing her the contribution statement. The appellant wrote that she can do no more than wait for the piece of mail to arrive, and the ministry was aware of this. The CPP Statement of Contributions was dated March 18, 2019 and received by the appellant after she had submitted her Request for Reconsideration and was provided by the appellant at the earliest opportunity on the appeal.

Given that on or about February 21, 2019 the appellant advised the ministry of the letter dated February 12, 2019 indicating that the CPP administration will send the appellant the requested Statement of Contributions, the appellant indicated that it was a matter of waiting for the Statement to arrive in the mail, and the appellant had taken the necessary actions within her control to comply with the ministry's direction, the panel finds that ministry's determination that the appellant failed to comply with the ministry's direction was unreasonable. Therefore, the panel finds that the ministry's conclusion on March 25, 2019 that the appellant continued to be ineligible for disability, pursuant to Section 28 of the EAPWDR, was unreasonable since the panel finds that, on or about February 21, 2019, the appellant had complied with the ministry's direction to supply specific information.

Section 8 of the EAPWDR

Section 8 of the EAPWDR provides that where a family unit includes a recipient who may be eligible for a benefit under the CPP (Canada), for the family unit to continue to be eligible for disability assistance, the recipient, when requested by the minister, must complete a Consent to Deduction and Payment under the CPP (Canada) ("Consent to Deduction"). In the reconsideration decision, the ministry wrote that the ministry requested that the appellant sign the Consent to Deduction in the letter to the appellant dated October 9, 2018 and the ministry wrote that their request to complete the Consent to Deduction was to prevent duplicate payment in the event that the appellant was found to be eligible for CPP Disability benefits.

In her handwritten letter dated January 29, 2019, the appellant wrote that she was confused why the provincial government has sent her a federal government document to sign. In her Request for Reconsideration, the appellant wrote that she never "refused" to sign any document and she had requested to speak to someone who could answer her questions as she did not understand the document she was asked to sign. The appellant wrote that the document said the consent was "irrevocable" and she took this seriously and she feels she has a right to make an informed decision. In the reconsideration decision, the ministry wrote that the ministry attempted to explain the purpose of the Consent to Deduction form in conversations with the appellant on January 31, February 8, and February 21, 2019 and the appellant had also been

provided with numbers for advocates to further assist her in understanding the Consent to Deduction form.

In her written submission on the appeal, the appellant argued that since she was not eligible for CPP benefits, she did not have to sign the Consent to Deduction form. The appellant argued that the ministry did not interpret the legislation or consider the evidence in a fair, large and liberal construction and interpretation as best ensures the attainment of its objects as required by the provisions of the *Interpretation Act* [Section 8]. In the letter dated May 16, 2019, the ministry argued that the appellant failed to sign the Consent to Deduction form as requested by the ministry and is, therefore, ineligible for assistance in accordance with Section 8 of the EAPWDR.

Given that the CPP Statement of Contributions was admitted on the appeal and indicates an estimated monthly disability benefit for the appellant of \$0 per month, the panel finds that the ministry's determination that the appellant "may be eligible for a benefit under the CPP (Canada)," was unreasonable. Therefore, the panel finds that the ministry's application of Section 8 of the EAPWDR to the appellant's circumstances, requiring her to complete the Consent to Deduction form, was not reasonable.

Conclusion

Therefore, the panel finds that the ministry's decision was not a reasonable application of the applicable legislation to the appellant's circumstances and the panel rescinds the ministry's reconsideration decision. The panel's decision is referred back to the ministry for a determination as to amount. Therefore, the appellant's appeal is successful.

APPEAL NUMBER

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)

2019-06-05

PRINT NAME

Jennifer Armstrong

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-06-05

PRINT NAME

Neena Keram

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-06-05